

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA,)
)
) Plaintiff,)
)
) STATE OF MARYLAND,)
)
) Plaintiff-Intervenor,)
)
) and)
)
) ANACOSTIA WATERSHED SOCIETY,)
) AUBUBON NATURALIST SOCIETY OF)
) THE CENTRAL ATLANTIC STATES, INC.)
) FRIENDS OF SLIGO CREEK, and)
) NATURAL RESOURCES DEFENSE COUNCIL,)
)
) Plaintiffs-Intervenors,)
)
) v.)
)
) WASHINGTON SUBURBAN SANITARY)
) COMMISSION,)
)
) Defendant.)
 _____)

Civil Action No. PJM-04-3679

Judge Messitte

CONSENT DECREE

TABLE OF CONTENTS

SECTIONS	PAGES
I. JURISDICTION AND VENUE	4-5
II. BINDING EFFECT	5-6
III. PURPOSES	6
IV. DEFINITIONS	7-16
V. REMEDIAL MEASURES SECTION	16-65
<u>Article One</u> Collection System Characterization Report,	16-18
<u>Article Two</u> Collection System Evaluation	18-25
<u>Article Three</u> Fats, Oils and Grease Control Program	26-33
<u>Article Four</u> Flow Monitoring	33-36
<u>Article Five</u> Collection System Modeling	36-40
<u>Article Six</u> Sewer Basin Repair, Replacement, Rehabilitation Plans (SR ³ Plans) and Schedules	40-43
<u>Article Seven</u> Performance Assessments	43-45
<u>Article Eight</u> Illegal Stormwater Discharges to the Collection System	45-46
<u>Article Nine</u> Information Management System	46-48
<u>Article Ten</u> Pump Stations	49-52
<u>Article Eleven</u> Collection System Operation and Maintenance Plan	52-57
<u>Article Twelve</u> Emergency Response Plan(s)	57-60
<u>Article Thirteen</u> Reporting and Recordkeeping	61-62

VI.	REVIEW AND APPROVAL PROCEDURES	62-65
VII.	REPORTING REQUIREMENTS	65-66
VIII.	CIVIL PENALTY	66-67
IX.	STIPULATED PENALTIES	67-80
X.	SUPPLEMENTAL ENVIRONMENTAL PROJECTS	80-85
XI.	EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS	85-87
XII.	FORCE MAJEURE	87-89
XIII.	DISPUTE RESOLUTION	89-92
XIV.	RETENTION OF JURISDICTION	92-93
XV.	MODIFICATION	93
XVI.	RIGHT OF ENTRY	93-94
XVII.	NOT A PERMIT/COMPLIANCE WITH OTHER LAWS	94-95
XVIII.	FAILURE OF COMPLIANCE	95
XIX.	NON-WAIVER PROVISIONS	95-96
XX.	COSTS OF SUIT	96-97
XXI.	RECORD KEEPING	98
XXII.	FORM OF NOTICE	98-100
XXIII.	PUBLIC COMMENTS AND ENTRY OF CONSENT DECREE	100-101
XXIV.	TERMINATION	101
XXV.	SIGNATORIES	101-102
XXVI.	EFFECTIVE DATE	102

XXVII. INTEGRATION	102
XXVIII. FINAL JUDGMENT	103
XXIX. LIST OF APPENDICES	103
Appendix A- Format for Annual Report and Statement or Certification	114-121
Appendix B- Format for Quarterly Report	122-129
Appendix C- Description of Trunk Sewer Inspection Program	130-131
Appendix D- List of Individual Submissions under the Consent Decree	132-136
Appendix E- Code of Maryland Regulation 26.08.10.	137-141
Appendix F1- Supplemental Environmental Project A Description: Purchase of Patuxent Reservoir Buffer Properties and Easements for Water Supply Protection	142-147
Appendix F2- Supplemental Environmental Project B Description: Private Property Inflow Elimination Program	148-150
Appendix F3- Supplemental Environmental Project C Description: Western Branch WWTP Winter Denitrification Through Methanol Addition	151-153

CONSENT DECREE

WHEREAS, Plaintiff, the United States of America ("United States"), by the authority of the Attorney General of the United States and through its undersigned counsel, acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a Complaint on November 18, 2004, seeking injunctive relief pursuant to Sections 309 and 504 of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1319 and 1364, and civil penalties pursuant to Section 309 naming as defendant the Washington Suburban Sanitary Commission ("WSSC");

WHEREAS, Plaintiff-Intervenor the State of Maryland, on behalf of the Maryland Department of the Environment ("MDE"), filed a Motion to Intervene and a Complaint in Intervention on November 18, 2004 against WSSC for its alleged violations of Title 9, Subtitle 3 of the Environment Article, Annotated Code of Maryland ("Maryland's Environment Article Title 9, Subtitle 3");

WHEREAS Plaintiff-Intervenors the Anacostia Watershed Society ("AWS"), Audubon Naturalist Society of the Central Atlantic States, Inc. ("Aububon"), Friends of Sligo Creek ("FOSC") and the Natural Resources Defense Council ("NRDC") (collectively, "the Citizens Groups") filed a Motion to Intervene and a Complaint in Intervention on January 11, 2005 against WSSC for its alleged violations of CWA Section 301(a), 33 U.S.C. § 1311(a), certain NPDES Permits, and Maryland common law, following their issuance on September 22, 2004 of a 60-day notice of intent to sue pursuant to CWA Section 505(b), 33 U.S.C. § 1365(b);

WHEREAS, WSSC serves the citizens of Montgomery and Prince George's Counties, Maryland, by operating several wastewater treatment plants ("WWTPs") and a Sanitary Sewer Collection System ("the Collection System") that, in part, feeds into its WWTPs and, in part, feeds into the Washington, D.C. sewer system, which ultimately flows into the District's Blue Plains WWTP;

WHEREAS, the United States alleged in its Complaint that 1) WSSC has violated and continues to violate Section 301 of the CWA, 33 U.S.C. § 1311, by discharging untreated sewage from its Collection System to waters of the United States in violation of Section 301 of the CWA, 33 U.S.C. § 1311; 2) WSSC has violated and continues to violate the terms and conditions of its NPDES permits and CWA Sections 301 and 402, 33 U.S.C. §§ 1311 and 1342, by failing properly to operate and maintain its Collection System; 3) certain of WSSC's SSOs, namely those that occur in streets, playground areas and buildings, pose an imminent and substantial endangerment to the health of persons, in violation of CWA Section 504(a), 33 U.S.C. §1364(a); 4) WSSC has violated its NPDES permits and CWA Sections 301 and 402, 33 U.S.C. §§ 1311 and 1342, by failing adequately to report SSOs; and 5) WSSC has violated its NPDES permits and CWA Sections 301 and 402, 33 U.S.C. §§ 1311 and 1342, by failing to maintain compliance during power failures to its facilities;

WHEREAS, the State of Maryland alleged in its Complaint in Intervention that 1) WSSC has violated and continues to violate Section 301 of the CWA, 33 U.S.C. § 1311, by discharging untreated sewage from its Collection System to waters of the United States in violation of Section 301 of the CWA, 33 U.S.C. § 1311; 2) WSSC has violated and continues to violate the terms and conditions of its NPDES permits by failing properly to operate and maintain its Collection System; 3) WSSC has violated its NPDES permits by failing adequately to report SSOs; 4) WSSC has violated its NPDES permits by failing to maintain compliance during power failures to its facilities;

5) WSSC's SSOs are "unpermitted discharges" which violate Sections 9-322 and 9-323 of the Environment Article, Annotated Code of Maryland (1996) ("Environment Article"); 6) WSSC violated Section 9-331.1 of the Environment Article by failing to timely and adequately report SSOs; and 7) certain of WSSC's SSOs, namely those that occur in public and private property, including streets,

playground areas, and into buildings, pose a menace to public health or a nuisance, in violation of Sections 9-220, 9-252, and/or 10-105 of the Maryland Environment Article;

WHEREAS, the Citizens Groups alleged in their Complaint in Intervention that 1) WSSC has violated and continues to violate Section 301 of the CWA, 33 U.S.C. § 1311, by discharging untreated sewage from its Collection System to waters of the United States in violation of Section 301 of the CWA, 33 U.S.C. § 1311; 2) WSSC has violated and continues to violate the terms and conditions of its NPDES permits by failing to properly operate and maintain its Collection System and by failing to report SSOs; 3) that the Citizens Groups were entitled to a Declaratory Judgment that WSSC has violated and continues to violate the CWA in order to prevent future harm to the Citizens Groups and their respective members; and 4) that WSSC's inadequate operation of its Collection System constitutes a nuisance under Maryland law;

WHEREAS, on May 17, 2005, the Court granted the State of Maryland's and the Citizens Groups' motions to intervene, and consolidated their cases with the United States' case (C.A. No. PJM-04-3679);

WHEREAS, the Parties agree, and the Court finds, that settlement of the claims alleged in the Complaints without further litigation or trial of any issues is fair, reasonable and in the public interest, and that the entry of this Consent Decree is the most appropriate way of resolving the claims alleged in the Complaints; and

WHEREAS, WSSC does not admit any liability to the United States or to the State or to the Citizens Groups for the violations alleged in their respective Complaints;

NOW THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action and over the Parties to this action pursuant to Sections 309(b) and 504(a) of the CWA, 33 U.S.C. §§ 1319(b) and 1364(a), and 28 U.S.C. §§ 1331, 1345, 1355 and 1367. The United States' Complaint states claims upon which relief may be granted against WSSC under Section 309 and 504 of the CWA, for injunctive relief and civil penalty. The State of Maryland's Complaint in Intervention states claims upon which relief may be granted under Sections 301(a) and 309(b) of the CWA and under the Court's supplemental jurisdiction, under Sections 9-339 and 9-342 of the Environment Article, Annotated Code of Maryland, for injunctive relief and civil penalties. The Citizens Groups' Complaint in Intervention states claims upon which relief may be granted under Sections 301 and 402 of the CWA and under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. WSSC waives any and all objections that it might have to the Court's jurisdiction to enter and enforce this Consent Decree. Authority to bring this action on behalf of the United States is vested in the Department of Justice ("DOJ") pursuant to Section 506 of the CWA, 33 U.S.C. § 1366, and 28 U.S.C. §§ 516 and 519. Authority to bring this action on behalf of the State of Maryland is vested in the Office of the Attorney General of Maryland pursuant to Section 9-344 of the Environment Article, Annotated Code of Maryland.

2. For purposes of this Consent Decree, or any action to enforce this Decree, WSSC consents to the Court's jurisdiction over WSSC, this Decree, and such action, and further consents to venue in this judicial district.

3. For purposes of this Consent Decree, WSSC agrees that the United States' Complaint states a claim for relief under Section 301(a), 309(a), and 504 (a) of the CWA, that Maryland's Complaint in Intervention states a claim for relief under Sections 301(a) and 309(b) of the CWA, and

under § 9-322 of the Environment Article, Annotated Code of Maryland, and that the Citizens Groups' Complaint in Intervention states a claim for relief under Sections 301 and 402 of the CWA, 28 U.S.C. §§ 2201 and 2202;

4. Venue is proper in this Court pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and 1395(a).

II. BINDING EFFECT

5. The provisions of this Consent Decree shall apply to and be binding on WSSC, through its officers, directors, employees, agents, and binding on its successors and assigns.

6. From the Date of Lodging of this Consent Decree until its termination, WSSC shall give written notice of and provide a copy of this Consent Decree to any person or entity to whom WSSC may transfer ownership or operation of its WWTPs, and/or any portion of its Collection System. WSSC shall notify EPA, MDE the United States Department of Justice (DOJ) and the Citizens Groups in writing of any successor in interest at least twenty-one (21) days prior to any such transfer.

7. Any transfer of ownership or operation of one or more WWTPs and/or the Collection System, in whole or in part, to another entity must be conditioned upon the transferee's agreement to undertake the obligations required by this Decree, as provided in a written agreement between WSSC and the proposed transferee, enforceable by the United States and the State as third-party beneficiaries of such agreement. At least 30 days prior to such transfer, WSSC shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region III, to DOJ, to MDE and to the Citizens Groups in accordance with Section XXII (Form of Notice) of this Consent Decree.

8. Any transfer of ownership or operation of any one or more WWTP, and/or any part of or the whole Collection System without complying with paragraph 7, above, constitutes a violation of this Decree and shall not be effective to relieve WSSC of its obligations under this Consent Decree.

9. Following the Date of Lodging of this Consent Decree, upon approval by WSSC of any contract relating to work to be performed pursuant to this Consent Decree, WSSC shall provide a copy of all relevant and applicable portions of this Consent Decree to each firm retained to perform that work. For firms already retained by WSSC to perform work under this Decree prior to the Date of Lodging, WSSC shall provide a copy of all relevant and applicable portions of this Consent Decree no later than thirty (30) days after the Date of Lodging. Any action taken by any contractor or consultant retained to fulfill WSSC's responsibilities under this Consent Decree shall be considered an action of WSSC for purposes of determining compliance with this Consent Decree. In an action to enforce this Consent Decree, WSSC shall not assert as a defense against the United States and/or Maryland any act or failure to act by any of its officers, directors, employees, agents, servants, contractors, successors and assigns.

III. PURPOSES

10. The express purposes of the Parties entering into this Consent Decree are for WSSC to take steps necessary to comply with the CWA, Maryland's Environment Article, Title 9, Subtitle 3, the regulations promulgated under those laws, and WSSC's National Pollutant Discharge Elimination System (NPDES) Permits effective on the Date of Lodging, and any subsequent renewals of such permits that occur before the Termination of this Consent Decree, and to resolve the claims for civil penalties and injunctive relief alleged in the United States', the State of Maryland's, and the Citizens Groups' Complaints against WSSC.

IV. DEFINITIONS

11. Unless otherwise defined herein, the terms used in this Consent Decree will have the meaning given to those terms in the CWA, 33 U.S.C. §§ 1251 et seq. and the regulations promulgated there under or, if not defined in the CWA or its regulations, then as defined in Maryland's Environment Article Title 9, Subtitles 1 and 3, and the regulations promulgated there under.

The following terms used in this Consent Decree will be defined as follows:

A. "Annual Report" shall mean the report that WSSC shall submit for each calendar year, by March 1st of the year following the calendar year in question, which report will incorporate the format set out in Appendix A to this Consent Decree.

B. "Article" shall mean a subpart of the Remedial Measures Section (Section V.) of this Consent Decree.

C. "Building Backup" shall mean a release from the Collection System, through a lateral to a building or structure.

D. "Calendar Quarter" shall mean the three-month periods ending on March 31st, June 30th, September 30th, and December 31st of each year.

E. "Citizens Groups" shall mean the Plaintiff-Intervenors in this action, the Natural Resources Defense Council, the Anacostia Watershed Society, the Audubon Naturalist Society of the Central Atlantic States, Inc., and the Friends of Sligo Creek.

F. "Closed Circuit Television" or "CCTV" shall mean an inspection technique that uses a closed-circuit TV camera to observe the interior condition of Sewer Segments from within the Sewer Segments.

G. “CCTV Inspection Program” shall mean the CCTV inspections that are required to be performed pursuant to Article Two, B. and Article Eleven, B.2 of this Consent Decree.

H. “Collection System” means the collection and conveyance system (including all pipes, Force Mains, Gravity Sewer Segments, overflow structures, regulators, pump stations, manholes, and components thereto) owned by WSSC and located within the WSSD on the Date of Lodging of this Consent Decree, and designed to store and/or convey sewage to a wastewater treatment plant. For purposes of the Remedial Measures Section of this Consent Decree (Section V) any collection and conveyance system constructed and/or acquired by WSSC in between the Date of Lodging and the date this Consent Decree is terminated shall also be considered part of the “Collection System,” provided that it is located within the WSSD.

I. “Collection System Characterization Report or CSC Report” shall mean the Report that WSSC must submit in accordance with Article One, B. of the Remedial Measures Section (Section V) of this Consent Decree.

J. “Collection System Component Inventory” shall mean the electronic inventory of the components of the Collection System that WSSC must keep updated in accordance with Article Nine, B.3 of the Remedial Measures Section (Section V) of this Consent Decree.

K. “Collection System Model” or “Model” shall mean the computer model of the Collection System that WSSC shall use in accordance with the requirements of Article Five, B. of this Remedial Measures Section (Section V) of this Consent Decree to assess the existing and long-term capacity of the Collection System.

L. “Collection System Operation and Maintenance Plan” or “O & M Plan” shall mean the comprehensive plan that WSSC shall submit in accordance with the requirements of Article Eleven, B.

of the Remedial Measures Section (Section V) of this Consent Decree to provide for the proper operation and maintenance of the gravity sewer lines, force mains, pump stations, and all appurtenances of its Collection System, and to minimize failures, malfunctions, and line blockages that could contribute to SSOs.

M. “Complaints” shall mean the complaint filed by the United States and the complaints in intervention filed by the State of Maryland and the Citizens Groups in this action.

N. “Consent Decree” or “Decree” shall mean this Decree and all appendices attached hereto.

O. “Date of Entry” or “Effective Date” shall mean the date on which the United States District Court for the District of Maryland signs and enters the Consent Decree on its docket.

P. “Date of Lodging” shall mean the date on which the United States, the State of Maryland, and the Citizens Groups file this Consent Decree, with the United States District Court for the District of Maryland.

Q. “Day” or “days” shall mean a calendar day or calendar days. When the day a report or other deliverable is due under this Consent Decree falls on a Saturday, Sunday or a legal holiday as set forth in Federal Rule of Civil Procedure 6, WSSC shall have until the next calendar day that is not one of the aforementioned days for submittal of such report or other deliverable.

R. “Department of Justice or DOJ” shall mean the United States Department of Justice and any successor departments or agencies of the United States government.

S. “Design Costs” shall mean any and all costs associated with planning, investigation, alternative development, environmental clearance, facility configuration, detailed design (including, as appropriate, architectural, landscape, civil, water quality, mechanical, electrical, instrumentation and control system, structural, and geotechnical design), constructability review, and procurement (including

contract document preparation).

T. “Discharge” shall mean any “discharge of a pollutant” as defined in 40 C.F.R. § 122.2, and/or any “discharge” as defined in Section 9-101(b) of the Maryland Environment Code Annotated (1996 Repl. Vol.) (“(1) The addition, introduction, leaking spilling or emitting of a pollutant into the waters of this State; or (2) The placing of a pollutant in a location where the pollutant is likely to pollute.”).

U. “Emergency Response Plan(s)” shall mean the plan that WSSC shall develop and submit in accordance with the requirements contained in Article Twelve, B. of the Remedial Measures Section (Section V) of this Consent Decree to respond adequately to the occurrence of SSDs and Basement Backups in its Collection System to protect human health and welfare.

V. “EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

W. “FOG” shall mean the pollutants fats, oils and grease. The term “grease,” as used in this Consent Decree, is a shorthand for FOG.

X. “FOG Permit” as that term is used in Article Three of the Remedial Measures Section (Section V) of this Consent Decree shall mean a document that WSSC shall issue to “Food Establishments” in the WSSD which authorizes such Food Establishments to discharge FOG into the Collection System subject to specific conditions and limitations which are aimed at minimizing the introduction of FOG into the Collection System so as to reduce or eliminate SSOs from the Collection System caused by FOG blockages from such Food Establishments.

Y. “FOG Report” shall mean the report that WSSC must submit in accordance with Article Three, B.5 of this Consent Decree.

Z. “Food Establishment(s)” shall mean: (1) a food processing plant or (2) a food service facility, as defined below:

1. “food processing plant” shall mean any place used for, or in connection with, the commercial manufacturing, preparing, processing, packaging, canning, freezing, storing, distributing, labeling, or holding of food or drink for human consumption. The term includes: (a) a bakery plant; (b) a cannery; (c) a confectionery plant; (d) a crab meat picking plant; (e) a food manufacturing plant; (f) a food warehouse or distribution center; (g) a frozen food processing plant; (h) a shellfish plant; and (i) a soft drink manufacturing plant. The term “food processing plant” does not include a warehouse or distribution center that: (a) does not process food; and (b) stores only sealed containers of whole bean, ground or instant coffee, leaf or instant teas, nondairy dehydrated whiteners, sugar or sugar-free sweeteners.

2. “food service facility” shall mean: (a) a place where food or drink is prepared for sale or service on the premises or elsewhere; or (b) any operation where food is served to or provided for the public, with or without charge. The term “food service facility” does not include: a kitchen in a home, for guests at a social gathering, or for service to unemployed, homeless or other disadvantaged populations; or a facility that serves exclusively prepackaged food products where food is not handled.

AA. “Force Main” shall mean any pipe that receives and conveys wastewater under pressure from the discharge side of a pump.

BB. “Gravity Sewer Segments” or “Sewer Segments” shall mean pipes that receive, contain and convey wastewater not normally under pressure, but intended to flow unassisted under the influence of gravity.

CC. “Hydrograph” shall mean a graphical representation of flow volume over time of wastewater, infiltration, and inflow at a particular point in the Collection System. Hydrographs characterize diurnal variations in wastewater flow rates, as well as flow response to a wet weather event, at a particular point in the Collection System.

DD. “Illegal Stormwater Discharge” shall mean a discharge of storm water not authorized by WSSC to its Collection System, whether such discharge occurs through an illegal connection or through an authorized connection, from a privately-owned source of inflow and infiltration (“I/I”), including but not limited to areaway drains, sump pumps, foundations, roof drains, and defective lateral pipes.

EE. “I/I” or the terms “Inflow” and “Infiltration” as used in this Consent Decree shall be defined as those terms are defined in EPA’s “Sewer System Infrastructure Analysis and Rehabilitation Handbook” (October 1991), referenced in Article Two, B.1 of the Remedial Measures Section (Section V) of this Consent Decree.

FF. “Information Management System” shall mean the system utilized, in accordance with Article Nine of the Remedial Measures Section of this Consent Decree, to track SSOs, to identify known existing and potential sources of SSOs, and to maintain and manage the information necessary to operate and maintain WSSC’s Collection System to eliminate existing SSOs, and avoid future SSOs. The Information Management System shall consist of a maintenance management system or systems, and a Geographic Information System (“GIS”) or the functional equivalent.

GG. “Maintenance Management System” shall mean the computer system that WSSC shall utilize in accordance with Article Nine of this Consent Decree to collect information regarding the operation, maintenance and performance of the Collection System, including maintenance history, repair

history, and the status of maintenance work to be implemented and completed under the Consent Decree.

HH. “Maryland Department of the Environment or MDE” shall mean the Maryland Department of the Environment and any successor departments or agencies of the State of Maryland.

II. “Modified FOG Program Plan” shall mean the plan that WSSC shall develop and submit pursuant to Article Three, B.5 of the Remedial Measures Section (Section V) of this Consent Decree.

JJ. “Non-SSES Basin” shall mean those Sewer Basins in WSSC’s Collection System that are enumerated in Article Two, B.4.a. of the Remedial Measures Section (Section V) of this Consent Decree.

KK. “Parties” shall mean the United States, the State of Maryland, the Citizens Groups and WSSC.

LL. “Performance Assessment” shall mean the assessments that WSSC is required to perform in accordance with Article Seven, B.1 of the Remedial Measures Section (Section V) of this Consent Decree.

MM. “Quarterly” shall mean each “calendar quarter” as defined above.

NN. “Quarterly Report” shall mean the report that WSSC shall submit for each calendar quarter, which report will incorporate the format set out in Appendix B to this Consent Decree.

OO. “Preventive Maintenance” shall mean any inspection, condition assessment, equipment and/or facility servicing, cleaning, upgrading, or other similar activity undertaken to help and/or maintain the components and/or the operation of the Collection System.

PP. “Pump Station” or “Pump Stations” shall mean facilities comprised of pumps which lift wastewater to a higher hydraulic elevation, including all related electrical, mechanical, and structural

systems necessary to the operation of that pump station.

QQ. “Sanitary Sewer Discharge” and “SSD” shall mean any Discharge (as defined above) from WSSC’s Collection System through a point source not specified in any NPDES permit to “Waters of the United States,” “Waters of the State,” or a “location where the pollutant discharged is likely to pollute,” within the meaning of Section 9-101(b) of the Maryland Environment Code Annotated (1996 Repl. Vol.).

RR. “Sewer System Evaluation Survey” or “SSES” shall mean a systematic examination of the tributary sewer systems or subsections of the tributary sewer systems that may have excessive Inflow and Infiltration. The examination will determine the location, flow rate and cost of correction for each definable element of the total I/I problem.

SS. “Sanitary Sewer Overflow” or “SSO” shall mean any unpermitted spill, release or Discharge from the WSSC Collection System.

TT. “Section” shall mean a portion of this Decree identified by a roman numeral.

UU. “Sewer Basin” shall mean a section of WSSC’s Collection System that is a distinct drainage and/or wastewater collection area and designated as such by WSSC.

VV. “Sewer Component” or “Component” shall mean any part of WSSC’s Collection System.

WW. “Sewer Repair, Replacement and Rehabilitation Plan” or “SR³ Plan” shall mean the plans for repair, replacement and rehabilitation work that WSSC must develop for all SSES Basins and all Non-SSES Basins, in accordance with Article Six, B. of the Remedial Measures Section (Section V) of this Consent Decree. Replacement of sewer components may include the elimination of hydraulic restrictions and the creation of additional capacity, as needed, in the Collection System.

XX. “Sewer Segment” shall mean that part of a sewer line that is between one manhole and

the next closest manhole on the sewer line in question.

YY. “SSES Basins” shall mean those sewer basins in WSSC’s Collection System that are listed in Article Two, B.1.a. of the Remedial Measures Section (Section V) of this Consent Decree.

ZZ. “Structurally Rehabilitate” shall mean, when used in reference to sewers, a manhole-to-manhole rehabilitation process that includes sewer lining, pipe bursting, pipe replacement, and/or any other manhole-to-manhole rehabilitation practice that renews the structural integrity of a Sewer Segment.

AAA. “Substantial Completion” shall mean, as used in the Remedial Measures Section (Section V) of this Consent Decree in reference only to construction projects, that date, as certified by the engineer in charge of a construction project, when the construction of the project or specified part thereof is sufficiently completed, in accordance with the contract documents, so that the project or specified part can be utilized for the purposes for which it is intended.

BBB. “Trunk Sewer” shall mean any sewer lines in WSSC’s Collection System that are 15 inches in diameter or greater, including components thereto, and stream-crossings.

CCC. “United States” shall mean the United States of America, acting on behalf of EPA.

DDD. “Waters of the State” shall mean the “Waters of the State” of Maryland, as that term is defined in Section 9-101(I) of the Maryland Environment Code Annotated (“(1) Both surface and underground waters within the boundaries of this State subject to its jurisdiction . . . and (2) The flood plain of free-flowing waters determined by the Department of Natural Resources on the basis of the 100-year flood.”)

EEE. “Waters of the United States” shall mean the “waters of the United States” as that term is defined in 40 C.F.R. § 122.22.

FFF. “WSSC” shall mean the Washington Suburban Sanitary Commission.

GGG. “WSSD” shall mean the Washington Suburban Sanitary District as defined in Art. 29, Maryland Annotated Code § 1-101(i).

V. REMEDIAL MEASURES

12. The following thirteen Articles constitute the injunctive relief or remedial measures that WSSC shall undertake in an effort to eliminate SSOs to achieve the purposes of this Consent Decree. Notwithstanding any other provisions contained herein, all remedial measures undertaken by WSSC shall be completed no later than 14 years from the Date of Entry of the Decree. This Consent Decree does not establish specific criteria for the design of the WSSC Collection System.

Article One- Collection System Characterization Report

A. No later than ninety (90) days from the Date of Entry of this Consent Decree, WSSC shall submit a report to EPA, MDE and the Citizens Groups characterizing the existing Collection System. The Collection System Characterization Report (“CSC Report”) shall include:

1. Maps of the Collection System that identify sewer pipes 6-inch and larger, wastewater treatment plants, Pump Stations, wastewater storage and sewer vaults, flow control valves, and the known location of SSDs identified in Article One A.3. below;
2. Identification of the Sewer Basins that contribute flow to the WSSC Collection System;

3. Identification (where available) of the frequency, date, duration and volume of each SSD (sorted by event/date) during the five years preceding the Date of Lodging of the Consent Decree.

4. Identification of any cause or condition that contributed to each SSD (if known) identified in Article One A.3.

B. Annual SSD Update Map and Report. No later than March 1st of each year, starting the year following when this Consent Decree is entered, and continuing for each year until this Consent Decree is terminated, WSSC shall submit with the appropriate Annual Report due pursuant to Section VII (“Reporting Requirements”) herein, an Annual SSD Update Map and Report for the preceding year, providing:

1. Map Required: A map of the Collection System that identifies Sewer Segments 6-inch and larger, wastewater treatment plants, Pump Stations, wastewater storage and sewer vaults, flow control valves, and the known location of all SSDs that occurred during the year for which the Annual Report is being submitted, with a coding system identifying the cause(s), if known (such as grease, roots, broken pipes, etc.), of the SSDs;

2. Report Requirement: A report listing all SSDs that occurred during the preceding year, identifying the date, location, duration, volume and cause(s) (if known) of each SSD.

C. Annual Building Backup Report. No later than March 1st of each year, starting the year following when this Consent Decree is entered, and continuing for each year until this Consent Decree is terminated, WSSC shall submit with the appropriate Annual Report due pursuant to Section VII (“Reporting Requirements”) herein, an Annual Building Backup Report for the preceding year. The report shall include: 1) a list of the street address (or location) at which Building Backups occurred; 2)

identification of the Sewer Basin and the Sewer Segment in which the Building Backup occurred; 3) the cause or causes of the Building Backup, if known; 4) an indication of whether a Building Backup has previously occurred at the same address (or location) since the Date of Entry of the Consent Decree and, if so, a list of the earlier date(s) on which a Building Backup occurred, and 5) a list of those Building Backups that have resulted in a Discharge, if known.

D. Individual Submission Requirements and Annual Reporting Requirements. For a list of individual submissions required under Article One, see Appendix D, and for a list of Annual Reporting Requirements under Article One, see Appendix A this Consent Decree.

Article Two- Collection System Evaluation

A. General Requirements. WSSC shall perform a Collection System Evaluation as described herein to determine the causes of SSOs that occur in the WSSC Collection System. The Collection System Evaluation shall include an evaluation of the impact of fat, oil and grease blockages, root intrusion, structural defects, poor alignment and Infiltration and Inflow into the Collection System, and any other significant problems that may contribute to SSOs. Rainfall data, wastewater flow data and other information shall be used in the course of the Collection System Evaluation. The Collection System Evaluation is to include Sewer System Evaluation Surveys (“SSESs”) on the SSES Basins, the implementation of a WSSC Trunk Sewer Inspection Program, and other inspections of the Non-SSES Basins, as described more fully in Subsection B. below.

B. Specific Requirements. The WSSC Collection System Evaluation shall be conducted in the manner as described below.

1. SSESs- WSSC shall conduct an SSES in each of the Sewer Basins listed below in 1.a. which have qualified as meeting the criteria for such a study in the “Handbook: Sewer System Infrastructure Analysis and Rehabilitation, EPA\625\6-91\030,” October 1991 (the “EPA Handbook”); and “Specification Guidelines: Wastewater Collection Systems Maintenance and Rehabilitation” prepared by the National Association of Sewer Service Companies (the “NASSCO Guidelines”). Such SSESs shall be conducted in accordance with the procedures set forth in the NASSCO Guidelines and sound engineering practice. As part of the inspection, WSSC shall conduct rainfall, groundwater and flow monitoring to determine baseline I/I rates in each Sewer Basin and identify areas of limited capacity. Where appropriate, WSSC shall use additional means to identify sources of I/I, including CCTV, smoke and/or dye testing in accordance with the EPA Handbook.

a. WSSC shall perform an SSES in the following Sewer Basins which have been qualified as meeting the criteria under the EPA Handbook as noted in B.1 above:

Beaverdam
Broad Creek II
Cabin John
Little Falls
Northeast Branch
Parkway
Piscataway
Rock Run
Watts Branch

b. SSES studies underway as of the Date of Entry of the Consent Decree in the Beaverdam, Cabin John and Broad Creek II Sewer Basins satisfy the requirement of B.1.a. herein. WSSC shall perform the SSESs in these three Sewer Basins in a manner

that is consistent with the EPA Handbook and NASSCO Guidelines and sound engineering practice.

c. Within 30 days of the Date of Entry of the Consent Decree, WSSC shall submit a schedule for conducting the SSESs in those Sewer Basins identified in Article Two B.1.a. above to MDE and EPA for their review and approval and to the Citizens Groups for their review and comment. Comments from the Citizens Groups, if any, shall be submitted to EPA, MDE and WSSC within thirty (30) days of their receipt of the proposed SSES schedule. WSSC shall implement the SSESs in accordance with the schedule approved by MDE and EPA. The approved scheduled completion date for each SSES shall be incorporated herein and shall become enforceable under this Consent Decree. All SSES studies required under this Article shall be completed within eight years of the Date of Entry of the Consent Decree.

d. The recommendations in the Rock Creek/Patuxent North and Broad Creek I SSES reports which were completed before the Date of Entry must be reevaluated and, where appropriate, all recommendations for further study and work completed within five years from the Date of Entry of the Consent Decree unless field conditions justify that a recommendation not be performed. The SR³ Plans prepared for the Rock Creek/Patuxent North and Broad Creek I Sewer Basins shall include the unaddressed recommendations proposed in these SSES reports.

e. Within 30 days of awarding the contract for each SSES, WSSC shall submit to MDE, EPA and the Citizens Groups a copy of the final scope of work describing the specific tasks to be performed in each Sewer Basin.

f. Within 60 days of the scheduled deadline for completion of each SSES, WSSC shall submit the SSES report to EPA, MDE and the Citizens Groups for review and comment. Comments from the Citizens Groups, if any, shall be submitted to EPA, MDE and WSSC within thirty (30) day of their receipt of the SSES report from WSSC. Within sixty (60) days of receipt of EPA's and MDE's comments on the SSES report, WSSC shall respond to and/or modify the SSES report accordingly, and shall resubmit the report to EPA and MDE.

2. Trunk Sewer Inspection Program – WSSC shall conduct a Trunk Sewer Inspection Program of all Sewer Segments 15-inch in diameter and larger, including appurtenances and stream crossings as noted in Appendix C. The initial Trunk Sewer inspection shall begin within 90 days of the Date of Entry and shall be completed no later than five years thereafter. A description of the Trunk Sewer Inspection Program is attached as Appendix C. Recommendations for repair, replacement and/or rehabilitation of Trunk Sewers, manholes and exposed pipe at stream crossings, and trunk sewer appurtenances necessary to address those defects that cause SSOs, identified during the Trunk Sewer Inspection Program shall be incorporated into the appropriate Sewer Basin Repair, Replacement and Rehabilitation Plan (SR³ Plan), in accordance with Section V., Article Six, B.3, of this Consent Decree. After completion of the initial inspection, WSSC shall conduct subsequent Trunk Sewer inspections at no less than 5-year intervals. The subsequent Trunk Sewer inspections shall focus on ensuring that the problems identified in the previous Trunk Sewer inspections have been appropriately addressed and identifying new problems to be addressed. Each subsequent Trunk Sewer inspection shall be completed no later than 5 years after the start of the inspection.

a. Other sewer pipes connecting to the trunk that are exposed across or along stream channels will be evaluated in conjunction with the Trunk Sewer Inspection Program. Exposed pipes will be evaluated in a manner similar to the Stream Corridor Assessment Survey (Maryland Department of Natural Resources adopted September, 2001) protocol for exposed pipes and in accordance with requirements of Appendix C and the O & M Plan requirements of Article Eleven.

b. Repair and rehabilitation within the SR³ Plan will be prioritized taking into consideration severity, accessibility of the pipe defects identified, and proximity of the defect to streams and other water bodies.

c. Trunk Sewer Inspection Program scheduling obligations for the Rock Creek and Broad Creek Sewer Basins re-evaluations are required in Article Two, B.1.d and Article Six, A. Scheduling of the trunk sewer inspections in the Sligo Creek, Northwest Branch, Northeast Branch, Paint Branch, Beaverdam Creek and Lower Anacostia Basins will follow Rock Creek and Broad Creek.

3. CCTV of SSD Sewer Segments – From the Date of Entry of the Consent Decree until its termination, WSSC shall CCTV any Sewer Segment of the Collection System where an SSD has occurred. Seventy-five percent (75%) of the CCTV activity required herein shall be conducted within 10 days of the occurrence of the SSD event, and one hundred percent (100%) of the CCTV activity required herein shall be conducted within 30 days of the occurrence of the SSD event. WSSC shall report on whether this provision has been achieved in each Quarterly Report submitted in accordance with Section VII. of this Consent Decree (See Appendix B of this Consent Decree, Quarterly Report Format).

4. Evaluation of Non-SSES Sewer Basins

a. Within five years from the Date of Entry of this Consent Decree, WSSC shall evaluate the condition of Sewer Segments that are less than 15 inches in diameter and have been in service for more than 20 years by performing CCTV and manhole inspections in the following Sewer Basins:

Dulles Interceptor
Horsepen
Lower Anacostia
Mattawoman
Monocacy
Muddy Branch
Northwest Branch
Oxon Run
Paint Branch
Patuxent Center
Seneca Creek
Sligo Creek
Western Branch.

b. Sewer Segments Exempt from CCTV Requirements – The following portions of the Collection System shall be exempt from the CCTV requirement in Article Two B.4.a. above:

- (i) Sewer Segments that have been CCTV inspected by WSSC in the five year period preceding the Date of Entry of the Consent Decree;
- (ii) Sewer Segments currently on preventive cleaning and/or chemical root control programs;

(iii) Sewer Segments that have been “Structurally Rehabilitated” (as that term is defined in Section V. (Definitions) of this Consent Decree) and/or replaced in the 20 years prior to the Date of Entry of the Consent Decree.

c. CCTV Guidelines – The CCTV shall be performed in accordance with the EPA Handbook and the NASSCO Guidelines and sound engineering practice.

d. A list of Sewer Segments exempted from the CCTV requirement pursuant to Article Two B.4.b. above, shall be submitted to EPA and MDE within 30 days of the Date of Entry of the Consent Decree. This list may be updated periodically by WSSC to include Sewer Segments added and/or deleted as the result of additions and/or deletions to the preventive cleaning and chemical root control programs pursuant to Article Two B.4.b.(ii) above, and the addition of segments that are structurally rehabilitated in the manner described in Article Two 4.b.(iii) above. Any updated lists shall be provided to EPA, MDE and the Citizens Groups in the Annual Report to be submitted for each calendar year.

5. Water Quality Monitoring (“WQM”) Plan WSSC shall develop and submit a WQM Plan to EPA, MDE and the Citizens Groups for review and comment no later than 120 days after the Date of Entry. WSSC shall begin implementation of the WQM Plan 60 days after receiving EPA and MDE approval.

a. The WQM Plan shall include semi-annual bacteria source tracking (BST) and fecal coliform testing at two locations in each of the following Sewer Basins:

Broad Creek
Cabin John
Horsepen
Indian Creek

Little Falls
Lower Anacostia
Lower Beaverdam Creek
Muddy Branch
Northeast Branch
Northwest Branch
Oxon Run
Paint Branch
Parkway
Piscataway
Rock Creek
Seneca Creek
Sligo Creek
Upper Beaverdam Creek
Watts Branch
Western Branch

b. The WQM Plan shall include annual BST and fecal coliform testing at one location in each of the following Sewer Basins:

Dulles Interceptor
Mattawoman
Monocacy
Patuxent Center
Patuxent North
Rock Run.

c. The WQM Plan shall provide for the sampling locations, protocols and reporting of results.

C. Quarterly Reporting and Annual Reporting and Statement or Certification Requirements.

In the Quarterly Reports and the Annual Reports and Statements or Certifications to be submitted pursuant to this Consent Decree (See Appendix B, Quarterly Report Format, and Appendix A, Annual Report and Statement or Certification), WSSC shall report on its progress towards compliance with, and/or shall provide a Statement or Certification regarding its compliance with the applicable provisions of Article Two, as set forth in those Appendices.

D. Individual Submission Requirements. For a summary of individual submissions required under Article Two, see Appendix D to this Consent Decree.

Article Three- Fats, Oils and Grease Control Program

A. General Requirements. WSSC shall take the actions set forth in Subsection B below, in an effort to eliminate those SSOs caused by fats, oils and/or grease (“FOG”). During the review and modification process, WSSC shall continue to implement all elements of its existing FOG program.

B. Specific Requirements.

1. WSSC shall maintain and annually update a map or maps of the WSSD, identifying the location of all known grease-related SSOs that have occurred from the Date of Entry onward, and shall resubmit the map or maps annually to EPA and MDE as an attachment to the Annual Report (See Appendix A, Annual Report Format).

2. Within 180 days from the Date of Entry of the Consent Decree, WSSC shall, using as a starting point existing Maryland Department of Health and Mental Hygiene, Montgomery County, and Prince George’s County databases, establish, maintain, and on at least an annual basis update the database of all Food Establishments served by WSSC. The initial list of Food Establishments from this database shall be submitted to EPA and MDE no later than 180 days from the Date of Entry. As part of this database, WSSC shall include and maintain a record of all Notices of Violation (NOVs) and citations that it has issued to each Food Establishment located at the relevant address since January 1, 2000 onward. The database shall contain a field for the compliance status of establishments, which shall be updated regularly. WSSC shall annually submit to EPA and MDE a revised database to include newly opened and recently

closed Food Establishments, and a statement that it is maintaining a current record of NOV's and citations in the database (See Appendix A, Annual Report Format).

3. a. Within 18 months from the Date of Entry of the Consent Decree, WSSC shall develop and obtain all necessary approvals to commence implementing a FOG Permit program for all Food Establishments located in the WSSC service area to control the discharge of FOG into the sanitary sewers.

b. Within 9 months from the Date of Entry WSSC shall submit a copy of the draft FOG Permit to EPA, MDE, and the Citizens Groups for their review and comment. Comments from the Citizens Groups, if any, shall be submitted to EPA, MDE and WSSC within thirty (30) days of the date of receipt of the draft FOG permit from WSSC. EPA and MDE shall determine whether the draft permit complies with Article Three B.4, below. Should EPA and MDE take more than 60 days to review and send comments on the draft FOG Permit to WSSC, then WSSC shall receive an extension of time on the 18 month, 42 month and 54 month deadlines set forth in this Article Three B.3 and the following Article Three B.4, in an amount exactly equivalent to the amount of time beyond 60 days that it took for EPA and MDE to send comments to WSSC.

4. Within 54 months from the Date of Entry, WSSC shall issue all FOG Permits that are required to be issued pursuant to this Article. Within 42 months from the Date of Entry of the Consent Decree, no less than 60% of the FOG Permits shall be issued. The FOG Permits shall include grease abatement system management, operation and maintenance standards, best management practices that address on-site record keeping requirements, cleaning frequency, cleaning standards, use of additives, and ultimate disposal of the grease removed. The FOG

Permits shall also include recordkeeping requirements, which shall include a process that requires all Food Establishments with grease control devices to maintain records on dates of grease removal, the amount of grease removed, and the location where the establishment disposed of the grease, or the name, address and phone number of the hauling or recycling service used to transport the grease. Any FOG Permits shall be non-transferable without WSSC approval.

5. Within 180 days after the Date of Entry of the Consent Decree, WSSC shall submit a report to EPA, MDE and the Citizens Groups detailing its existing FOG program (“FOG Report”), and a separate plan for developing and implementing regulatory or program changes to improve the existing program (“Modified FOG Program Plan”). The Modified FOG Program Plan shall contain a schedule for prompt implementation of the modifications.

a. WSSC’s FOG Report shall include a review of the following aspects of its FOG program:

(i) WSSC’s current statutory and regulatory authority to regulate all Food Establishments to control FOG;

(ii) Current grease abatement system management, operation and maintenance standards, best management practices, on-site record keeping requirements, cleaning frequency, cleaning standards, use of additives, and requirements regarding the ultimate disposal of the grease removed;

(iii) Current standards and requirements for the type and proper installation of grease control devices in all new Food Establishments to prevent excess discharges of FOG to the Collection System. The review shall include, but

not be limited to, protocols for assuring proper installation and operation of grease control devices. The review shall also consider the extent to which multi-person residential buildings contribute FOG to the Collection System;

(iv) The current public education, outreach, and compliance assistance efforts to inform commercial, institutional and residential property owners and occupants about the need to minimize the introduction of grease into the Collection System;

(v) The current FOG enforcement program; and

(vi) Consideration of and estimate of the extent to which older Food Establishments that are not currently required to have a grease recovery device are causing FOG blockages.

b. WSSC's Modified FOG Program Plan shall include the following:

(i) Recommendations regarding the inspection prioritization, frequency, and protocol for subsequent regular inspections of Food Establishments and a schedule for implementing such recommendations. WSSC may recommend that Food Establishments that do not generate FOG be identified in its database as not requiring regular inspection. WSSC shall provide a basis for such recommendation;

(ii) A description of and schedule for development and submission for enactment of those statutory and regulatory revisions necessary to address any

deficiencies in the ability to regulate Food Establishments, including implementation and enforcement of the FOG Permit program;

(iii) A description of and schedule for implementation of proposed recommendations for and/or changes to the grease abatement system management, operation and maintenance standards and best management practices that address on-site record keeping requirements, cleaning frequency, cleaning standards, use of additives, and the ultimate disposal of the grease removed necessary to prevent grease related SSOs;

(iv) Recommendations regarding the need for and, if recommended, the development of a program and schedule to notify new owners or operators of Food Establishments about their responsibilities to obtain a FOG Permit and to properly handle FOG;

(v) Recommendations for improvement of the existing FOG enforcement program together with a schedule for implementation of the recommendations. The recommendations shall, at a minimum, address procedures for timely notification of violations, escalation of enforcement actions, and the imposition of civil penalties and injunctive relief;

(vi) Recommendations and a schedule for reducing FOG from those FOG generating establishments (such as older restaurants and multi-person residential buildings) that are not required in Chapter 5 of WSSC's Plumbing & Gasfitting Regulations (revised 4/1/94) to have grease recovery devices but which may be generating FOG and causing FOG blockages. Taking into consideration

the review required under B.5.a.(iii) and B.5.a.(vi), above, WSSC shall consider whether (a) to revise regulations to require installation and operation of grease recovery devices, (b) to implement a program for increased cleaning by WSSC of the Sewer Segment into which the lateral connects and to require such establishments to regularly clean the lateral pipes that connect to WSSC's Collection System, or (c) to implement any other equally effective program or remedial measure for reducing FOG blockages; and

(vii) Recommendations, if needed, for changes to public education, outreach and compliance efforts to inform commercial, institutional and residential property owners and tenants about the need to minimize the introduction of grease into the Collection System.

6. WSSC shall perform a baseline inspection of each Food Establishment at least once during the initial 5-year period following receipt of EPA/MDE approval of the Modified FOG Program. WSSC shall inspect no less than 10% of Food Establishments located in the WSSC service area during year one, and no less than an additional 15% during each of the remaining four years until completed, with priority being given to those food establishments that are identified as high-risk facilities for generating FOG. WSSC shall annually certify its compliance with these percentages in accordance with Appendix D. Inspections shall include a determination of each Food Establishment's compliance with its then currently effective FOG

Permit, or if no permit is in effect, the best management practices, and WSSC regulations applicable to FOG.

C. Within 60 days after receiving EPA and MDE comments on the Modified FOG Program Plan, WSSC shall respond to and/or amend the Modified FOG Program Plan accordingly, and shall then submit the amended Modified FOG Program Plan to EPA and MDE for final approval. WSSC may request additional time to review and respond to and/or amend the Modified FOG Program Plan if the comments from MDE and/or EPA so require. Disagreements among the Parties shall be resolved in the manner provided in Section XIII (“Dispute Resolution”) of this Consent Decree. Once final approval is obtained, the recommendations contained in the approved Modified FOG Program Plan shall be implemented in accordance with the schedule set forth therein, which schedule shall be incorporated automatically into and shall be enforceable under this Consent Decree.

D. No later than 6 years from the Date of Entry of this Consent Decree, WSSC shall provide a report to EPA, MDE and the Citizens Groups on the effectiveness of WSSC’s FOG control program, as measured by the reduction in frequency of FOG-related SSOs, compliance with FOG Permits, and the effectiveness of the FOG control measures required in Article Three, B, Specific Requirements. In preparing this report WSSC shall, among other things, analyze and discuss the information on Building Backups submitted in the Annual Reports.

E. Annual Reporting and Statement or Certification Requirements. In the Annual Reports and Statements or Certifications to be submitted pursuant to this Consent Decree (See Appendix A, Annual Report), WSSC shall report on its progress towards compliance with, and/or shall provide a statement or certification regarding its compliance with the applicable provisions of Article Three, as set forth in those Appendices.

F. Individual Submission Requirements- For a summary of individual submissions required under Article Three, see Appendix D, to this Consent Decree.

Article Four- Flow Monitoring

A. General Requirements. WSSC shall perform flow monitoring to identify portions of the Collection System that may not have sufficient capacity to accommodate present or anticipated future flows, to plan sewer improvements, and to make determinations regarding future development of the Collection System. Flow monitoring shall also be used for the hydraulic modeling performed pursuant to Article Five, during the flow monitoring phase of the SSES performed in each Sewer Basin identified in Article Two herein and during the Performance Assessments required in Article Seven herein.

B. Specific Requirements.

1. Within 30 days from the Date of Entry of the Consent Decree, WSSC shall submit to EPA, MDE and the Citizens Groups a map identifying the locations of the 11 permanent rain gauges and 120 permanent flow monitors in use to fulfill the requirements of the Consent Decree. WSSC shall maintain this number of flow monitors and rain gauges at a minimum, throughout the term of the Consent Decree.

2. WSSC shall use contract services as needed to assist in flow monitoring of the Collection System. WSSC shall assure that it obtains minimum data loss and maximum amount of quality data available from the flow monitoring network, and shall upgrade the flow monitors and rain gauges as necessary to do so. WSSC shall perform routine servicing to keep the rain

gauges and flow monitors operating in accordance with their manufacturers' design specifications.

3. All flow meter installations, long-term or temporary, are to be evaluated according to manufacturers' specifications and sound industry practice to ensure optimal data collection. Each meter shall have an accuracy of plus or minus 10 percent. For long-term flow monitor installations with telemetry collection of data, WSSC shall inspect, maintain and calibrate all flow monitors according to the manufacturers' operation and maintenance guide. For temporary flow monitor locations where data is electronically collected at the site, the monitor shall be visited on a weekly basis to confirm the depth and velocity recorded by the sensors and to verify that the monitor is performing within the specific manufacturers limits.

4. WSSC's flow and rain monitoring network shall be capable of monitoring at least three storm events of a magnitude of at least three inches precipitation within 24 hours. WSSC shall execute maintenance agreements that require a minimum of 90% quality data from the system on a monthly basis to meet the requirements of Article Four B. 8. WSSC may alternatively achieve this level of data quality through means other than such maintenance agreements. If other means are used to achieve this level of data quality, WSSC shall provide, upon request of EPA or MDE, documentation to demonstrate how this requirement was met.

5. WSSC shall use a minimum of two permanent and/or temporary rain gauges per Sewer Basin when collecting rainfall data for the hydraulic modeling, all SSESs and all Performance Assessments for SSES Basins. WSSC shall supplement those rain gauge results with Doppler radar information that utilizes a minimum resolution equivalent to one (1) pixel per four (4) square kilometers. At the time that the modeling required by Article Five is conducted,

the submission of the SSESs to EPA, MDE and the Citizens Groups required by Article Two, and the submission of the Performance Assessments to EPA, MDE and the Citizens Groups required by Article Seven, WSSC shall certify that it has met the minimum rain gauge/Doppler radar requirements. WSSC may use previously collected data in conducting the modeling as permitted by Article Five B.1.

6. WSSC shall annually evaluate the number and placement of permanent flow monitors and rain gauges throughout the Sanitary District or, in the alternative, in the specific Sewer Basin being evaluated that year, to assure that the then-current number and placement of flow monitors and rain gauges adequately capture representative wastewater flow and rainfall impact on the Collection System or Sewer Basin. If the locations of such devices are changed, WSSC shall notify EPA, MDE and the Citizens Groups about the change in the next Annual Report to be submitted under Section VII. of this Decree, and shall provide, on an annual basis, a revised location map, if the locations of rain gauges or flow monitors have changed during any calendar year.

7. WSSC shall perform appropriate quality assurance and quality control (“QA/QC”) analysis, consistent with good industry practice, of all rainfall and flow monitoring data collected for each Sewer Basin.

8. WSSC shall conduct its rainfall and flow monitoring in general accordance with the EPA Handbook. Rainfall and flow measurements shall be collected in accordance with NASSCO published guidance and good industry practice, and such measurements shall be handled and analyzed consistent with appropriate QA/QC procedures that shall assure that measurements are representative of flow conditions and that the data are accurate, precise and

sufficient to provide the information needed to accomplish the Collection System modeling required by this Consent Decree.

C. Annual Reporting and Statement or Requirements. In the Annual Reports and Statement or Certifications to be submitted pursuant to this Consent Decree (See Appendix A, Annual Report and Statement or Certification Format), WSSC shall report on its progress towards compliance with and/or shall provide a statement or certification regarding its compliance with the applicable provisions of Article Four, as set forth in Appendix A.

D. Individual Submission Requirements. For a summary of individual submissions required under Article Four, see Appendix D to this Consent Decree.

Article Five- Collection System Modeling

A. General Requirements. WSSC shall utilize a computer model of the Collection System to identify portions of the Collection System that may not have sufficient capacity to accommodate present or anticipated future flows, to plan sewer improvements, and to make determinations regarding future development of the Collection System.

B. Specific Requirements.

1. WSSC shall use a computer model (“the Model”) to estimate the impact of peak flows experienced by the Collection System on the capacity of any component of the system to manage peak flows. The Model shall be created and maintained in accordance with the manner and schedule described in this Article Five of the Remedial Measures Section (Section V) of this Consent Decree. In the Model WSSC shall use previously collected and maintained flow and rainfall data and, when necessary to allow adequate calibration and verification of the Model,

WSSC shall also use flow and rainfall data collected pursuant to this Decree. WSSC shall analyze rainfall and flow monitoring data to determine peak flows associated with wet weather and high groundwater conditions, and in doing so WSSC shall take into account variables including, but not limited to, average age of the gravity sewer system, soil type and porosity (where applicable), maximum, minimum, and average yearly groundwater elevations, proximity to surface water bodies, tidal influence, amount of drainage area, land use, historic infiltration/inflow data, seasonal population patterns (where applicable), and Collection System construction materials.

2. In the performance of the modeling to be done under this Article, WSSC shall utilize a current, widely-used and accepted (e.g., XP_SWMM) computerized collection and transmission system model to evaluate the impact of I/I, rehabilitation projects, proposed system modifications, upgrades, new connections, expansions to the capacity and performance of the Collection System, and shall certify to EPA and MDE that the Model can perform the functions required by this Article.

3. WSSC shall model for “select 8 inch diameter pipes” and all larger Sewer Segments in each Sewer Basin. The term “select 8 inch diameter Sewer Segments” shall include, at a minimum, all 8 inch Sewer Segments necessary to complete connectivity in the Model and all 8 inch Sewer Segments in which capacity-related surcharges have occurred. WSSC shall model for the range of flows for dry and appropriate wet weather conditions as is necessary to allow the characterization of the capacity limitations of the portions of each Sewer Basin modeled. At a minimum, the modeling shall include the following conditions:

- a. Baseline dry weather flows;

- b. 2 year, 24 hour Soil Conservation Service (“SCS”) Type II rainfall distribution;
 - c. 10 year, 24 hour SCS Type II rainfall distribution; and
 - d. 10 year, 24 hour SCS Type II rainfall distribution with year 2020 population.
- 4. WSSC shall evaluate the Collection System to determine whether it has sufficient capacity to carry flows predicted by each of the modeled events noted above.
- 5. At a minimum the Model shall be capable of, and shall be used for, predicting:
 - a. Volume and rate of wastewater flow in all Force Mains, to and from all Pump Stations, and “select 8-inch diameter pipes” and all larger gravity Sewer Segments and components throughout the Collection System, under both dry and wet weather conditions;
 - b. Hydraulic grade line (“HGL”) of wastewater at any point in the “select 8-inch diameter Sewer Segments” and all larger Gravity Sewer Segments and associated appurtenances, and pressure at any point in all Force Mains;
 - c. I/I flow rates and volumes for each Sewer Basin tributary to the Collection System resulting from a range of rainfall events;
 - d. Flow capacity of all Force Mains, all Pump Stations, all “selected 8-inch diameter Sewer Segments,” and all larger Gravity Sewer Segments and components throughout the Collection System; and
 - e. Likelihood and location of surcharge sewer conditions under both dry and high flow/wet weather conditions.

6. In those portions of the Collection System where modeling shall be performed pursuant to this requirement, modeled flows that terminate at a Pump Station shall be used to evaluate pumping capacity. Evaluations of Pump Station capacities shall consider each station's current condition and equipment reliability/availability, loss of each Pump Station's back-up (*i.e.* largest) pump, available wet well capacity, off-line storage capacity, and normal in-line storage capacity.

7. The Model shall be:

a. Configured based on representative, accurate and verified system component data (*i.e.*, pipe sizes and invert elevations, manhole rim elevations, etc.);

b. Calibrated using spatially and temporarily representative rainfall data and existing or contemporary flow data generated by WSSC, or obtained pursuant to this Consent Decree; and

c. Verified with data independent of the rainfall and flow data used to calibrate the Model.

8. WSSC shall complete implementation of the Model for each Sewer Basin on or before submission of the Sewer Basin Repair, Replacement, or Rehabilitation Plan ("SR³ Plan"), shall certify to EPA and MDE that the Model can perform the functions required by this Consent Decree, and shall also certify that the Model has been calibrated (including the performance of sensitivity analysis) and verified using actual flow data from permanent and temporary monitoring points in the Collection System.

9. WSSC shall utilize existing rainfall and flow data and that rainfall and flow data collected under this decree, and an appropriate Rainfall Derived Infiltration and Inflow ("RDII")

characterization methodology (such as the development of synthetic unit hydrographs, or the use of rainfall/flow regression analyses) to characterize the response of each portion of its Collection System to a range of wet weather events.

10. It is not the purpose of this Consent Decree to require WSSC to design or otherwise construct its Wastewater Collection System or Wastewater Collection System Components to any specific recurring storm interval, or any particular event modeled pursuant to this Consent Decree.

C. Individual Submission Requirements. For a summary of individual submissions required under Article Five, see Appendix D to this Consent Decree.

Article Six- Sewer Basin Repair, Replacement, Rehabilitation Plan and Schedule

A. General Requirements. Within 180 days of completion of each Sewer Basin Collection System Evaluation required under Article Two B. of this Consent Decree, WSSC shall submit to EPA, MDE and the Citizens Groups for review and for EPA's and MDE's approval, a Sewer Basin Repair, Replacement, Rehabilitation Plan ("SR³ Plan") describing the repair, replacement and rehabilitation that is recommended in the Sewer Basin. The SR³ Plans for the Rock Creek/Patuxent North and Broad Creek Sewer Basins shall be submitted within 180 days following completion of the Trunk Sewer Inspection Program in those Sewer Basins. Comments from the Citizens Groups, if any, shall be submitted to EPA, MDE and WSSC within thirty (30) days of their receipt of the proposed SR³ Plan.

B. Specific Requirements. An SR³ Plan shall be submitted by WSSC for each Sewer Basin in the Collection System in accordance with the following requirements.

1. WSSC shall prioritize the work to be performed in each SR³ Plan based on what actions are expected to most effectively prevent SSOs.

2. WSSC shall consider the following improvements as examples of work to be included and performed in the SR³ Plans:

a. Reduction of inflow and infiltration;

b. Installation of larger replacement Sewer Segments or relief Sewer Segments;

c. In situ lining of Sewer Segments;

d. Rebuilding of manholes;

e. Enhanced cleaning schedule for roots and grease; and

f. Repair of structural defects and poor alignment.

3. The SR³ Plan shall include the following:

a. The identification of all deficiencies discovered during the inspections completed as part of the Collection System Evaluation that are proposed for repair, replacement or rehabilitation;

b. The identification of all actions taken, or to be taken, by WSSC (including but not limited to preventive maintenance, repair, replacement, or rehabilitation) to correct the deficiencies identified during the Collection System Evaluation;

c. A presentation of the results of the rainfall and flow monitoring conducted in the Sewer Basin, including a map that depicts all monitored locations, dates of monitoring, a description of quality assurance and quality control analyses performed for samples collected and data analyzed and the results of those analyses (i.e., summarize

data quality assurance and data “lost” or “qualified”), a description of any smoke testing and/or dye testing activities performed in the Sewer Basin, a summary of the results of such testing, a quantification of the rates of Inflow and Infiltration (“I/I”) for the Sewer Basin;

d. An explanation of the priority scheme developed and corrective action recommended in each of the SR³ Plans;

e. A description of the decision-making criteria used to identify the deficiencies and defects WSSC has targeted for future corrective action;

f. An explanation of why WSSC decided not to perform specific work;

g. Measures for eliminating any physical connections (i.e. cross-connections) between the Collection System and any public storm water collection system found during the Collection System inspections;

h. A proposed schedule not to extend two years beyond completion of the last SSES conducted pursuant to Article Two herein for the Substantial Completion of all repair, rehabilitation, or replacement and other remedial measures identified during the Collection System Evaluation and included in the SR³ Plans. For purposes of Article Six B. only, the term “rehabilitation” shall be interpreted in accordance with the meaning ascribed to that term in Chapters 5 and 6 of the EPA Handbook and in accordance with the technical procedures for sewer system rehabilitation set forth in Chapter 6 of the EPA Handbook; and

i. An estimate of the resources and costs to be committed to the proposed remedial and/or corrective measures conducted in each Sewer Basin.

4. Within sixty (60) days of receipt of EPA's and MDE's comments on the SR³ Plan, WSSC shall modify the plan, and shall resubmit the Plan to EPA and MDE for final approval. Upon receipt of EPA's and MDE's final approval, WSSC shall implement the Plan, which shall be incorporated into, and become enforceable under this Consent Decree.

C. Quarterly Reporting Requirements. In the Quarterly Reports to be submitted pursuant to this Consent Decree (See Appendix B Format for Quarterly Report), WSSC shall report on its progress toward compliance with Article Six B.

D. Individual Submission Requirements. For a summary of individual submissions required under Article Six, see Appendix D to this Consent Decree.

Article Seven- Performance Assessments

A. General Requirement. WSSC shall conduct a Performance Assessment of the work undertaken in Articles Two and Six for each Sewer Basin in the Collection System.

B. Specific Requirements.

1. A Performance Assessment of the work performed as required under Articles Two and Six herein shall be conducted to determine the effectiveness of the evaluation and corrective action work performed in each Sewer Basin. The Performance Assessment shall, at a minimum,

a. Evaluate the number and causes of SSDs and Building Backups that have occurred on an annual basis in each Sewer Basin for the years beginning with the Date of Entry through the year the work was completed;

- b. Quantify the reduction of I/I in each Sewer Basin that is the subject of an SSES;
- c. Determine whether WSSC has adequately prioritized rehabilitation work to maximize the reduction of SSDs and Building Backups;
- d. Evaluate the type and effectiveness of the Preventive Maintenance and proactive maintenance practices in reducing grease and root blockages; and
- e. Evaluate the effectiveness of the frequency of Preventive Maintenance and proactive maintenance practices employed.

2. WSSC shall modify its Collection System Evaluation Program, SR³ Plan and Collection System Operations and Maintenance as appropriate to improve their effectiveness in reducing SSOs.

3. The Performance Assessment shall be completed for each Sewer Basin no later than 18 months after complete implementation of the SR³ Plan for the Sewer Basin.

4. The Performance Assessment report shall be prepared no later than 90 days after completion of the Performance Assessment, and submitted to MDE, EPA and the Citizens Groups for review and comment. Comments from the Citizens Groups, if any, shall be submitted to EPA, MDE and WSSC within thirty (30) days of their receipt of the Performance Assessment.

5. After receiving EPA and MDE comments, if any, on each such Performance Assessment Report, WSSC shall modify its Collection System Evaluation Program, SR³ Plan and Collection System Operations and Maintenance as appropriate to improve their effectiveness in reducing SSOs.

C. Individual Submission Requirements- For a summary of submissions required under Article Seven, see Appendix D to this Consent Decree.

Article Eight- Illegal Stormwater Discharges to the Collection System

A. General Requirements. WSSC shall, through the use of CCTV and smoke and dye testing during the performance of the Sewer Basin evaluations required pursuant to Article Two herein, actively seek to identify and eliminate Illegal Stormwater Discharges where such discharges to the Collection System are in and/or upstream of service areas where such sources of inflow and infiltration are likely to cause or contribute to SSOs.

B. Specific Requirements.

1. Elimination of Illegal Discharges

a. Within 60 days of identifying an illegal discharge, WSSC shall notify the owner(s) of such connection (including all associated laterals or other privately-owned conduits used to transport discharge to the connection) that such connection is the source of an illegal discharge, and shall require the owner(s) to take all appropriate steps to eliminate the illegal discharge.

b. Within 180 days after notifying the owner(s) to eliminate the illegal discharge, if the owner(s) has/have failed to eliminate the illegal discharge, WSSC shall take all appropriate steps including, but not limited to repair, rehabilitate, replace, or initiate enforcement action to cause the repair, rehabilitation, replacement, or termination of that service connection.

c. Alternatively, WSSC may require the owner(s) to pay the appropriate fines and/or authorize the discharge if WSSC determines that the discharge does not cause or contribute to an SSO.

d. The foregoing remedies shall not be exclusive of other judicial remedies provided by law or regulation.

C. Annual Reporting and Statement or Certification Requirements. In the Annual Reports and Statement/Certifications to be submitted pursuant to this Consent Decree (See Appendix A, Annual Report and Statement/Certification Format), WSSC shall report on its progress towards compliance with and/or shall provide a statement or certification regarding its compliance with the applicable provisions of Article Eight, as set forth in Appendix A.

Article Nine- Information Management System

A. General Requirements.

1. WSSC shall develop or demonstrate to EPA and MDE that it has developed an Information Management System that is adequate to track SSOs, to identify known existing and potential sources of SSOs, and to maintain and manage the information necessary to operate and maintain WSSC's Collection System to eliminate existing SSOs and avoid future SSOs. The Information Management System shall consist of a maintenance management system or systems, and a Geographic Information System (GIS) or the functional equivalent.

2. WSSC shall complete the installation of the Information Management System no later than 180 days from the Date of Entry of this Consent Decree, at which time WSSC shall certify by letter to EPA and MDE that the Information Management System is fully functioning

and capable of displaying the information described in B. Specific Requirements, as required by this provision of the Consent Decree.

B. Specific Requirements.

1. Maintenance Management System(s) -WSSC shall use a maintenance management system or systems to update and collect information regarding the operation, maintenance and performance of the Collection System, including maintenance history, repair history, and the status of maintenance work to be implemented and completed under the Consent Decree.

2. Geographic Information System – WSSC shall use a computerized geographic information system (“GIS”) to map the Collection System. WSSC’s GIS program shall display the following:

- a. All Collection System components;
- b. Attribute data for Sewer Segments including:
 - (i) Date of installation (if available)
 - (ii) Pipe length
 - (iii) Age
 - (iv) Inverts at manholes
 - (v) Slope
 - (vi) Diameter (or dimensions if no cylindrical)
 - (vii) Type (e.g. gravity or pressure)
 - (viii) Material (if available)
 - (ix) Nominal capacity (i.e. Manning) design, and

- (x) Geographic location.
- c. Display attribute data for structures including
 - (i) Structure type (e.g. siphon, manhole, junction box, Force Main, air relief valve)
 - (ii) Invert elevation
 - (iii) Geographic location, and
 - (iv) Age.

3. Within 120 days of completing any inspection, testing, condition assessment activity or rehabilitation activity of a Collection System component required pursuant to this Consent Decree or within 120 days of when WSSC becomes aware of reliable information that the attribute data is incorrect or incomplete, WSSC shall update the attribute data listed in Article Nine B. 2.b. and c. above.

4. WSSC shall use its best efforts to locate sewer components that cannot be located in the field. These efforts shall include the use of GIS, as-built drawings, surveying and/or Global Positioning Systems.

C. Annual Reporting and Statement or Certification Requirements. In the Annual Reports and Statement/Certifications to be submitted pursuant to this Consent Decree (See Appendix A, Annual Report and Statement or Certification Format), WSSC shall report on its progress towards compliance with and/or shall provide a statement or certification regarding its compliance with the applicable provisions of Article Nine, as set forth in Appendix A.

Article Ten- Pump Stations

A. General Requirements. WSSC shall continue its recent effort to eliminate the occurrence of SSDs from Pump Stations in its Collection System.

B. Specific Requirements.

1. For each Pump Station in its sewer system, WSSC shall continue to implement a Pump Station “Preventive Maintenance Program,” appropriate to the type, size and capacity of the Pump Station.

2. For each Pump Station in its sewer system, the WSSC Preventive Maintenance Program for that Pump Station shall provide for: adequate inventory of equipment, pumps and motors; appropriate, necessary and periodic servicing and calibration of Pump Station instrumentation; periodic inspection of the Pump Station, and periodic servicing of all Pump Station equipment.

3. All Preventive Maintenance and repair activities undertaken at any Pump Station shall be documented and tracked in an appropriate automated management tracking program such as the Commission’s COMPASS System.

4. WSSC shall maintain and periodically review and update Pump Station standard operating procedures (“SOPs”) for each of its Pump Stations, appropriate in detail and format to the type, size and capacity of the particular Pump Station. For purposes of this provision, if any physical or operational changes are made at a Pump Station, the periodic review and update of the SOP shall occur no later than ninety (90) days from completion of the physical change or initial implementation of the operational change in question.

5. Response to the Occurrence of an SSD at a Pump Station. If any SSD occurs at a Pump Station, WSSC shall conduct an analysis to determine the cause of the SSD. WSSC shall report its findings to EPA and MDE within 30 days of the SSD occurrence. If WSSC determines that the SSD was due to equipment failure or malfunction, loss of power, or inadequate maintenance activities, then, within ninety (90) days after the occurrence of the SSD, WSSC shall submit a plan and schedule for the implementation of appropriate corrective measures to EPA and MDE for their review and approval. If WSSC determines that the SSD was due to inadequate capacity or design deficiencies of the Pump Station, then, within 180 days of the SSD occurrence, WSSC shall submit a plan and schedule for the completion of appropriate corrective measures to EPA and MDE for their review and approval. All plans and schedules submitted to and approved by EPA and MDE pursuant to this subsection of the Consent Decree (Section V, Article Ten B.5) shall be incorporated into and become enforceable under this Consent Decree.

6. Every five (5) years WSSC shall re-evaluate its Pump Stations to assure that each Pump Station is of sufficient size and capacity to handle expected waste water flows. The results of the re-evaluation shall be reported to EPA, MDE and the Citizens Groups in the appropriate Annual Report to be submitted under Section VII of this Consent Decree, with the first such re-evaluation to appear in the Annual Report for the fifth year following the Date of Entry of the Consent Decree.

7. Anacostia Pump Station. WSSC shall prepare a facility plan for the Anacostia Pump Station. The facility plan will evaluate the capacity of the pump station and, if necessary, make a recommendation for modifications. The facility plan shall be completed and submitted to EPA, MDE and the Citizens Groups within one year from the Date of Entry of the Consent

Decree for review and for EPA's and MDE's approval. The performance of this facility plan is in place of the capacity and/or design determinations that otherwise would be required following an SSD under Section V, Article Ten B.5. If the approved Anacostia Pump Station facility plan demonstrates the need for modifications, within sixty (60) days of receipt of approval of the facility plan, WSSC shall submit a plan and schedule for the completion of appropriate corrective measures to EPA and MDE for their review and approval. All plans and schedules submitted to and approved by EPA and MDE for the Anacostia Pump Station pursuant to this subsection and to Section V, Article Ten B.5 shall be incorporated into and become enforceable under this Consent Decree.

8. Broad Creek Pump Station. WSSC shall prepare a facility plan for the Broad Creek Pump Station. The Broad Creek Pump Station facility plan will evaluate the capacity of the pump station and, if necessary, make a recommendation for modifications. The Broad Creek Pump Station facility plan shall be completed and submitted to EPA, MDE and the Citizens Groups within two years from the date of Entry of the Consent Decree for review and approval. The performance of this facility plan is in place of the capacity and/or design determinations that otherwise would be required following an SSD under Section V, Article Ten B.5. If the approved Broad Creek Pump Station facility plan demonstrates the need for modifications, then within sixty (60) days of receipt of approval of the facility plan, WSSC shall submit a plan and schedule for the completion of appropriate corrective measures to EPA and MDE for their review and approval. All plans and schedules submitted to and approved by EPA and MDE for the Broad Creek Pump Station pursuant to this subsection and to Section V, Article Ten B.5, shall be incorporated into and become enforceable under this Consent Decree.

C. Quarterly Reporting and Annual Reporting and Statement or Certification Requirements.

In the Quarterly Reports and the Annual Reports and Statement or Certifications to be submitted pursuant to this Consent Decree (See Appendix B, Quarterly Report Format, and Appendix A, Annual Report and Statement or Certification), WSSC shall report on its progress towards compliance with, and/or shall provide a Statement or Certification regarding its compliance with the applicable provisions of Article Ten, as set forth in those Appendices.

D. Individual Submission Requirements. For a summary of individual submissions required under Article Ten, see Appendix D to this Consent Decree.

Article Eleven- Collection System Operation and Maintenance Plan (“O&M” Plan)

A. General Requirements.

Within 180 days from the Date of Entry of this Consent Decree, WSSC shall complete development and submit for review and approval a comprehensive operation and maintenance plan for the Collection System, including its Gravity Sewer Segments, Force Mains, Pump Stations, and components to provide for the proper operation and maintenance of equipment while minimizing failures, malfunctions, and line blockages that could contribute to SSOs due to the lack of adequate preventive care.

B. Specific Requirements.

The Collection System O&M Plan shall include:

1. Cleaning of the Collection System in accordance with the following requirements:
 - a. Phase I Sewer Segment Cleaning, Non-SSES Sewer Basins:

(i) Cleaning of all Gravity Sewer Segments less than 15-inch diameter that have been in service for more than 20 years shall be performed in all Non-SSES Sewer Basins.

(ii) Sewer Segments cleaned as part of the CCTV inspection required in Article Two shall be deemed to satisfy this cleaning requirement.

(iii) Sewer Segments that are on Preventive Maintenance, including chemical root control shall be deemed to satisfy this requirement.

(iv) The cleaning required in subsection 1.a(i), above, shall be completed within 5 years of the beginning of the implementation of the Collection System O&M Plan.

b. Phase II Sewer Segment Cleaning, SSES Sewer Basins:

(i) Cleaning of all gravity sewer lines less than 15-inch diameter that have been in service for more than 20 years shall be completed in all SSES Sewer Basins.

(ii) Sewer Segments cleaned as part of the CCTV inspection of those Sewer Segments in SSES Sewer Basins conducted pursuant to Article Two shall be deemed to satisfy this cleaning requirement.

(iii) Sewer Segments cleaned as a part of CCTV inspection of Sewer Segments in SSESs performed in the Broad Creek and Rock Creek/Patuxent North Sewer Basins shall be deemed to satisfy this cleaning requirement.

(iv) Sewer Segments that are on Preventive Maintenance, including chemical root control, shall be deemed to satisfy this requirement.

(v) The cleaning required in this Article shall be completed within 5 years of the beginning of the implementation of the Collection System O&M Plan.

c. Phase III Sewer Segment Cleaning, Future Pipe Aging:

(i) Every 5 years for the duration of the Consent Decree, Sewer Segments that reach at least 21 years of service during the prior 5 years, and are not cleaned as a part of Phase I and II cleaning requirements described herein, shall be cleaned.

(ii) Sewer Segments that are on Preventive Maintenance, including chemical root control, shall be deemed to satisfy this requirement.

d. Any cleaning performed in the Collection System by WSSC personnel or through or by means of contracts with other parties and/or entities performed after January 1, 2004, shall be deemed to satisfy the Phase I and II cleaning requirements in B 1, herein, for those sections cleaned;

2. A CCTV Inspection Program as follows:

a. A CCTV program consistent with the requirements of Article Two;

b. A CCTV inspection program for the removal of Sewer Segments from the preventive cleaning and chemical root control programs as follows:

(i) Before removing any Sewer Segment from the preventative cleaning and/or chemical root control programs, CCTV will be performed for visual confirmation of the current conditions.

(ii) The review process documentation shall be maintained in the maintenance information system.

c. CCTV inspections will also be performed when information indicating structural or other maintenance problems are revealed as a result of the cleaning performed in accordance with Article Eleven B.1;

3. Routine Preventive Maintenance of the Pump Stations as described in Article Ten of this Consent Decree;

4. Routine inspection of manholes that are performed as a part of the Collection System Evaluations undertaken pursuant to Article Two herein, as well as routine inspection of manholes that are entered for the purposes of cleaning, inspection or other routine maintenance activities;

5. Provisions for the control of roots in Sewer Segments by either chemical, mechanical, hydraulic or other effective methods, to include procedures for the manner and frequency of treatment;

6. Procedures for ensuring that new Sewer Segments and connections are properly designed and constructed (including testing of new Sewer Segments installations) to prevent SSOs and new connections of storm water inflow;

7. Procedures for ensuring that rehabilitation projects are properly designed and constructed;

8. A FOG program consistent with the requirements of Article Three of this Consent Decree;

9. A trunk sewer inspection program consistent with the requirements of Article Two and Appendix C;

10. A routine maintenance plan to include prioritized, as needed, system cleaning and evaluation; and

11. A general description of the resources committed by WSSC to its wastewater collection maintenance efforts.

C. WSSC shall submit the O&M Plan to EPA, MDE and the Citizens Groups for review. Comments from the Citizens Groups, if any, shall be submitted to EPA, MDE and WSSC within thirty (30) days of their receipt of the proposed O & M Plan. Within 60 days after receiving EPA and MDE comments on the O & M Plan, WSSC shall respond to and/or amend the Plan, and shall then submit the amended O & M Plan to EPA and MDE for final approval. WSSC may request additional time to review and respond to and/or amend the O & M Plan if the comments from MDE and EPA so require. WSSC shall begin implementation of the Plan within 90 days of receiving approval from EPA and MDE.

D. With regard to the Collection System O & M Plan submitted under Article Eleven, the following elements shall become incorporated into and enforceable under this Consent Decree within 90 days of approval of the plan:

1. The requirement under Article Eleven B. 4 to inspect manholes in the Collection System plan as set forth in the O & M Plan;

2. The requirement under Article Eleven B. 5 to control roots in segments by chemical, mechanical, hydraulic, or other effective methods, as set forth in the O & M Plan;

3. The requirement under Article Eleven B.6 to ensure that new Sewer Segments and connections are properly designed and constructed (including testing of new sewer line

installations) to prevent discharges and new connections of stormwater inflow, as set forth in the O & M Plan;

4. The requirement under Article Eleven B.7 that WSSC ensure that rehabilitation projects are properly designed and constructed, as set forth in the O & M Plan;

5. The requirement under Article Eleven B. 2 to CCTV any Sewer Segment that is on the preventive cleaning and chemical root control program before removing it from that program, as set forth in the O & M Plan, and

6. The requirement under Article Eleven B. 2 to CCTV any Sewer Segment at which a structural or maintenance problem is revealed during Sewer Segment cleaning, as set forth in the O & M Plan.

E. Annual Reporting and Statement or Certification Requirements. In the Annual Reports and Statement or Certifications to be submitted pursuant to this Consent Decree (See Appendix A, Annual Report and Statement or Certification), WSSC shall report on its progress towards compliance with, and/or shall provide a Statement or Certification regarding its compliance with the applicable provisions of Article Eleven, as set forth in those Appendices.

F. Submission Requirements. For a summary of individual submissions required under Article Eleven, see Appendix D to this Consent Decree.

Article Twelve- Emergency Response Plan(s)

A. General Requirement. WSSC shall develop and implement an Emergency Response Plan(s) to adequately respond to the occurrence of SSDs and Building Backups and to protect the health and welfare of persons in the event of SSDs and/or Building Backups.

B. Specific Requirements.

Within 90 days of the Date of Entry of this Consent Decree, WSSC shall provide to EPA, MDE and the CitizensGroups for review and comment and for EPA's and MDE's approval, an Emergency Response Plan. Comments from the Citizens Groups, if any, shall be submitted to EPA, MDE and WSSC within thirty (30) days of their receipt of the Emergency Response Plan.

1. For SSDs, the Emergency Response Plan shall include, but not be limited to, the following:

a. A description of the actions WSSC shall undertake to provide notice to the public in accordance with the Environment Article, Section 9-331.1, Annotated Code of Maryland and Code of Maryland Regulation 26.08.10, attached to this Consent Decree as Appendix E, and amendments thereto;

b. A description of how WSSC shall notify MDE and the local health department when SSDs occur in accordance with Article Thirteen of the Remedial Measures Section (Section V) of this Consent Decree, below;

c. A description of how WSSC shall coordinate with local health departments regarding the posting of waters where an overflow has occurred in accordance with Environment Article, Section 9-331.1, Annotated Code of Maryland and regulations promulgated there under;

d. A detailed plan describing the standard operating procedures to be followed by WSSC personnel in responding to an SSD occurrence, including the steps to

be taken to minimize the volume of untreated wastewater discharge to surface waters as a result of an SSD;

e. A general identification of resources that WSSC shall make available to correct or repair conditions causing or contributing to the SSD; and

f. A plan to ensure training of WSSC personnel responding to an SSD.

2. For Building Backups, the Emergency Response Plan shall include a detailed plan describing the standard operating procedures to be followed by WSSC personnel in responding to a Building Backup, including:

a. A description of methods for communicating with customers about:

(i) How to report Building Backups, and

(ii) How to obtain clean-up;

b. A description of WSSC's response to Building Backups including:

(i) The timeframes for responses,

(ii) The measures taken to cleanup Building Backups found to be caused by conditions in WSSC's Collection System; and

(iii) The measures taken to correct or repair conditions in the Collection System causing or contributing to the Building Backup; and

c. A description of WSSC's follow-up process to insure adequacy of cleanup.

3. In the event of an SSD, WSSC shall perform monitoring, sampling, and analysis in accordance with Environment Article, Section 9-331.1, Annotated Code of Maryland and regulations promulgated there under. WSSC shall provide copies of field sample reports and laboratory analysis results to EPA and MDE upon request.

C. Within sixty (60) days of receipt of EPA and MDE's comments on the Emergency Response Plan(s), WSSC shall, if necessary, modify the plan(s) and resubmit the revised plan(s) to EPA and MDE for final approval.

D. WSSC shall begin implementation of the final plan(s) within 30 days of receipt of final approval from EPA and MDE. The Emergency Response Plan(s) shall be incorporated into and shall be enforceable under this Consent Decree.

E. WSSC shall review the Emergency Response Plan(s) on an annual basis and update the plan as necessary. An update and/or revision of the Emergency Response Plan(s) shall be subject to EPA and MDE approval in the manner described herein regarding the development of the Emergency Response Plan(s).

F. Annual Reporting and Statement or Certification Requirements. In the Annual Reports and Statement/Certifications to be submitted pursuant to this Consent Decree (See Appendix A, Annual Report and Statement/Certification), WSSC shall report on its progress towards compliance with, and/or shall provide a Statement or Certification regarding its compliance with the applicable provisions of Article Twelve., as set forth in those Appendices.

G. Individual Submission Requirements. For a list of individual submissions required under Article Twelve, see Appendix D.

Article Thirteen- Reporting and Recordkeeping

A. General Requirement. WSSC shall report information to MDE and EPA about SSOs, and shall keep appropriate records, as set forth below.

B. Specific Requirements for SSDs.

1. WSSC shall orally report SSD events to MDE in accordance with Code of Maryland Regulation 26.08.10, attached to this Consent Decree as Appendix E, and Environment Article, Section 9-331.1 Annotated Code of Maryland, and amendments thereto.

2. Further, WSSC shall submit written reports on SSD events to both MDE and EPA in accordance with the requirements of Code of Maryland Regulation 26.08.10, (See Appendix E), Environment Article, Section 9-331.1, Annotated Code of Maryland, and amendments thereto.

3. The SSD information submitted in the written report to EPA and MDE shall be placed on the WSSC website within 10 days of the SSD event.

C. Quarterly Reporting Requirements for Building Backups

On a quarterly basis, and as part of each Quarterly Report to be submitted pursuant to this Consent Decree, WSSC shall report any known Building Backups that have occurred in the WSSD in the preceding quarter. The Quarterly Report should include:

1. The street address (or location) at which the Building Backup occurred;
2. The Sewer Basin in which the Building Backup occurred; and
3. The Sewer Segment in which the Building Backup occurred.

D. WSSC shall maintain for at least five years a list and description of any complaints from customers or others related to reported SSDs, and Building Backups.

E. Until termination of the Consent Decree, WSSC shall maintain records of the written reports required by Article Thirteen B.2 and C, above.

F. Annual Reporting and Statement or Certification Requirements for SSOs. In the Annual Reports WSSC shall certify that it has reported SSDs, Building Backups and Building Backups that have resulted in Discharges, if known, in the preceding year in accordance with this Article.

VI. REVIEW AND APPROVAL PROCEDURES

13. After submission of any report, plan, program, schedule or other document required in Section V (Remedial Measures) of this Consent Decree, when action is required, EPA and MDE may: (1) approve the complete submission; (2) approve specifically identified portions of the submission; (3) approve the complete submission or portions of the submission upon specified conditions; or (4) disapprove the submission, in whole or in part, and direct that WSSC modify the submission. EPA and/or MDE shall provide written notice of any such actions to WSSC and to the Citizens Groups in accordance with Section XXII (Form of Notice) of this Consent Decree.

14. Where not inconsistent with a specific provision of the Remedial Measures Section (Section V) of the Consent Decree, in the event EPA and MDE approve the complete submission, WSSC shall proceed to take the actions identified in the report, plan, program, schedule or other approved document, beginning within fourteen (14) days following EPA and MDE's approval.

15. In the event EPA and MDE either approve specifically identified portions of the submission, or approve all or a specifically identified portion of the submission-with conditions, WSSC shall proceed to take the actions identified in the approved portion of the report, plan, program, schedule, other document, or portion thereof, in accordance with any applicable conditions specified by

EPA and MDE beginning within fourteen (14) days following EPA and MDE's approval, or within the specific time period provided in the Remedial Measures Section of the Consent Decree, where applicable.

16. In the event EPA and/or MDE disapprove all or a portion of any submission, WSSC shall revise the submission to address all of EPA and/or MDE's written comments. WSSC shall resubmit the revised program, plan or other document to EPA and MDE within 30 days of receipt of EPA and MDE's comments, unless another time period for response is specified in the Remedial Measures Section (Section V) of this Consent Decree.

17. If WSSC timely submits or resubmits an item for review and approval or for comment under this Consent Decree, and EPA and/or MDE responds to the submission or resubmission more than sixty (60) days after the date the item was submitted or resubmitted, then WSSC shall be entitled to an extension of any interim or final deadlines, provided that WSSC demonstrates that it will be unable to meet the deadline as a result of the length of the review process. WSSC shall provide written notice to EPA and/or MDE of its need for an extension of this interim or final deadline, and indicate in the notice the amount of time needed for the extension. EPA and MDE may discuss with WSSC the amount of time needed for the extended interim or final deadline or they may approve or disapprove the length of the extended deadline requested by WSSC. In the event that EPA and MDE should disapprove in whole or in part the extended deadline requested by WSSC, WSSC may invoke Section XIII (Dispute Resolution) of the Consent Decree.

18. If WSSC submits a report, program, plan or other document that fails to contain all of the required elements set forth in the appropriate Article of the Remedial Measures, WSSC shall be deemed to have failed to make the submission. Where this Consent Decree requires a resubmission, if upon a

resubmission, the report, program, plan or other document is disapproved by EPA and MDE either in whole or in part, WSSC shall be deemed to have failed to resubmit such report, program, plan or other document timely and adequately, unless WSSC invokes the Dispute Resolution Procedures set forth in Section XIII, and EPA and MDE's action is overturned pursuant to that Section. In the case of a submission that fails to contain all the required elements, stipulated penalties begin to accrue on the date the submission is due. In the case of a disapproved resubmission, stipulated penalties begin to accrue on the date WSSC receives written notice of disapproval.

19. The following programs under the Remedial Measures Section (Section V) of this Decree shall become incorporated into and enforceable under this Consent Decree. Those programs or plans that require approval by EPA and MDE shall become enforceable upon approval. In the event that only a portion of a submission is approved, then the approved portion shall become incorporated into and enforceable under this Consent Decree:

- A. Completion dates for SSESs (under Article Two B.1.c);
- B. Trunk Sewer inspection program (under Article Two B.2, and Appendix C);
- C. The Water Quality Monitoring Plan established in Article Two, B.5
- D. Modified FOG Program Plan and schedule for changes (under Article Three B & C);
- E. SR³ Plans for all WSSC sewer basins mentioned in Article II.B, and work schedules therein (under Article Six B.4);
- F. Any plans to respond to SSDs that occur at Pump Stations developed and submitted under Article Ten B;

- G. Pump Station Preventative Maintenance Programs developed and submitted under Article Ten B;
- H. O & M Plan, as provided in Article Eleven; and
- I. The Emergency Response Plans submitted under Article Twelve; and
- J. The Scopes of Work for the SEPs submitted under Section X, paragraph 37;

VII. REPORTING REQUIREMENTS

20. Quarterly Reporting. Beginning with the first full Calendar Quarter after the Date of Entry of the Consent Decree, and each Calendar Quarter thereafter until termination of the Decree, WSSC shall submit to EPA, MDE and the Citizens Groups at the address provided in Section XXII of this Consent Decree a Quarterly Report in the general format set forth in Appendix B to this Consent Decree. The Quarterly Report shall be due on the forty-fifth (45) day after the end of each Calendar Quarter.

21. Annual Reporting. On March 1, 2006, and every March 1st thereafter until termination of this Consent Decree, WSSC shall submit to EPA, MDE and the Citizens Groups at the address provided in Section XXII. of this Consent Decree an Annual Report in the general format set forth in Appendix A to this Consent Decree.

22. In preparing Quarterly and Annual Reports, if a requirement due to be completed during the reporting period was not completed, an explanation should be provided for why the requirement was not completed, what steps are being taken to ensure its prompt completion, and when it is anticipated that the requirement will be completed. Further, in preparing Quarterly and Annual Reports, if WSSC

knows of any problems that may prevent it from meeting future due dates under this Consent Decree, it should notify EPA, MDE and the Citizens Groups of those anticipated problems.

23. The Quarterly and Annual Reports shall be certified, Appendix A (Annual Reporting Format) and for Appendix B (Format for Quarterly Reports).

24. WSSC shall not object to the accuracy, authenticity, and admissibility into evidence of any certified Quarterly or Annual Report in any proceeding to enforce this Consent Decree.

VIII. CIVIL PENALTY

25. WSSC shall pay a civil penalty to the United States and the State of Maryland in the amount of one million one hundred thousand dollars (\$1,100,000) for violations as alleged by the United States in its Complaint, and by the State of Maryland in its Complaint in Intervention, through the Date of Lodging of this Consent Decree. The United States and the State of Maryland shall be deemed judgment creditors for purposes of collection of this penalty. WSSC shall pay fifty percent (50%) of the civil penalty to the United States within thirty (30) days after the Date of Entry, in accordance with paragraph 26 below, and shall pay fifty percent (50%) to the State of Maryland within thirty (30) days after the Date of Entry in accordance with paragraph 27 below.

26. Payment to the United States shall be made by Electronic Funds Transfer ("EFT") to the U.S. Department of Justice ("DOJ") lockbox bank, referencing DOJ No. 90-5-1-1-07360. Payment shall be made in accordance with instructions provided by the United States to WSSC following execution of this Consent Decree. Any EFT received at the DOJ lockbox bank after 11:00 A.M. Eastern Time will be credited on the next business day. Notice of the EFT shall simultaneously be mailed to the following:

Docket Clerk (3RC00)

U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Yvette C. Roundtree (3RC20)
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029; and

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-1-1-07360

The transmittal letter forwarding such notice shall include the caption, civil action number and judicial district of this action.

27. Payment to the State of Maryland shall be made by tendering to the Maryland Department of the Environment, P.O. Box 2057, Baltimore, MD 21203-2057 a check made payable to: "Maryland Clean Water Fund."

28. If WSSC fails to tender all or any portion of the civil penalty payment owed to the United States within thirty (30) days of the Date of Entry and/or the State within 10 days after July 1, 2005, interest on the unpaid amount shall accrue in accordance with the provisions of 28 U.S.C. § 1961, and shall be paid from the date said payment is due until all amounts owed are paid.

IX. STIPULATED PENALTIES

29. WSSC shall be liable for stipulated penalties to the United States and the State of Maryland for violations of this Consent Decree, upon demand. Stipulated penalties due and owing

under this Section shall be paid in the manner specified in paragraphs 26 and 27 of the Consent Decree for payment of the civil penalty and according to the percentage distribution specified in paragraph 25 of the Decree. Stipulated penalties, for which a demand has been made, shall be paid unless excused under Section XII (Force Majeure) or by the terms of this section.

A. WSSC shall pay the following stipulated penalty to the United States and the State of Maryland for failing timely to submit a Collection System Characterization Report containing all of the specific requirements in Article One B:

<u>Period of Noncompliance</u>	<u>Penalty Per Milestone Date per Day of Violation</u>
1st to 30th day	\$1,000
31st to 60th day	\$1,250
After 60 days	\$2,000

B. WSSC shall pay the following stipulated penalty to the United States and the State of Maryland for failing to perform each of the following elements of the Collection System Evaluation described in Article Two B: 1) timely submission of a schedule to perform SSESs on all the SSES Sewer Basins identified in Article Two B.1.a; 2) timely completion of each SSES on the SSES Sewer Basins identified in Article Two B.1.a. by the date specified in the approved and/or modified schedule for completion; 3) submission of an SSES Report within 60 days of the approved scheduled completion date of an SSES; 4) timely completion of the recommendations made in the Broad Creek and/or the Rock Creek SSES Reports in accordance with Article Two B.1.d 5) timely completion of the 5 year cycles for the trunk sewer inspection program in accordance with Article Two and Appendix C, B.2; and 6) timely completion of an evaluation of the Non-SSES Sewer Basins in accordance with Article Two B. 4. For purposes of counting violations, each failure to timely complete an SSES on an SSES

Sewer Basins, each failure to timely submit an SSES Report on an SSES Sewer Basins, and each failure to timely complete an evaluation on a Non-SSES Sewer Basin shall be considered a separate requirement/violation. The stipulated penalties that apply to these violations are:

<u>Period of Noncompliance</u>	<u>Penalty Per Requirement Per Day of Violation</u>
1st to 30th day	\$1,000
31st to 60th day	\$1,500
After 60 days	\$2,250

C. WSSC shall pay a stipulated penalty to the United States and Maryland for failing, on a quarterly basis, to CCTV at least 75% of the Sewer Segments of the Collection System where a SSD has occurred, within 10 calendar days following the SSD event, in accordance with Article Two B.3. The stipulated penalty for failing to meet this quarterly 75% target shall be \$1,000 for each percentage point by which WSSC fails to achieve this quarterly 75% target. WSSC shall also pay \$200 per day for each full day past the 30th day that it takes to CCTV the Sewer Segment in question.

D. WSSC shall pay the following stipulated penalties to the United States and the State of Maryland for failing timely to perform the water quality monitoring required in Article Two, B.5:

For Each Day WSSC Fails to Perform a Required BST- \$100

For Each Day WSSC Fails to Perform a Required Fecal Coliform Test- \$25

E. WSSC shall pay the following stipulated penalties to the United States and the State of Maryland for failing timely to submit or resubmit a Sewer Basin Repair, Replacement, Rehabilitation Plan (“SR³ Plan”) and Schedule that includes all elements as required by Article Six, for each of the SSES Sewer Basins and non-SSES Sewer Basin identified in Article Two B.1 and 4 of Section V of this Consent Decree:

<u>Period of Noncompliance</u>	<u>Penalty Per SR³ Plan Per Day</u>
1st to 30th day	\$1,000
31st to 60th day	\$1,500
After 60 days	\$2,250

F. WSSC shall pay the following stipulated penalties to the United States and the State of Maryland for failing timely to complete all remedial work in each approved SR³ Plan and Schedule:

<u>Period of Noncompliance</u>	<u>Penalty Per Day</u>
1st to 30th day	\$1,500
31st to 60th day	\$3,000
After 60 days	\$5,000

G. WSSC shall pay the following stipulated penalties to the United States and the State of Maryland for failing timely to submit a “Performance Assessment Report” on the work completed in each of its Sewer Basins, as required in Article Seven B of this Decree:

<u>Period of Noncompliance</u>	<u>Penalty Per Report Per Day</u>
1st to 30th day	\$1,000
31st to 60th day	\$1,500
After 60 days	\$2,000

H. WSSC shall pay the following stipulated penalties to the United States and the State of Maryland for failing to either: 1) timely develop a database and submit a list of Food Establishments served by WSSC in accordance with Article Three B.2 of this Consent Decree; and/or 2) submit annually to EPA and MDE an updated list of food establishments in each Annual Report:

<u>Period of Noncompliance</u>	<u>Penalty Per Day of Violation</u>
--------------------------------	-------------------------------------

1st to 30th day	\$1,000
31st to 60th day	\$1,500
After 60 days	\$2,000

I. WSSC shall pay the following stipulated penalties to the United States and the State of Maryland for failing to meet the deadlines set forth in Article Three B. 4 for issuance of permits to all Food Establishments containing the requirements set forth in Article Three B. 4:

<u>Period of Noncompliance</u>	<u>Penalty Per Day of Violation</u>
1st to 30th day	\$1,000
31st to 60th day	\$2,000
After 60 days	\$3,000

J. WSSC shall pay the following stipulated penalties to the United States and/the State of Maryland for failing timely to either: 1) submit a FOG Report containing all of the elements set forth in Article Three B.5.a.; 2) submit a Modified FOG Program that includes all the required elements set forth in Article Three B. 5.b; or 3) resubmit the Modified FOG Program once it receives comments from EPA and MDE on the Program in accordance with Article Three C.

<u>Period of Noncompliance</u>	<u>Penalty Per Day for Each Report/Plan Not Timely or Fully Submitted or Resubmitted</u>
1st to 30th day	\$1,000
31st to 60th day	\$2,000
After 60 days	\$3,000

K. WSSC shall pay the following stipulated penalties to the United States and the State of Maryland for failing to implement in accordance with Article Three B.5.b each recommendation made in the approved Modified FOG Program Plan in accordance with the Schedule set forth therein:

<u>Period of Noncompliance</u>	<u>Penalty Per Day Per Requirement</u>
1st to 30th day	\$1,500
31st to 60th day	\$2,500
After 60 days	\$5,000

L. WSSC shall pay stipulated penalties to the United States and the State of Maryland for failing to meet the annual percentage completion requirements set forth in Article Three B.6 for Food Establishment inspections (10% first year, an additional 15% each for years 2, 3 and 4, and 100% by end of year 5). The stipulated penalties shall be \$1,500 per day for failing to meet each of the annual percentage completion requirements. The stipulated penalties shall continue to accrue daily until the annual percentage completion for inspections have been achieved by WSSC for the year in question.

M. WSSC shall pay the following stipulated penalties to the United States and the State of Maryland for failing timely to submit the report on the effectiveness of WSSC's FOG control program by the deadline in Article Three D:

<u>Period of Noncompliance</u>	<u>Penalty Per Day</u>
1st to 30th day	\$1,000
31st to 60th day	\$2,000
After 60 days	\$3,000

N. WSSC shall pay the following stipulated penalties to the United States and the State of Maryland for failing timely to submit a map of the locations of rain gauges and flow monitors as required in Article Four B.6:

<u>Period of Noncompliance</u>	<u>Penalty Per Day</u>
--------------------------------	------------------------

1st to 30th day	\$500
31st to 60th day	\$1,000
After 60 days	\$1,500

O. WSSC shall pay the following stipulated penalties to the United States and the State of Maryland for failing to conduct flow monitoring in accordance with each separately numbered paragraph in Article Four, B. during the previous year and certify annually thereto:

Penalty Per Specific Requirement Not Met Annually \$3,000

The failure annually to certify compliance with the above-listed requirements as required by Article Four C. shall be deemed a failure to perform these requirements.

P. WSSC shall pay the following stipulated penalties to the United States and the State of Maryland for failing: 1) to complete the modeling for all Sewer Basins identified in Article Two B.1 and 4, in accordance with Article Five B; and/or 2) to certify in accordance with Article Five B.9 that the model(s) has (have) been calibrated and verified using actual flow data from permanent and temporary monitoring points in the Collection System, as set forth below:

<u>Period of Noncompliance</u>	<u>Penalty Per Day Per Sewer Basin Per Requirement</u>
1st to 30th day	\$1,000
31st to 60th day	\$2,000
After 60 days	\$3,000

Q. WSSC shall pay the following stipulated penalties to the United States and the State of Maryland for failing timely to take the steps identified in Article Eight B.1 to eliminate or authorize identified illegal discharges:

Penalty Per Day for Each Failure to Eliminate or Authorize: \$500

R. WSSC shall pay the following stipulated penalties to the United States and the State of Maryland for failing timely to certify the performance of the Information Management System as required in Article Nine A of this Consent Decree:

Penalty Per Day: \$1,000

S. WSSC shall pay stipulated penalties to the United States and the State of Maryland for failing to implement for each Pump Station any of the requirements set forth in Article Ten B.1 through 4, as set forth below:

<u>Period of Noncompliance</u>	<u>Penalty Per Day Per Requirement Per Pump Station</u>
1st to 30th day	\$500
31st to 60th day	\$1,000
After 60 days	\$1,500

T. WSSC shall pay the following stipulated penalties to the United States and the State of Maryland for failing to meet the deadlines set forth for each Pump Station in Article Ten B.5 through 9.

<u>Period of Noncompliance</u>	<u>Penalty Per Day Per Deadline Missed Per Pump Station</u>
1st to 30th day	\$1,000
31st to 60th day	\$2,500
After 60 days	\$4,000

U. WSSC shall pay the following stipulated penalties to the United States and the State of Maryland for failing timely to submit an operation and maintenance plan (“O & M Plan”) in accordance with the requirements of Article Eleven of this Consent Decree:

<u>Period of Noncompliance</u>	<u>Penalty Per Day</u>
1st to 30th day	\$1,000
31st to 60th day	\$2,000
After 60 days	\$3,000

V. WSSC shall pay the following stipulated penalties to the United States and the State of Maryland for failing to implement any of the following elements as set forth in its approved O & M Plan: 1) the manhole inspection program, in accordance with Article Eleven B.4; 2) the root control program, in accordance with Article Eleven, B.5;-3) the program to require that new Sewer Segments and connections are properly designed and constructed in accordance with Article Eleven B.6; 4) the program to require that WSSC rehabilitation projects are properly designed and constructed, in accordance with Article Eleven B.7; and 5) the program to CCTV any Sewer Segment that is on the preventive cleaning and chemical root control program before removing it from that program, and to CCTV any Sewer Segment of pipe at which a structural or maintenance problem is revealed during Sewer Segment cleaning required by this Decree, in accordance with Article Eleven B.2.

<u>Period of Noncompliance</u>	<u>Penalty Per Day Per Requirement</u>
1st to 30th day	\$1,000
31st to 60th day	\$2,000
After 60 days	\$3,000

W. WSSC shall pay the following stipulated penalties to the United States and the State of Maryland for failing to complete the Phase I, Phase II and Phase III Sewer Segment Cleaning requirements contained in Article Eleven B.1 a, b and c of this Consent Decree within the five year time periods set forth in those subsections:

Penalty Per Day for Each Five Year Deadline Missed \$1,000

These stipulated penalties shall continue to accrue daily until the required cleaning for that five year period is achieved.

X. WSSC shall pay the following stipulated penalties to the United States and the State of Maryland for failing timely to submit an Emergency Response Plan and/or a revised Emergency Response Plan, as required in Article Twelve B and C of this Consent Decree:

<u>Period of Noncompliance</u>	<u>Penalty Per Day</u>
1st to 30th day	\$1,000
31st to 60th day	\$1,500
After 60 days	\$2,000

Y. WSSC shall pay the following stipulated penalties to the United States and the State of Maryland for failing to implement the final approved Emergency Response Plan, in accordance with Article Twelve D of this Consent Decree:

<u>Period of Noncompliance</u>	<u>Penalty Per Day</u>
1st to 30th day	\$1,000
31st to 60th day	\$1,500
After 60 days	\$2,000

These stipulated penalties do not apply to the improper reporting of an SSD, which penalties are set forth in paragraph Z herein.

Z. WSSC shall pay stipulated penalties to the United States and the State of Maryland for failing to report orally and/or provide a written report of any SSD in accordance with Article Thirteen B. The stipulated penalty shall be \$2,000 for each SSD not properly reported orally within 24 hours; the

stipulated penalty shall be \$2,000 per SSD for failing timely to submit a complete 5 day written report. Hence, a failure to meet both reporting obligations for one SSD may result in a \$4,000 stipulated penalty.

AA. For failing timely to submit Quarterly Reports in accordance with Section VII, WSSC shall pay the following stipulated penalties:

<u>Period of Noncompliance</u>	<u>Penalty Per Day</u>
1st to 60th day	\$500 per day
After 60th day	\$1,500 per day

For failing timely to submit Annual Reports in accordance with Section VII, WSSC shall pay the following stipulated penalties:

<u>Period of Noncompliance</u>	<u>Penalty Per Day</u>
1st to 60th day	\$1,000 per day
After 60th day	\$3,000 per day

BB. Stipulated Penalties for SSD Events

i. For the first four years following the Date of Entry of this Consent Decree, and as a result of the need to make numerous system, operational and procedural changes to implement the remedial measures required by this Consent Decree and to develop the logistical infrastructure necessary to implement these measures, WSSC shall pay stipulated penalties to the United States and the State of Maryland for each SSD in the amounts set forth below:

Less than 100 gallons	\$50
100 to 2,499 gallons	\$250
2,500 to 9,999 gallons	\$500

10,000 to 99,999 gallons	\$1,875
100,000 to 999,999 gallons	\$5,000
1 million gallons	\$7,500

ii. Commencing four years after the Date of Entry of this Consent Decree, WSSC shall pay stipulated penalties to the United States and /or the State of Maryland for each SSD in the amounts set forth below:

Less than 100 gallons	\$125
100 to 2,499 gallons	\$750
2,500 to 9,999 gallons	\$1,250
10,000 to 99,999 gallons	\$4,700
100,000 to 999,999 gallons	\$10,000
1 million gallons	\$15,000

For purposes of subsections BB. i and ii above, an SSD shall be considered one SSD, even when a discharge occurs from more than one point source, provided that each discharge is caused by the same blockage or failure and occurs on the same calendar day. Further, for purposes of subsection BB.1 and 2 above, and Article Thirteen, B., when an SSD is reported by someone other than a member of WSSC's inspection crews, and a member of WSSC's inspection crew, upon inspection, determines that an SSD is occurring, timing of the SSD, for purposes of calculating volume of the discharge, shall commence at the date and time that WSSC received the report of the SSD event.

CC. If WSSC does not timely complete a Supplemental Environmental Project ("SEP") pursuant to Section X of this Consent Decree, or EPA and MDE determine that the SEP has not been completed in accordance with the Project's Scope of Work or the terms of paragraph 36 of Section X,

and/or if WSSC fails to expend or obligate the full \$4,400,000 on the SEPs in accordance with the Scopes of Work or the terms of paragraph 36, WSSC shall pay the portion of that amount not properly expended or obligated on the SEPs to the United States Treasury and the State of Maryland's Clean Water Fund in equal amounts as an additional civil penalty.

30. Stipulated penalties are payable 50% to EPA and 50% to MDE within 30 days after WSSC receives a demand from the United States, the State of Maryland, or both unless WSSC invokes the Dispute Resolution Provisions (Section XIII) of this Decree.

31. Stipulated penalties shall automatically begin to accrue on the day after performance is due, or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed, or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree. Interest on stipulated penalties shall not begin to accrue until 30 days after a demand for a stipulated penalty has been made.

32. Following EPA's and/or MDE's demand for a Stipulated Penalty under this Section, WSSC may petition EPA and MDE to waive the assessment of a Stipulated Penalty for good cause shown (which may include reasons other than an alleged Force Majeure Event). EPA and MDE, in their sole and unreviewable discretion, may waive any stipulated penalties that have accrued against WSSC pursuant to this Consent Decree.

33. Stipulated penalties shall continue to accrue during any Dispute Resolution, with interest on accrued penalties payable and calculated at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961, and in accordance with paragraph 31 herein, but need not be paid until the following:

A. If the dispute is resolved by agreement or by a decision of the sovereign(s) that made the demand for payment that is not appealed to the Court, then WSSC shall pay accrued penalties determined to be owing, together with interest, within 30 days of the effective date of the agreement or the receipt of the decision or order;

B. If the dispute is raised to the Court and the sovereign(s) who made the demand prevail(s) in whole or in part, WSSC shall pay all accrued penalties determined by the Court to be owed together with interest, within 60 days of receiving the Court's decision or order, except as provided in Subparagraph C, below;

C. If any Party appeals the District Court's decision, WSSC shall pay all accrued penalties determined by the Appellate Court to be owed, together with interest, within 15 days of receiving the final Appellate Court decision.

D. Accrued penalties shall be payable 50% to EPA and 50% to MDE, regardless of who made the demand.

34. Payment of stipulated penalties as set forth herein shall be in addition to any rights or remedies which may be available to the United States and/or the State of Maryland or their agencies by reason of WSSC's failure to comply with the requirements of this Consent Decree and all applicable federal, State or local laws, regulations, wastewater discharge permit(s) and all other applicable permits.

X. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

35. WSSC shall satisfy the requirements of this section from among the following Supplemental Environmental Projects ("SEPs"), which the Parties agree are intended to secure significant environmental protection and improvements which are not otherwise required by law. The

SEPs, which are more fully described in Appendices F1, 2 and 3 hereto, are as follows:

- A. Purchase or Acquisition of Patuxent Reservoir Buffer Properties and Easements for Water Supply Protection (not less than \$ 3,290,000) (Appendix F1);
- B. Private Property Inflow Elimination Program (not to exceed \$660,000) (Appendix F2); and
- C. Western Branch Wastewater Treatment Plant Winter Denitrification Through Methanol Addition (not to exceed \$1,110,000) (Appendix F3).

The SEPs in A and B above (Appendices F1 and F2) shall be completed within five years from the Date of Entry of this Decree, and the SEP in C above (Appendix F3) shall be completed within three years from the Date of Entry. WSSC shall perform SEP A as noted above and shall expend the remaining SEP monies by either distributing the funds between SEP B and C up to the “not to exceed” figures noted, or on SEP C, if the three-year cost of performing this SEP reaches the “not to exceed” figure for that project.

36. WSSC’s total expenditure for the development and implementation of these SEPs (including the cost of operating and maintaining the SEPs and performing post-construction monitoring) shall not be less than \$4,400,000 in Eligible SEP costs. Eligible SEP costs include the costs of planning and implementing SEPs, but do not include WSSC overhead, administrative expenses, legal fees, and contractor oversight. No more than 20% of the eligible SEP costs shall be spent on Design Costs. No part of the expenditure shall include federal or State funds, including federal or State low interest loans, contracts, or grants.

37. WSSC shall submit for EPA, MDE and Citizens Groups review and for EPA’s and MDE’s approval, a detailed Scope(s) of Work within 120 days of entry of this Decree for each project, which shall include a plan for the implementation of the SEP(s), a schedule for implementing the

SEP(s), and cost estimates for the various phases of each project. Upon approval by EPA and MDE of the Scopes of Work (“SOWs”) for the SEPs, those SOWs shall be incorporated by reference and enforceable under this Consent Decree.

38. If WSSC at any point determines that a project provided in paragraph 35 is not feasible, WSSC may propose to substitute a project or projects from the additional projects set forth below. WSSC must notify EPA, MDE and the Citizens Groups in writing that it is electing to substitute one or more of the projects identified in paragraph 35 with a project set forth in this paragraph. In addition, prior to initiation of the project and within 60 days of the notification, WSSC must submit to EPA, MDE and the Citizens Groups for review, and to EPA and MDE for approval, a detailed Scope(s) of Work for each substitute project which shall include a plan for the implementation of the substitute SEP(s), a schedule for implementing the SEP(s), and costs estimates for the various phases of the substitute SEP(s). The requirements set forth in paragraphs 36 and the incorporation by reference and enforcement provisions in paragraph 37, above, shall also apply with regard to any substitute project(s). The following is a list of proposed substitute SEP projects:

- A. Lower Beaverdam Creek Stream Restoration and Low Impact Development (“LID”) Project;
- B. Rock Creek Watershed Fish Barrier Assessment and Removal.

39. WSSC is responsible for the satisfactory completion of the SEP(s) in accordance with the requirements of this Decree. Satisfactory completion means that WSSC shall complete the work in accordance with all SOW plans and specifications for the project, and shall spend, in total, not less than the amount set forth in paragraph 36, above. WSSC may use contractors and/or consultants in planning and implementing the SEP(s).

40. At the time of submission of each SOW for a SEP, WSSC shall certify the truth and accuracy of each of the following:

A. That all cost information provided to EPA and MDE in connection with their approval of the SEP(s) is complete and accurate and represents a fair estimate of the costs necessary to implement the SEP(s);

B. That, as of the Date of Lodging of this Decree, WSSC is neither required to perform or develop the SEP(s) by any federal, state, or local law or regulation, nor required to perform or develop the SEP(s) by agreement, grant, or as injunctive relief awarded in any other action in other forum;

C. That the SEP(s) is not a project that WSSC was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;

D. That WSSC has not received any reimbursement for any portion of the SEP(s) from any other person.

41. SEP Completion Report. Within 60 days after the date set for completion of the SEP(s), WSSC shall submit a SEP Completion Report to EPA, MDE and the Citizens Groups in accordance with Section XXII (Notices) of this Consent Decree. The SEP Completion Report shall contain the following information:

A. A detailed description of the SEP(s) as implemented;

B. A description of any problems encountered in completing the SEP(s) and the solutions thereto;

C. An itemized list of all SEP costs, identify those that are Design Costs.

D. Certification that the SEP(s) has been fully implemented pursuant to the provisions of this Decree; and

E. A description of the environmental and public health benefits resulting from implementation of the SEP(s) (with a quantification of the benefits and pollutant reductions, if feasible).

42. EPA and MDE may, in their sole discretion, request information in addition to that described in the preceding paragraph, in order to determine the adequacy of SEP completion or eligibility of SEP costs.

43. After receiving a SEP completion report, EPA and MDE shall notify WSSC whether or not WSSC has satisfactorily completed the SEP(s). If the SEP(s) has not been satisfactorily completed in accordance with all schedules, stipulated penalties may be assessed under Section IX CC. of this Decree. If the amount actually expended on performance of the SEP(s) is less than the amount set forth in paragraph 36, WSSC shall, within thirty (30) days after receiving notice from EPA and MDE that it has satisfactorily completed the SEP(s), submit a cashier's check in the amount of 50% of the difference between the amount set forth in paragraph 36 and the amount actually expended, to the United States Treasury in accordance with the instructions in paragraph 26, above, and another cashier's check in the same amount to the "Maryland Clean Water Fund," in accordance with the instructions in paragraph 27, above.

44. Each submission required under this Section shall be signed by an official with knowledge of the SEP(s) and shall bear the certification language set forth at the end of Appendix B (the Quarterly Report Format) to this Consent Decree.

45. Any public statement, oral or written, in print, film, or other media, made by WSSC making reference to the SEP(s) under this Decree shall include the following language:

“This project was undertaken in connection with the settlement of an enforcement action, United States, the State of Maryland, Anacostia Watershed Society, Audubon Naturalist Society of the Central Atlantic States, Inc., Friends of Sligo Creek, and Natural Resources Defense Council v. Washington Suburban Sanitary Commission, C.A. No. PJM 04-3679, taken on behalf of the United States Environmental Protection Agency and the Maryland Department of the Environment under the Clean Water Act and Title 9, Subtitle 3 of the Environment Article, Annotated Code of the State of Maryland.”

XI. EFFECT OF SETTLEMENT/ RESERVATION OF RIGHTS

46. Effective upon the Date of Entry of the Consent Decree, and in consideration of the civil penalty payments that will be made, and the injunctive relief and SEPs that will be performed by WSSC under this Consent Decree, except as expressly set forth in paragraph 48 (Reservation of Rights), the United States covenants not to bring any administrative or civil judicial action for violations of Sections 301 and 402 of the CWA as alleged in the Complaint filed in this matter, and the State of Maryland covenants not to sue WSSC for violations of Sections 301 and 402 of the CWA and Sections 9-322, 9-323 and 9-331.1 of the Maryland Environment Article as alleged in the State of Maryland’s complaint in intervention. Entry of the Consent Decree by the Court shall resolve the United States and the State of Maryland’s civil claims, except as expressly set forth in paragraph 48 below, for violations of the above-referenced statutory provisions as alleged in the Complaint and in the Complaint in Intervention up to and including the Date of Lodging of the Decree.

47. This Consent Decree shall not be construed to prevent or limit the rights of the United States or the State to obtain penalties or injunctive relief under the CWA, under the Maryland Environment Article, or regulations promulgated there under, or permit conditions, except as expressly specified herein.

48. Reservations of Rights.

A. By the United States.

Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, all rights against WSSC with respect to all matters other than those expressly included in its Complaint, including but not limited to the following:

1. Claims based on a failure by WSSC to meet a requirement of this Consent Decree;
2. Claims for stipulated penalties, if any, under the terms of this Consent Decree;
3. Any criminal liability; and
4. Claims that a discharge or overflow from the Collection System may pose an imminent and substantial endangerment to health or the environment in accordance with Section 504 of the CWA, 33 U.S.C. § 1364.

B. By the State of Maryland.

Notwithstanding any other provision of this Consent Decree, the State of Maryland reserves, and this Consent Decree is without prejudice to, all rights against WSSC with respect to all matters other than those expressly included in its Complaint in Intervention, including but not limited to the following:

1. Claims based on a failure by WSSC to meet a requirement of this Consent Decree;
2. Claims for stipulated penalties, if any, under the terms of this Consent Decree;
3. Any criminal liability; and
4. Claims that a discharge or overflow from the Collection System may pose a menace to public health or comfort or cause a nuisance under Sections 9-220, 9-252 and/or 10-

105 of the Environment Article.

C. By the Citizens Groups.

Notwithstanding any other provision of this Consent Decree, Citizens Groups reserve, and this Consent Decree is without prejudice to, all rights against WSSC with respect to all matters other than those expressly included in their Complaint in Intervention, including but not limited to the following:

1. Claims based on a failure by WSSC to meet a requirement of this Consent Decree; and
2. Claims that a discharge or overflow from the Collection System may pose a nuisance under Maryland common law.

XII. FORCE MAJEURE

49. "Force Majeure" for the purposes of this Consent Decree is defined as an event beyond the control of WSSC or the control of any entity controlled by WSSC, including its agents, consultants and contractors, which delays or prevents the performance of any obligation under this Consent Decree despite WSSC's best efforts to fulfill the obligation. "Best efforts" include anticipating a reasonably foreseeable Force Majeure event and addressing the effects of any such event (a) as it is occurring, and (b) after it has occurred, to prevent or minimize any resulting delay to the extent reasonably possible. Unanticipated or increased costs or expenses associated with implementation of this Consent Decree and changed financial circumstances shall not, in any event, be considered "Force Majeure" events. In addition, failure to apply for a required permit or approval or to provide in a timely manner all information required to obtain a permit or approval that is necessary to meet the requirements of this Consent Decree, or failure of WSSC to approve contracts, shall not, in any event, be considered "Force

Majeure” events.

50. When WSSC knows or if WSSC should have known, by the exercise of reasonable diligence, of an event that might delay completion of any requirement of this Consent Decree, whether or not the event is a “Force Majeure” event, WSSC shall notify EPA, MDE and the Citizens Groups, in writing, within thirty (30) days after WSSC first knew, or in the exercise of reasonable diligence under the circumstances, should have known of such event. The notice shall indicate whether WSSC claims that the delay should be excused due to a “Force Majeure” event. The notice shall describe the basis for WSSC’s contention that it experienced a “Force Majeure” delay, the anticipated length of the delay, the cause or causes of the delay, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which those measures will be implemented. WSSC shall adopt all reasonable measures to avoid or minimize such delay. Failure to give such notice shall preclude WSSC from asserting any claim of “Force Majeure” as to the event in question, and shall be a waiver of WSSC’s right to obtain an extension of time for its obligations based on such event.

51. If EPA and MDE find that a delay in performance is, or was, caused by a “Force Majeure” event, they shall extend the time for performance, in writing, for a period to compensate for the delay resulting from such event, and stipulated penalties shall not be due for such period. In proceedings on any dispute regarding a delay in performance, the dispute resolution provisions of Section XIII (Dispute Resolution) shall apply, and WSSC shall have the burden of proving that the delay is, or was, caused by a “Force Majeure” event, and that the amount of additional time requested is necessary to compensate for that event.

52. If EPA and MDE do not find that a “Force Majeure” event has occurred, or do not agree with WSSC concerning the extent of time sought, the position of the United States and Maryland shall

be binding, unless WSSC invokes Dispute Resolution under Section XIII of this Consent Decree. In any such dispute, WSSC bears the burden of proving by a preponderance of the evidence, that each claimed “Force Majeure” event is a “Force Majeure” event; that WSSC gave the notice required in paragraph 50; that the “Force Majeure” event caused the delay WSSC claims was attributable to that event; and that WSSC exercised best effort to prevent or minimize any delay caused by the event.

53. Compliance with a requirement of this Consent Decree shall not by itself constitute compliance with any other requirement. An extension of one compliance date based on a particular event shall not automatically extend any other compliance date. WSSC shall make an individual showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought.

XIII. DISPUTE RESOLUTION

54. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes among the Parties arising under or with respect to this Consent Decree; however, disputes raised by the Citizens Groups concerning EPA and MDE approvals required under this Consent Decree shall bypass the first informal stage (paragraph 55 below), and shall proceed directly to the Court under paragraph 56.b. The procedures set forth in this Section shall not apply to actions by the United States and the State of Maryland to enforce obligations of WSSC that have not been disputed in accordance with this Section. Further, any disputes that may arise between EPA and MDE under this Consent Decree shall not be resolved pursuant to this Section, but shall be resolved in accordance with the “EPA Region III and MDE, Water Management Administration Agreement Regarding NPDES and Water Pollution Civil and

Administrative Enforcement Response,” dated July 14, 1998, and/or any subsequent agreement that amends or supercedes the July 14, 1998 agreement.

55. Informal Dispute Resolution. Any dispute that arises under or with respect to this Consent Decree (with the exception noted in paragraph 54 above, for disputes relating to approvals) shall in the first instance be the subject of informal negotiations among the Parties. The dispute shall be considered to have arisen when one party sends the other Parties a written notice of dispute, stating the matter in dispute. Such notice shall be sent within thirty days of the events or facts giving rise to the dispute. The period for informal negotiations shall not exceed thirty (30) days from the time the dispute arises, unless it is modified by written agreement of the Parties. If the dispute is not resolved, then within the fifteen (15) days after the end of the informal dispute resolution negotiation period, the Party raising the dispute shall serve on all Parties a written statement of position on the matter in dispute, including all supporting documentation. Within thirty (30) days of receiving that statement of position by the Party raising the dispute, the United States and the State of Maryland shall serve on all Parties a joint statement of position, and any other interested Party(ies) may serve on all Parties its (their) statement of position. The United States shall retain and maintain all notices, statements of position, and determinations, including supporting documentation, submitted pursuant to this Section. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by EPA and MDE shall be considered binding unless, within thirty (30) days after the receipt of the United States’ and Maryland’s Joint of Statement of Position, the disputing party(ies) files a petition with the Court pursuant to paragraph 56.

56. Resolution of Disputes by Court.

A. Disputes Not Resolved by Informal Dispute Resolution.

If a disputing party(ies) decides to challenge the United States' and the State of Maryland's Joint Statement of Position issued under paragraph 55, any petition filed with the Court, pursuant to this Section, shall describe the nature of the dispute, and shall provide a proposal for its resolution. The United States and the State of Maryland shall have thirty (30) days to file a response setting forth their position and their proposal for resolution of the dispute. In any such dispute, the Party(ies) filing the petition shall have the burden of proof. In any dispute commenced by WSSC, or any dispute commenced by the Citizens Groups against WSSC alone, the standard of review shall be that provided by applicable law. In any dispute commenced by the Citizen Groups against the United States and/or Maryland, the Citizen Groups shall bear the burden of demonstrating that the United States' and/or Maryland's Joint Position is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.

B. Disputes by Citizens Groups Concerning United States and Maryland Approvals.

If the Citizens Groups desire to dispute the United States' and Maryland's approval of any submission required under this Consent Decree (See Appendix D, Individual Submissions), the Citizens Groups shall file a petition with the Court within thirty (30) days after receiving notice that both EPA and MDE have approved or partially approved the submission in question, serving a copy of such notice upon EPA, MDE and WSSC. The petition filed with the Court shall describe the nature of the dispute, and shall provide a proposal for its resolution. The United States and the State of Maryland and/or WSSC shall have thirty (30) days to file a response setting forth their position, and their proposal for resolution of the dispute. In any

dispute over governmental approvals, the Citizen Groups shall bear the burden of demonstrating that the United States' and Maryland's approval was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. In any event in which the United States and Maryland approve a submission required of WSSC under this Consent Decree, and any Citizens Group disputes such approval, in whole or in part, pursuant to paragraph 56.B, WSSC shall be authorized to rely upon the approval, and such approval shall constitute "good cause" for the waiver of stipulated penalties under paragraph 36 of this Consent Decree, unless and until the Citizens Groups prevail. WSSC shall be a party to any dispute filed with the Court pursuant to paragraph 56.B.

57. All documents required by this Section to be served upon the Parties shall be served in accordance with Section XXII (Form of Notice).

58. Except as provided elsewhere in this Consent Decree, or agreed to in writing by the Parties, submission of any matter to the Court for resolution shall not extend any of the deadlines set forth in this Consent Decree unless the Court grants an order extending such deadline. Except as provided in paragraph 56.B, stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in paragraph 33. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that WSSC does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section IX.

XIV. RETENTION OF JURISDICTION

59. This Court shall retain jurisdiction of this matter for the purposes of implementing and

enforcing the terms and conditions of this Consent Decree, entering orders to modify this Decree, and adjudicating all disputes among the Parties that may arise under the provisions of this Consent Decree, to the extent that this Consent Decree provides for resolution of disputes by the Court.

XV. MODIFICATION

60. This Consent Decree, including Appendices, contains the entire agreement of the Parties and shall not be modified by any prior oral or written agreement, representation or understanding. This Consent Decree may not be materially amended or modified except by written agreement of the United States, Maryland and WSSC, and approval of this Court, after notice and motion to all Parties. The Citizens Groups shall have the right to oppose a motion for material modification by filing with the Court and serving on all Parties a statement of position regarding any material modification. Any material modification of this Consent Decree shall be effective upon approval of the Court. Non-material modifications of the Consent Decree which do not significantly alter the requirements of this Consent Decree may be made in writing by the United States, Maryland and WSSC and shall be effective upon service to all Parties, provided that the issue of the materiality of such modifications remains subject to dispute resolution and subsequent Court challenge under this Decree.

XVI. RIGHT OF ENTRY

61. EPA and MDE, along with their authorized representatives and contractors shall each have authority at all reasonable times, upon the presentation of credentials, to enter the premises of WSSC facilities to:

- A. Monitor the progress of activities required by this Consent Decree;

- B. Verify any data or information submitted to EPA and/or MDE;
- C. Obtain samples, and, upon request, obtain splits of any samples collected by WSSC or its consultants and contractors. Upon request, WSSC will be provided with splits of all samples taken by EPA, MDE and/or their authorized representatives;
- D. Inspect and evaluate any portion of the Collection System; and
- E. Inspect and review any record required to be kept under the terms and conditions of this Consent Decree.

These inspection rights are in addition to, and in no way limit or otherwise affect, the EPA and MDE's statutory authorities to conduct inspections, to require monitoring and to obtain information from WSSC as authorized by law.

XVII. NOT A PERMIT/COMPLIANCE WITH OTHER LAWS

62. This Consent Decree is not and shall not be construed as a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, nor as a modification of any existing permit so issued, nor shall it in any way relieve WSSC of its obligations otherwise to obtain required permits for WSSC's wastewater treatment plants and its Collection System, and to comply with the requirements of any applicable NPDES permit, permit modification, or with any other applicable federal or State law or regulation. In any subsequent enforcement action brought by EPA, MDE and/or the Citizens Groups not involving matters addressed in this Consent Decree, WSSC retains all legal and equitable defenses available to it.

63. Nothing herein shall be construed as relieving WSSC of the duty to comply with the CWA, Maryland's Environment Article Title 9, Subtitle 3, the regulations promulgated under those acts,

and all applicable permits issued under those acts and regulations.

XVIII. FAILURE OF COMPLIANCE

64. The United States, the State of Maryland, and the Citizens Groups do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that WSSC's complete compliance with this Consent Decree will result in compliance with the provisions of the CWA, 33 U.S.C. §§ 1251 et seq., Maryland's Environment Article Title 9, Subtitle 3, or with the NPDES permits issued to WSSC. Notwithstanding EPA and MDE's review or approval of any plans, reports, policies, or procedures formulated pursuant to this Consent Decree, WSSC shall remain solely responsible for any non-compliance with the terms of this Consent Decree, all applicable permits, the CWA, Maryland's Environment Article Title 9, Subtitle 3, and regulations promulgated under those acts. The pendency or outcome of any proceeding concerning issuance, reissuance, or modification of any NPDES permit shall neither affect nor postpone WSSC's duties and obligations as set forth in this Consent Decree. WSSC reserves all legal and equitable defenses to enforcement under this Consent Decree that are not specifically waived.

XIX. NON-WAIVER PROVISIONS

65. The Parties agree that WSSC is responsible for achieving and maintaining compliance with all applicable federal and State laws, regulations, and permits, and that compliance with this Consent Decree shall be no defense to any actions commenced pursuant to said laws, regulations, or permits, except as otherwise expressly specified in the Consent Decree.

66. The United States, Maryland and the Citizens Groups reserve any and all legal and

equitable remedies available to enforce the provisions of this Consent Decree.

67. This Consent Decree shall not limit any authority of EPA, MDE and the Citizens Groups under the CWA or any applicable statute, including the authority to seek information from WSSC or to seek access to the property of WSSC.

68. Performance of the terms of this Consent Decree by WSSC is not conditioned on the receipt of any federal, State or local funds. Application for construction grants, state revolving loan funds, or any other grants or loans, or delays caused by inadequate facility planning or plans and specifications on the part of WSSC shall not be cause for extension of any required compliance date in this Consent Decree.

69. The United States, the State of Maryland and the Citizens Groups reserve all remedies available to them for violations of the CWA and Maryland's Environment Article Title 9, Subtitle 3 by WSSC which are not alleged in the Complaint and the Complaint in Intervention, and for any violations of the CWA and Maryland's Environment Article Title 9, Subtitle 3 by WSSC which occur after the Date of Lodging of this Consent Decree.

XX. COSTS OF SUIT

70. The United States, the State of Maryland and WSSC shall each bear their own costs and attorney's fees with respect to matters resolved by this Consent Decree, except that the United States and the State may be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any Stipulated Penalties due but not paid under this Consent Decree (for purposes of this paragraph, Stipulated Penalties are not "due" until the conclusion of dispute resolution proceedings, if any, brought pursuant to Section XIII of the Decree).

A. Citizens Groups Costs

1. All claims by the Citizens Groups for attorneys fees and/or expenses and/or costs are hereby resolved in the Agreement between WSSC and the Citizens Groups dated June 2005.

2. WSSC does not acknowledge that the Citizens Groups are entitled to payment of any attorneys fees in this matter, but is resolving this issue in the interest of avoiding litigation on whether the Citizens Groups are, in fact, owed such fees and/or expenses and/or costs, and, if so, the amount of such fees and/or expenses and/or costs.

3. The Citizens Groups, including all individual organizations comprising the Citizens Groups, upon payment by WSSC of the amount noted in the Agreement, hereby agree to make no further claim for fees and/or expenses and/or costs incurred in this action through the Effective Date of the Consent Decree and accept said payment in satisfaction of all claims for attorneys fees and/or expenses and/or costs related to the underlying lawsuit and the negotiations leading to the entry of the Consent Decree.

4. Nothing in this Consent Decree obligates the WSSC, the United States or the State of Maryland to pay any attorneys fees that may be incurred in the future by any one or more of the Citizens Groups in connection with this Consent Decree.

5. Nothing in this Consent Decree precludes the Citizens Groups from applying to the Court under any applicable provision of law or settling with WSSC for the payment of their costs, including reasonable attorney's fees and expert witness fees, in connection with ensuring compliance with this Consent Decree, consistent with the terms of the dispute resolution process set forth in paragraph 56.

XXI. RECORDKEEPING

71. WSSC shall maintain copies of any reports, plans, permits and documents submitted to EPA and MDE pursuant to this Consent Decree, including any underlying research and data, for a period of five (5) years from date of submission. WSSC shall require any contractor or consultant implementing any portion of this Consent Decree to also retain such materials for a period of five (5) years from date of submission. WSSC shall submit such supporting documents to EPA and MDE upon request.

72. In addition to the reports and documentation required to be provided by WSSC under the terms of this Consent Decree, WSSC shall also provide, upon demand, any analytical data or any other documents requested by EPA or MDE to review work done, or to be done, by WSSC, or to determine WSSC's compliance with the terms of this Consent Decree.

XXII. FORM OF NOTICE

73. Unless otherwise specified, all reports, notices, plans, or any other written communications required to be submitted under this Consent Decree shall be sent to the respective Parties at the following addresses:

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Reference DOJ Case No. 90-5-1-1-07360

As to EPA:

Yvette Roundtree
Assistant Regional Counsel
United States Environmental Protection Agency
Region III
1650 Arch Street (3RC20)
Philadelphia, PA 19103

Director
Water Protection Division
United States Environmental Protection Agency
Region III
1650 Arch Street (3WP31)
Philadelphia, PA 19103

As to the State of Maryland:

Principal Counsel for the
Maryland Department of the Environment
Office of the Attorney General
1800 Washington Blvd.
Suite 6048
Baltimore, MD 21230

Chief
Enforcement Division, Compliance Program
Water Management Administration
Maryland Department of Environment
1800 Washington Blvd.
Suite 420
Baltimore, MD 21230

As to WSSC:

General Manager
Washington Suburban Sanitary Commission
14501 Sweitzer Lane
Laurel, Maryland 20707

General Counsel
Washington Suburban Sanitary Commission
14501 Sweitzer Lane
Laurel, Maryland 20707

As to the Citizens Groups:

President
Anacostia Watershed Society
The George Washington House
4302 Baltimore Avenue
Bladensburg, Maryland 20710

Executive Director
Audubon Naturalist Society of the Central Atlantic States, Inc.
8940 Jones Mill Road
Chevy Chase, Maryland 20815

President
Friends of Sligo Creek
100 Hodges Lane
Takoma Park, Maryland 20912

Melanie Shepherdson
Staff Attorney
Natural Resources Defense Council
1200 New York Avenue, N.W., Suite 400
Washington, D.C. 20005

Notifications to or communications with EPA, MDE, the United States Department of Justice ("DOJ") and the Citizens Groups shall be deemed submitted on the date they are received. Reports, documents and/or other submittals to be provided to the Citizens Groups by WSSC for their comments shall be sent via Federal Express Second Day Delivery, or through any similar service provider.

XXIII. PUBLIC COMMENT AND ENTRY OF CONSENT DECREE

74. The Parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the requirements of 28 C.F.R. § 50.7. The United States reserves the

right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. WSSC consents to entry of this Consent Decree without further notice.

XXIV. TERMINATION

75. The Consent Decree shall automatically terminate six months after WSSC has certified to the United States, the State of Maryland, the Citizens Groups and the Court that WSSC has complied with all of its obligations under this Consent Decree including: 1) completing all the activities described in Articles One through Thirteen of the Remedial Measures Section V; 2) payment of the Civil Penalty as required in Section VIII; 3) performance of the SEPs in accordance with Section X; 4) payment of all accrued stipulated penalties for which a demand was made under Section IX and which WSSC did not successfully challenge under Section XIII (Dispute Resolution).

76. The Consent Decree shall not terminate if, following certification by WSSC of compliance pursuant to paragraph 75, above, the United States and/or the State of Maryland assert in writing that full compliance has not been achieved. If the United States and/or the State of Maryland dispute WSSC's full compliance, this Consent Decree shall remain in effect pending resolution of the dispute by the Parties or the Court in accordance with the Dispute Resolution provisions of this Decree.

XXV. SIGNATORIES

77. The Assistant Attorney General on behalf of the United States and the undersigned representatives of WSSC, the State of Maryland and the Citizens Groups certify that they are fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind

such party to this document.

78. This Consent Decree may be signed in counterparts, and such counterpart signature pages shall be given full force and effect.

79. WSSC agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States and/or the State of Maryland has notified WSSC in writing that they (it) no longer supports entry of this Decree.

80. WSSC agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree, and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXVI. EFFECTIVE DATE

81. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

XXVII. INTEGRATION

82. This Consent Decree and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written. Other than the Appendices which are attached to and incorporated in this Decree, no other document, or any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXVIII. FINAL JUDGMENT

83. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment among the United States, the State of Maryland, and WSSC.

XXIX. APPENDICES

84. The following appendices are attached to and incorporated into this Consent Decree:

Appendix A- Format for Annual Report and Statement or Certification

Appendix B- Format for Quarterly Report

Appendix C- Description of Trunk Sewer Inspection Program

Appendix D- List of Individual Submissions under the Consent Decree

Appendix E- Code of Maryland Regulation 26.08.10.

Appendix F1- Supplemental Environmental Project A Description: Purchase of Patuxent Reservoir Buffer Properties and Easements for Water Supply Protection

Appendix F2- Supplemental Environmental Project B Description: Private Property Inflow Elimination Program

Appendix F3- Supplemental Environmental Project C Description: Western Branch WWTP Winter Denitrification Through Methanol Addition.

Dated and entered this ____ day of _____, 2005.

PETER J. MESSITTE
UNITED STATES DISTRICT JUDGE

FOR THE DISTRICT OF MARYLAND,
SOUTHERN DIVISION

WE HEREBY CONSENT to the entry of the Consent Decree in United States, State of Maryland, Anacostia Watershed Society, Audubon Naturalist Society of the Central Atlantic States, Inc., Friends of Sligo Creek, and Natural Resources Defense Council v. Washington Suburban Sanitary Commission, PJM-04-3679, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR PLAINTIFF THE UNITED STATES OF AMERICA:

Date

KELLY A. JOHNSON
Acting Assistant Attorney General
Environment and Natural Resource Division
United States Department of Justice

Date

LISA A. CHERUP
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
1425 New York Avenue, N.W.
Washington, DC 20003
(202) 514-2802

ALAN F. LOUCKS
United States Attorney
District of Maryland

Date

By: _____
LARRY D. ADAMS
Assistant U. S. Attorney
Office of the U.S. Attorney
36 S. Charles Street, 4th Floor
Baltimore, MD 21201
(410) 209-4881 (phone)
(410) 962-9947 (fax)

Date

DONALD S. WELSH
Regional Administrator
U.S. Environmental Protection Agency
Region 3
1650 Arch Street
Philadelphia, PA 19103
(215) 814-2020

Date

WILLIAM C. EARLY
Regional Counsel
U.S. Environmental Protection Agency
Region 3
1650 Arch Street
Philadelphia, PA 19103
(215) 814-2626

Date

YVETTE C. ROUNDTREE
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 3
1650 Arch Street
Philadelphia, PA 19103
(215) 814-2685

Date

THOMAS V. SKINNER
Assistant Administrator
Office of Enforcement and Compliance
Assurance
U.S. Environmental Protection Agency
Washington, DC 20460
(202) 564-2440

OF COUNSEL:

ELYSE DI BIAGIO-WOOD
Attorney Advisor
Office of Enforcement and Compliance
Assurance
U.S. Environmental Protection Agency
Washington, D.C. 20460

WE HEREBY CONSENT to the entry of the Consent Decree in United States, State of Maryland, Anacostia Watershed Society, Audubon Naturalist Society of the Central Atlantic States, Inc., Friends of Sligo Creek, and Natural Resources Defense Council v. Washington Suburban Sanitary Commission, PJM-04-3679, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR PLAINTIFF-INTERVENOR THE STATE OF MARYLAND:

Date

KENDL P. PHILBRICK
Secretary
Maryland Department of the Environment

Date

M. ROSEWIN SWEENEY
Assistant Attorney General
Maryland Department of the Environment

Date

NANCY W. YOUNG
Assistant Attorney General
Maryland Department of the Environment
1800 Washington Blvd.
WSSC, Maryland 21230
(410) 537-3046

WE HEREBY CONSENT to the entry of the Consent Decree in United States, State of Maryland, Anacostia Watershed Society, Audubon Naturalist Society of the Central Atlantic States, Inc., Friends of Sligo Creek, and Natural Resources Defense Council v. Washington Suburban Sanitary Commission, PJM-04-3679, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR PLAINTIFF-INTERVENOR, Anacostia Watershed Society:

Date

ROBERT E. BOONE
President
Anacostia Watershed Society
The George Washington House
4302 Baltimore Avenue
Bladensburg, Maryland 20710

WE HEREBY CONSENT to the entry of the Consent Decree in United States, State of Maryland, Anacostia Watershed Society, Audubon Naturalist Society of the Central Atlantic States, Inc., Friends of Sligo Creek, and Natural Resources Defense Council v. Washington Suburban Sanitary Commission, PJM-04-3679, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR PLAINTIFF-INTERVENOR, AUDUBON NATURALIST SOCIETY OF THE CENTRAL ATLANTIC STATES, INC.:

Date

NEAL FITZPATRICK
Executive Director
Audubon Naturalist Society of the Central
Atlantic States, Inc.
8940 Jones Mill Road
Chevy Chase, Maryland 20815

WE HEREBY CONSENT to the entry of the Consent Decree in United States, State of Maryland, Anacostia Watershed Society, Audubon Naturalist Society of the Central Atlantic States, Inc., Friends of Sligo Creek, and Natural Resources Defense Council v. Washington Suburban Sanitary Commission, PJM-04-3679, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR PLAINTIFF-INTERVENOR, FRIENDS OF SLIGO CREEK

Date

ANN HOFFNAR
President
Friends of Sligo Creek
100 Hodges Lane
Takoma Park, Maryland 20912

WE HEREBY CONSENT to the entry of the Consent Decree in United States, State of Maryland, Anacostia Watershed Society, Audubon Naturalist Society of the Central Atlantic States, Inc., Friends of Sligo Creek, and Natural Resources Defense Council v. Washington Suburban Sanitary Commission, PJM-04-3679, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR PLAINTIFF-INTERVENOR, NATURAL RESOURCES DEFENSE COUNCIL:

Date

NANCY STONER
Director, Clean Water Project
Natural Resources Defense Council
1200 New York Avenue, N.W., Suite 400
Washington, D.C. 20005

WE HEREBY CONSENT to the entry of the Consent Decree in United States, State of Maryland, Anacostia Watershed Society, Audubon Naturalist Society of the Central Atlantic States, Inc., Friends of Sligo Creek, and Natural Resources Defense Council v. Washington Suburban Sanitary Commission, PJM-04-3679, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR DEFENDANT, THE WASHINGTON SUBURBAN SANITARY COMMISSION:

Date

ANDREW D. BRUNHART
General Manager
Washington Suburban Sanitary Commission

Date

ROBERT H. DRUMMER
Acting General Counsel
Washington Suburban Sanitary Commission

Date

THOMAS M. LINGAN
Venable, LLP
Two Hopkins Plaza, Suite 1800
Baltimore, MD 21201
(410)244-7820

Date

CARL T. HORTON
Long, Peterson & Horton
1625 K Street, N.W.
Suite 1070
Washington, D.C. 20006
(202) 728-0853

APPENDIX A TO WSSC CONSENT DECREE

**FORMAT FOR ANNUAL REPORT AND ANNUAL STATEMENT
OR CERTIFICATION**

**ANNUAL REPORT FOR 20____
and
ANNUAL STATEMENT OR CERTIFICATION REGARDING
COMPLIANCE WITH CERTAIN CONSENT DECREE PROVISIONS**

ARTICLE ONE- ELIMINATION OF SSO DISCHARGES

1. **Article One, B-** Annual SSD Update Map and Report (Due March 1st of each year, following year the Consent Decree is entered).
2. **Article One, C-** Annual Building Backup Report (Due March 1st of each year, following year the Consent Decree is entered).

ARTICLE TWO- COLLECTION SYSTEM EVALUATION REQUIREMENTS

1. **Article Two, B.2-** Progress towards conducting the Trunk Sewer Inspection Program set forth in Appendix C to the Consent Decree, including but not limited to, number of sewer miles of 15 inch or larger sewers that were inspected, the number of manholes inspected, the number of visual assessments and evaluations of stream crossings and exposed pipe that were conducted, for both trunk sewers and sewers connecting to trunk sewers.
2. **Article Two, B.4.d.-** Provide annually any updated list of Sewer Segments in “Non-SSES Basins” that are exempt from the CCTV requirement. (Note- The initial list of Sewer Segments so exempted is due within 30 days of Date of Entry, see Appendix D on Individual Submissions).

ARTICLE THREE- FAT, OIL AND GREASE CONTROL PROGRAM REQUIREMENTS

1. **Article Three, B.1-** Annually update and resubmit as an attachment to the Annual Report) a map or maps of FOG-related SSOs that have occurred in the WSSD from the Date of Entry onward.

Status:

2. **Article Three, B.2-** Annually submit to EPA and MDE an updated list of all “Food Establishments” in the WSSD, from WSSC’s “Food Establishments” database, including a tabular summary of information on the compliance and enforcement status of these establishments. (i.e. issuance of notices of violations, citations, fines, etc.).

Status:

3. **Article Three, B.3-** Issue permits to all “Food Establishments” within the WSSC service area within 54 months from the Date of Entry, and issue permits to 60% of all "Food Establishments” within 42 months from the Date of Entry.

Status:

Number of "Food Establishments" currently appearing in database _____

Total Number of FOG Permits Issued to Date _____

Percentage of Current "Food Establishments" issued Permits _____

4. **Article Three, B.5-** Report on the implementation of approved changes to FOG Program contained in Modified FOG Program Plan (in accordance with approved schedule in Plan), reporting separately on each category of approved modifications.

ARTICLE FOUR- FLOW MONITORING REQUIREMENTS

1. **Article Four, B.1-8 & C-** Annual statement or certification regarding whether WSSC has complied with each separate requirement in Article IV.B.1-8 (Flow Monitoring).

Annual Statement or Certification*:

Article Four,B.1- Flow monitors and rain gauges- summary of flow monitoring information collection.

Article Four, B.2- Flow monitors and rain gauges- contractor services, upkeep and preventative maintenance.

* In providing an “Annual Statement or Certification” in an Annual Report WSSC has the option of either certifying compliance with the applicable consent decree provisions, or alternatively, providing a statement in which it explains the extent to which it could comply with the provisions, and an explanation of how and why it did not fully comply.

Article Four, B.3- Evaluation of flow monitors, both temporary and permanent in accordance with manufacturer's specifications and sound industry practice and in accordance with the requirement that such monitors have an accuracy of plus or minus ten percent.

Article Four, B.4- Minimum requirement for flow and rain monitoring network (three storms of at least three inches within 24 hours), 90% minimum quality data per month requirement.

Article Four, B.6- Requirement to annually evaluate the number and placement of permanent flow monitors and rain gauges throughout WSSC collection system.

Article Four, B.6- Requirement to report any changes that have occurred in the placement of permanent flow monitors and rain gauges to EPA and MDE, and submit a revised location map, if changed.

Article Four, B.7- Consistent with good industry practice perform QA/QC of rainfall and flow monitoring data for each Sewer Basin.

Article Four, B.8- Conducting rainfall and flow monitoring in accordance with the EPA Handbook, NASSCO published guidance, and good industry practice.

ARTICLE EIGHT- ILLEGAL STORMWATER DISCHARGE REQUIREMENTS

1. **Article Eight**, C- Annual summary of Illegal Stormwater Discharges identified in all SSES and Non-SSES Basins, and actions taken in response to identification.

Report on progress toward compliance with the provisions in Article Eight, including:

Total Number (System-wide) of Illegal Stormwater Discharges identified during year:

Total Number by Basin:

Date Illegal Stormwater Discharge Identified, and date building owner(s) identified:

Identification of Illegal Stormwater Discharges found to be causing or contributing to SSOs and/or Building Backups by address, including a tabular summary of the actions taken to address them and the results of those actions.

ARTICLE NINE- INFORMATION MANAGEMENT SYSTEM REQUIREMENTS

1. **Article Nine, B** WSSC shall provide a certification regarding its compliance with the requirements of Article Nine, B, including that within 120 days of completion of any inspection, testing, condition assessment activity or rehabilitation activity required under the Consent Decree, or within 120 days of becoming aware of reliable information that the attribute data is incorrect or incomplete in the information management system (See Article Nine, B.2 for a list of inventory information), WSSC shall update or correct the information in the system.

Annual Statement or Certification:

ARTICLE TEN- PUMP STATION REQUIREMENTS

1. Article Ten, B.4- Review and Update Pump Station Standard Operating Procedures

In accordance with Article Ten, B.1-4:

- a. Certify that WSSC continues to implement a Preventive Maintenance Program for all its Pump Stations;
- b. Certify that the Pump station Preventative Maintenance Programs provide for the elements contained in Article Ten B.2;
- c. Certify that Pump Station preventive maintenance and repair activities are documented in an automated management tracking program; and
- d. Certify that the appropriate review and a timely update of Pump Station standard operating procedures has occurred.

Annual Statement or Certification:

2. Article Ten, B.6- Every Five Years WSSC Shall Re-evaluate the Capacity of Each of its Pump Stations

Starting the fifth year following the year in which this Consent Decree is entered by the Court, and every five years thereafter, WSSC shall supply its re-evaluation of the capacity of each then currently operational pump station, as an attachment to that the appropriate Annual Report.

ARTICLE ELEVEN- COLLECTION SYSTEM OPERATION AND MAINTENANCE PLAN (O &M PLAN) REQUIREMENTS

1. **Article Eleven, B.1.a- Phase I Sewer Segment Cleaning in Non-SSES Sewer Basins** (Due date: To be completed within 5 years from commencement of implementation of the Collection System O&M Plan).

For the Non-SSES Sewer Basins estimate the total number of sewer miles to be cleaned under the Phase I Program, then, in each annual report, report the number of sewer miles cleaned that year, the percentage of the total cleaned, and the location of pipes cleaned.

2. **Article Eleven, B.1.b.- Phase II Sewer Segment Cleaning in SSES Sewer Basins** (Due date: To be completed within 5 years from the beginning of implementation of the Collection System O&M Plan).

For the SSES Sewer Basins, estimate the total number of sewer miles to be cleaned under the Phase II Program, then, in each annual report, report the number of sewer miles cleaned that year, the percentage of the total cleaned, and a description of the areas cleaned.

3. **Article Eleven, B.1.c.- Phase III Sewer Segment Cleaning, Future Sewer Segment Aging** (Every 5 years clean sewers that reach an age of 21 years or older).

At each five year mark, report in the Annual Report for that fifth year, the total number of miles of sewer that newly reached 21 years of age, and the total number of sewer miles cleaned under this Program.

4. **Article Eleven, B. 2.b- CCTV Inspection Program for Removal of Segments from the Preventative Cleaning and Chemical Root Control Program**

Report annually the number of sewer miles that have been removed from the preventative cleaning and chemical root control program.

5. **Article Eleven, B.4-** Report annually the number of manhole inspections performed, by basin, resulting from the Collection System Evaluations performed pursuant to Article Two and the Trunk Sewer Inspection Program performed pursuant to Appendix C. Inspections resulting from cleaning, CCTV or other routine work will be estimated from documentation associated with those routine O & M activities. The number of manholes repaired as a result of all inspection work will also be reported annually.

6. **Article Eleven, B.5- Root Control Program**

Report annually the number of sewer miles that are mechanically and/or chemically treated with root control in the year for which the report is submitted.

ARTICLE TWELVE- EMERGENCY RESPONSE PLAN(S)

1. **Article Twelve, B.-** Annual Statement or Certification regarding whether WSSC has complied with the following elements of its approved Emergency Response Plan for SSDs.

Annual Statement or Certification:

Article Twelve, B.1.a.- Public notification of SSDs

Article Twelve, B.1.c- Posting of waters following SSDs, as required

Article Twelve, B.1.d- Standard operating procedures for minimizing volume of SSDs reaching waters.

Article Twelve, B.1.f.- Training of WSSC personnel on responding to SSDs.

2. **Article Twelve, B.2.-** WSSC shall supply the following types of information concerning its response to building backups:

- time frames within which it responded to building backups that occurred during the year;
- customer surveys submitted during the year by customers who experienced building backups.; and
- whether “follow up” procedures were followed for insuring adequacy of clean up of Building Backups caused by conditions in the Collection System.

3. **Article Twelve, E.-** Annual Review and Update of Emergency Response Plan-

Status of update, and recommendations made for change, if any:

Article THIRTEEN- REPORTING AND RECORDKEEPING REQUIREMENTS RELATING TO SSOs

1. **Article Thirteen, B.-** Annual Statement/Certification regarding whether WSSC has complied with the requirements of Article Thirteen, B. 1 and 2 for all SSD, that have occurred during the year.

Annual Statement or Certification:

Article Thirteen, B.1- Oral notification within 24 hours of all SSDs, and/or notification of when WSSC did not comply with this notice requirement.

Article Thirteen, B.2- Submission of written report within 5 days, containing the information set forth in Article, B.2. a-h (until superceded by COMAR 26.08.10.03.09), and/or notification of when WSSC did not comply with this notice requirement.

Article Thirteen, B.3- Posting on WSSC website of information relating to SSD events within 10 days of the event.

2. **Article Thirteen, C.-** Annual Statement/Certification regarding quarterly reporting of Building Backups as required in Article Thirteen, C.

Annual Statement or Certification:

3. **Article Thirteen, D & E.-** Annual Statement/Certification regarding whether WSSC has complied with the requirements of Article Thirteen, D and E.

Annual Statement or Certification:

Article Thirteen, D.- Customer complaint list maintained for at least five years.

Article Thirteen, E.- Maintenance of written reports required by Thirteen, B.2 and C.

Article Thirteen, F.- Annual summary of information on Building Backups, in accordance with this provision, and annual statement/certification, as set forth in this provision.

Annual Statement or Certification:

SECTION X. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

1. During any year in which one or more SEPs are being implemented, report on progress towards completion of the approved SEPs, and total monies spent to date on such SEPs.

Certification (by person responsible for compliance with terms of Consent Decree):

I certify under penalty of law that this information was prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my directions and my inquiry of the person(s) who manage the system, or the person(s) directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete.

Date

Name
Title
Contact Information

APPENDIX B TO WSSC CONSENT DECREE

FORMAT FOR QUARTERLY REPORT

QUARTERLY REPORT FOR __ QUARTER OF 20 __

ARTICLE TWO- COLLECTION SYSTEM EVALUATION REQUIREMENTS

(To be completed each quarter that one or more SSESs are being performed).

1. Article Two, B.1.a.- Progress in performing an SSES in the SSES Basins (By the due dates set in the approved schedule, but no later than 8 years from Date of Entry)

a. Beaverdam SSES Status (Approved Due Date: _____)

b. Broad Creek II SSES Status (Approved Due Date: _____)

c. Cabin John SSES Status (Approved Due Date: _____)

d. Little Falls SSES Status (Approved Due Date: _____)

e. Northeast Branch SSES Status (Approved Due Date: _____)

f. Parkway SSES Status (Approved Due Date: _____)

g. Piscataway SSES Status (Approved Due Date: _____)

h. Rock Run SSES Status (Approved Due Date: _____)

i. Watts Branch SSES Status (Approved Due Date: _____)

(To be completed each quarter, until Consent Decree terminated)

2. **Article Two, B.3-** CCTVing of Segments in which SSDs have occurred (At least 75% of SSDs occurring during the quarter should have been CCTVed within 10 days of the SSD occurrence, and 100% within 30 days of the SSD occurrence).

Number of SSDs that occurred during quarter up to 30 days prior to the close of the quarter:

Number of SSDs identified above, CCTVed within 10 days: ____ (____%)

Number of SSDs identified above, CCTVed within 30 days: ____ (____%)

Comments:

(To be completed each quarter that one or more Non-SSES Basin Evaluations are being performed).

3. **Article Two, B.4-** Progress toward completion of evaluations of Non-SSES Basins (To be completed by date in approved schedule, but no later than 5 years from Date of Entry).

a. Dulles Interceptor

b. Horsepen Evaluation Status

c. Lower Anacostia Evaluation Status

- d. Mattawoman Evaluation Status
- e. Monocacy Evaluation Status
- f. Muddy Branch Evaluation Status
- g. Northwest Branch Evaluation Status
- h. Oxon Run Evaluation Status
- i. Paint Branch Evaluation Status
- j. Patuxent Center Evaluation Status
- k. Seneca Creek Evaluation Status
- l. Sligo Creek Evaluation Status
- m. Western Branch Evaluation Status

4. **Article Two, B.5- Water Quality Monitoring (“WQM”) Plan-** Report on whether any of the semi-annual (or annual) WQM required under Article Two,. B.5, was conducted during the quarter, and if so, in which sewer basins, and report the results of that monitoring (both BST and fecal coliform) for each such sewer basin-

Basins Subject to Semi-Annual Monitoring and Reporting Requirements:

BST Results:

Fecal Coliform Results:

- a. Broad Creek-

- b. Cabin John-
- c. Horsepen
- d. Indian Creek-
- e. Little Falls-
- f. Lower Anacostia
- g. Lower Beaverdam Creek-
- h. Muddy Branch-
- i. Northeast Branch-
- j. Northwest Branch-
- k. Oxon Run-
- l. Paint Branch-
- m. Parkway-
- n. Pisacataway
- o. Rock Creek-
- p. Seneca Creek-
- q. Sligo Creek-
- r. Upper Beaverdam Creek
- s. Watts Branch-
- t. Western Branch-

Basins Subject to an Annual Monitoring and Reporting Requirements-

BST Results:

Fecal Coliform Results:

- a. Dulles Interceptor

- b. Mattawoman
- c. Monacacy
- d. Patuxent Center
- e. Patuxent North
- f. Rock Run

ARTICLE SIX- SEWER BASIN REPAIR, REPLACEMENT, REHABILITATION PLAN AND SCHEDULE) REQUIREMENTS

(To be completed starting the first quarter that any work under an SR³ Plan begins, through the last quarter that all work under all SR³ Plans is completed).

1. **Article Six, B.4-** Complete work set forth in each approved SR³ Plan, in accordance with schedule contained therein.

STATUS OF WORK IN SSES BASINS:

- a. Beaverdam- (Approved due date for work completion: *fill in for each basin, when known, and continue to supply until work completed*)
- b. Broad Creek I- (Remaining work to be completed no later than 5 years from the Date of Entry, see Article Two, B.1.d.)
- c. Broad Creek II- (Remaining work to be completed no later than 5 years from the Date of Entry, see Article Two, B.1.d.)
- d. Cabin John- (Approved due date: _____)
- e. Little Falls- (Approved due date: _____)
- f. Northeast Branch- (Approved due date: _____)

- g. Parkway (Approved due date: _____)
- h. Piscataway (Approved due date: _____)
- i. Rock Creek/Patuxent North- (Remaining work to be completed no later than five years from the Date of Entry, see Article Two, B.1.d.)
- j. Rock Run- (Approved due date: _____)
- k. Watts Branch- (Approved due date: _____)

STATUS OF WORK IN NON-SSES BASINS

- a. Dulles Interceptor- (Approved due date for work completion: _____)
{fill in for each basin, when known, and continue to supply until work completed}
- b. Horsepen (Approved due date: _____)
- c. Lower Anacostia (Approved due date: _____)
- d. Mattawoman (Approved due date: _____)
- e. Monocacy (Approved due date: _____)
- f. Muddy Branch (Approved due date: _____)
- g. Northwest Branch (Approved due date: _____)
- h. Oxon Run (Approved due date: _____)

- i. Paint Branch (Approved due date: _____)
- j. Patuxent Center (Approved due date: _____)
- k. Seneca Creek (Approved due date: _____)
- l. Sligo Creek (Approved due date: _____)
- m. Western Branch (Approved due date: _____)

ARTICLE TEN- PUMP STATION REQUIREMENTS

(To be completed for any quarter during which a Pump Station SSD has occurred, or during which a Pump Station SSD report is due to be submitted under Article Ten,.B).

- 1. **Article Ten, B.5-** Conduct an analysis to determine the cause of any SSD at a Pump Station, and report findings to EPA and MDE.

Pump Station SSDs that have occurred during the current reporting quarter:

(List pump station, date of SSD, date findings reported and cause(s) reported).

- 2. **Article Ten, B.5, 7 & 8-** Submit a plan and schedule to EPA and MDE for review and approval for corrective actions to address each Pump Station SSD (Due date: Within 90 days (if cause was equipment failure or malfunction, loss of power, or inadequate maintenance) and 180 days (if cause was inadequate capacity or design deficiencies).

Describe the status of the implementation of any approved corrective action plan for Pump Stations, including the Anacostia Pump Station and the Broad Creek Pump Station Facilities Plans.

ARTICLE THIRTEEN- REPORTING OF BUILDING BACKUPS

{To be completed in any quarter during which Building Backups occur}.

1. **Article Thirteen, C-** Submit information on Building Backups that have occurred in the preceding quarter.

OTHER MATTERS TO BE BROUGHT TO THE ATTENTION OF EPA, MDE AND THE CITIZENS GROUPS:

Certification (by person responsible for compliance with terms of Consent Decree):

I certify under penalty of law that this information was prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my directions and my inquiry of the person(s) who manage the system, or the person(s) directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, truth, accurate and complete.

Date

Name
Title
Contact Information

APPENDIX C TO WSSC CONSENT DECREE

Trunk Sewer Inspection Program

WSSC shall perform a Trunk Sewer Inspection Program for sewers 15-inch diameter and larger and their associated manholes, and exposed pipe in proximity to streams. This program shall include documentation and evaluation of defects and consists of the following activities:

- Visual inspection of the manhole.
- Video lamping of the trunk sewer pipe from each manhole where leakage or maintenance conditions are noted from the visual, above ground inspection.
- Visual assessment and evaluation of stream crossings and exposed pipe for all trunk sewers and other exposed sewers connecting to the trunk. The evaluation of exposed pipes will be conducted in a manner similar to the Stream Corridor Assessment Survey (“SCAS”) protocols for exposed pipes, adopted by the Maryland Department of Natural Resources, September 2001. Where appropriate, the exposed pipe evaluation will also include a dye tracing procedure in consideration of the diameter, location and characteristics of the exposed pipe in the stream.
- Identification of Trunk Sewer manholes that are buried.

The Trunk Sewer inspections shall be performed in all basins and will include approximately 625 miles of sewer 15-inch diameter and larger and approximately 8,800 manholes. For each manhole that cannot be accessed, a determination shall be made regarding the need to raise the manhole to grade and/or uncover the manhole. The determination of whether or not to uncover and/or raise the manhole to grade shall be based on the age of the sewer, the findings from adjacent manhole and Trunk Sewer inspections, whether it is a junction manhole, whether accessing the manhole is essential to the trunk sewer inspection program and other appropriate criteria.

There are currently estimated to be approximately 8,000 stream crossings in the Collection System. Exposed Trunk Sewer and other exposed sewers connecting to the Trunk Sewer across or along streams will be identified and evaluated. The evaluation shall include the SCAS system for ranking the

exposed pipes incorporating severity, correctability, proximity to streams and other factors that can be used to prioritize repairs within the SR³ Plan.

The initial trunk sewer inspection shall be initiated within 90 days of the Date of Entry and will be completed within five years of the start of the program. Each subsequent Trunk Sewer inspection shall be completed no later than five (50) years after the start of the inspection.

APPENDIX D TO WSSC CONSENT DECREE

INDIVIDUAL SUBMISSIONS UNDER CONSENT DECREE

ARTICLE ONE- ELIMINATION OF SSOs REQUIREMENTS

1. **Article One, A.** - Collection System Characterization Report (Due 90 days from Date of Entry of Consent Decree).

ARTICLE TWO- COLLECTION SYSTEM EVALUATION REQUIREMENTS

1. **Article Two, B.1.c.** - Submission of a Schedule for Conducting SSESs in the following nine Sewer Basins ("SSES Basins): Beaverdam, Broad Creek II, Cabin John, Little Falls, Northeast Branch, Parkway, Piscataway, Rock Run and Watts Branch. (Due within 30 days of Date of Entry)

2. **Article Two, B.1.d.**- Reevaluate recommendations in the Rock Creek/Patuxent North and Broad Creek I SSES Reports, and complete recommendations for further study and work- (Due Date: Within five years from Date of Entry of Consent Decree)

3. **Article Two, B.1.e.**- Submission of final Scopes of Work (SOWs) for the SSESs to be performed for the SSES Basins (Due within 30 days of awarding a contract for each SSES).

4. **Article Two, B.1.f.** - Submission of SSES Reports for each SSES Basin (Due Date for original reports: Within 60 days of the Approved Due Date for completion of each SSES; Due Date for revised reports- 60 days from receipt of comments from EPA and MDE).

5. **Article Two, B.4 d.**- Initial list of Sewer Segments exempted from CCTV requirements (Due within 30 days from Date of Entry).

6. **Article Two, B.5.**- Submit a Water Quality Monitoring ("WQM") Plan within 120 days after the Date of Entry.

ARTICLE THREE- FAT, OIL AND GREASE CONTROL PROGRAM REQUIREMENTS

1. **Article Three, B.2.** - Establish a database of all "Food Establishments" in the WSSC service area, within 180 days from the Date of Entry, and submit an initial list of such "Food Establishments" from the database to EPA/MDE.

2. **Article Three, B.3.b.** No later than 9 months from the Date of Entry WSSC

shall submit a copy of the draft FOG Permit to EPA, and MDE and the Citizens Groups for review and to EPA and MDE for approval.

3. **Article Three, B.4-** 42 Months from the Date of Entry, submit information necessary for EPA and MDE to determine whether the requirement that 60% of all “Food Establishments” have been issued permits has been met.

4. **Article Three, B.4-** 54 Months from the Date of Entry, submit information necessary for EPA and MDE to determine whether the requirement that 100% of all “Food Establishments” have been issued permits has been met.

5. **Article Three, B.5-** Submission of FOG Report and Modified FOG Program Plan, within 180 days from Date of Entry.

6. **Article Three, B.6-** Within the below stated periods of time, starting from the date that WSSC receives approval from EPA and MDE of a Modified FOG Program, WSSC shall have completed the following percentage of inspections of the Food Establishments in the WSSC’s service area that were in operation in the preceding year:

- 1 year (from receipt of approval)- a minimum of 10%
- 2 years (from receipt of approval)- a minimum of an additional 15% (or 25%);
- 3 years (from receipt of approval)- a minimum of an additional 15% (or 40%);
- 4 years (from receipt of approval) a minimum of an additional 15% (or 55%);
and
- 5 years (from receipt of approval) 100% of Food Establishments.

7. Within 30 days after each such anniversary date, WSSC shall submit a Statement/Certification regarding its compliance (or failure to comply) with the above minimum percentages for inspections of Food Establishments.

8. **Article Three, C.-** Submission of Revised Modified FOG Program Plan, following receipt of EPA and MDE comments, within 60 days after receiving comments.

9. **Article Three, D-** Submission of Report on Effectiveness of FOG Program (6 years from Date of Entry).

ARTICLE FOUR- FLOW MONITORING REQUIREMENT

1. **Article Four, B.1** Submission of the map identifying all locations of rain gauges and flow monitors, with a minimum of 11 rain gauges and 120 flow monitors in use in the WSSC Collection System (within 30 days from the Date of Entry).
2. **Article Four, B.5** At the time WSSC submits the results of the hydraulic model required under Article Five, submits each SSES Report and submits each Performance Assessment for SSES Basins), WSSC shall certify that it has met the requirement in Article Four.B.5. that a minimum of two rain gauges be used in each basin, supplemented with Doppler radar information at the minimum required resolution.

ARTICLE FIVE- COLLECTION SYSTEM MODELING REQUIREMENTS

1. **Article Five, B.8-** Before or with the submission of each SR³ Plan, certify that the modeling meets the specifications set forth in V.B. 1-7 for the Sewer Basin in question.

ARTICLE SIX- SEWER BASIN REPAIR, REPLACEMENT, REHABILITATION PLAN AND SCHEDULE REQUIREMENTS

1. **Article Six, A. B.** Submit an SR³ Plan for Each SSES Basin and Each Non-SSES Basin evaluated in accordance with Article Two, B. (Due date- Within 180 days after completion of each evaluation required under Article Two, B., except that the SR³ Plans for the Broad Creek and Rock Creek/Patuxent North Basins are due within 180 days after completion of the Trunk Sewer Inspection Program in those Sewer Basins).
2. **Article Six, B.4-** modify and resubmit, if required, each SR³ Plan, following receipt of comments by EPA and MDE (within 60 days of receipt of comments).

ARTICLE SEVEN- PERFORMANCE ASSESSMENT REQUIREMENTS

1. **Article Seven, B-** Submit a Performance Assessment Report for Each SSES Basin and Non-SSES Basin (Due Date: No later than 90 days after completion of each Performance Assessment).

ARTICLE NINE- INFORMATION MANAGEMENT

1. **Article Nine, A.2-** WSSC shall certify that its Information Management System complies with the minimum requirements in Article Nine, within 180 days from the Date of Entry.

ARTICLE TEN- PUMP STATION REQUIREMENT

1. **Article Ten, B.5-** Conduct an Analysis to Determine the Cause of Any SSD at a Pump Station, and Report Findings to EPA and MDE. (Due date: Within 30 days of the SSD occurrence).
2. **Article Ten, B.5-** Submit a plan and schedule to EPA and MDE for review and approval for corrective actions to address each Pump Station SSD other than for SSDs that occur at the Anacostia and/or Broad Creek pump stations for which Facility Plans are required under the Consent Decree. (Due date: Within 90 days (if cause was equipment failure or malfunction, loss of power, or inadequate maintenance) or 180 days (if cause was inadequate capacity or design deficiencies)).
3. **Article Ten, B.8- Anacostia Pump Station-** No later than one year from the Date of Entry, WSSC shall submit a "Facilities Plan" for the Anacostia Pump Station.

If the "Facilities Plan," as approved by EPA and MDE, identifies a need for a modification to the Anacostia Pump Station, then within 60 days from submission of the approved Facilities Plan, a plan and schedule for conducting the modification shall be submitted to EPA and MDE.

4. **Article Ten, B.9- Broad Creek Pump Station-** No later than two years from the Date of Entry, WSSC shall submit a "Facilities Plan" for the Broad Creek Pump Station.

If the "Facilities Plan," as approved by EPA and MDE, identifies a need for a Modification to the Broad Creek Pump Station, within 60 days from submission of the Facilities Plan, a plan and schedule for conducting the modification shall be submitted to EPA and MDE.

ARTICLE ELEVEN- COLLECTION SYSTEM OPERATION AND MAINTENANCE PLAN) REQUIREMENTS

1. **Article Eleven, A.-** Submit a comprehensive Operation and Maintenance Plan ("O&M Plan"), meeting the specifications in Article Eleven, B. (Due date: 180 days from Date of Entry)
2. **Article Eleven, A.-** Submit a response or amend the O & M Plan if EPA or MDE provide comments (within 60 days of receiving comments).

ARTICLE TWELVE- EMERGENCY RESPONSE PLAN(S)

1. **Article Twelve, B.1 and B.2-** Submit Emergency Response Plan(s) (Due within 90 days from Date of Entry)

2. **Article Twelve, C-** Modify and resubmit emergency response plan, following receipt of comments by EPA and MDE (Due within 60 days of receipt of comments).

SECTION X. SUPPLEMENTAL ENVIROMENTAL PROJECTS

1. **Section X, paragraph 37-** Submit detailed Scopes of Work (SOWs), plans for implementation and schedules for implementation for all three SEPs identified in paragraph 35 of the Consent Decree, within 120 days of the Date of Entry.
2. **Section X, paragraph 38-** If required, provide EPA, and MDE and the Citizens Groups written notice of WSSC's intent to select another SEP, as set forth in paragraph 38. Further, within 60 days of submitting such written notice, submit to EPA and MDE an SOW, a plan for implementation, a schedule for implementation, and a cost estimate for the alternative SEP(s) selected.
3. **Section X, paragraphs 40 and 44- Certifications.** At the time of submission of the SOW for each SEP, WSSC shall provide a written certification, in accordance with paragraphs 40 and 44.
4. **Section X, paragraph 41- SEP Completion Reports.** No later than 60 days after the date set for completion of each SEP, WSSC shall submit a SEP Completion Report in accordance with paragraph 41.

APPENDIX E- CODE OF MARYLAND REGULATION 26.08.10.

26.08.10.00

.00. Title 26 DEPARTMENT OF THE ENVIRONMENT Subtitle 08 WATER POLLUTION Chapter 10 Overflows or Bypasses Authority: Environment Article, §9-331.1, Annotated Code of Maryland

26.08.10.01

.01 Definition.

A. In this chapter, the following term has the meaning indicated.

B. Overflow.

- (1) "Overflow" means any loss of wastewater or discharge from a sanitary sewer system, combined sewer system, or wastewater treatment plant bypass which results in the direct or potential discharge of raw, partially treated or diluted sewage into waters of the State as defined in Environment Article, §9-101(I), Annotated Code of Maryland.
- (2) "Overflow" includes, but is not limited to, any overflow or discharge of raw or diluted sewage onto the surface of the ground, into waterways, storm drains, ditches or other manmade or natural drainage conveyances to surface or ground waters.
- (3) "Overflow" does not include:
 - (a) An overflow or discharge of 50 gallons or less to the ground that are cleaned up within 1 hour of its occurrence; and
 - (b) An overflow or discharge to impervious surfaces that are effectively contained and cleaned up so that there is no direct or potential pollution of waters of the State as a result of the overflow or discharge.

26.08.10.02

.02 Overflows Prohibited.

A. Overflows are prohibited except as allowed under the terms of a discharge permit issued by the Department.

B. The existence of a discharge permit for a sanitary sewer system or combined sewer system that does not specifically reference the requirements of this chapter does not exclude the owner, operator, or permittee from the requirements of this chapter.

26.08.10.03

.03 Reports - Generally.

- A. The owner or operator, or both, of any sanitary sewer system, combined sewer system, or wastewater treatment plant shall report to the Department and local health department any overflow that results in the direct or potential discharge of raw, partially treated, or diluted sewage into waters of the State.
- B. The owner of a separate sanitary sewer system, pumping station, or grease trap that is connected to a public sewer system is responsible for providing reports required by this chapter.

- C. Reports required by this chapter shall be made by telephone as soon as practicable to the telephone number or numbers designated by the Department, but not later than 24 hours after the time that the owner or operator becomes aware of the event.

26.08.10.04

.04 Telephone Reports.

Telephone reports shall include:

- A. The location of the overflow, including latitude and longitude if reasonably available, Maryland Grid Coordinates or nearest street and intersection, city or town, and county;
- B. The name of the owner and operator of the sanitary sewer system or treatment plant; C.
- C. The name of the receiving water, if applicable, and if known, whether the receiving water is designated as shellfish waters or for a public drinking water supply;
- D. The volume discharged based on actual measurement or as an estimate using best professional judgment;
- E. A description of the combined sewer system, separate sanitary sewer system or treatment plant component from which the overflow was released, such as manhole, crack in pipe, pumping station wet well or constructed overflow pipe;
- F. Whether the overflow is from a combined sewer system, a separate sanitary sewer system, or a treatment plant bypass;
- G. A detailed description of visual observations and preliminary assessment of the overflow's actual or potential impact upon waters of the State;
- H. The cause or suspected cause of the overflow;
- I. The date and time when the overflow began and stopped or, if not stopped, the date and time the overflow is expected to be stopped;
- J. The steps taken or planned to reduce, eliminate, and prevent recurrence of the overflow and a time schedule for completion of the steps;
- K. Measures taken or planned to mitigate the adverse impact of the overflow and a time schedule for implementation of the measures; and
- L. Whether the public has been notified, who performed the notification, the media used, and the content of the message.

26.08.10.05

.05 Written Reports.

- A. Within 5 calendar days after the telephone notification of the event, the owner or operator shall provide the Department and local health department with a written report that includes, at a minimum, the information in Regulation .04 of this chapter unless the Department waives the requirement for submission of a written report due to the small volume of the overflow. The written report shall be directed to the mailing address specified by the Department.
- B. The owner or operator of the sanitary sewer system, combined sewer system, or wastewater treatment plant or a duly authorized representative shall sign any written report. A person is a duly authorized representative only if the owner or operator has signed and submitted a written authorization to the Department specifying that the person or the person holding a specified position is authorized to sign

sewage overflow reports. The written authorization shall be directed to the mailing address specified by the Department.

26.08.10.06

.06 Records, Disclosure.

The owner or operator shall, for at least 5 years from the date of the overflow or backup:

A. Maintain copies of all overflow records and reports, including:

- (1) Any backups of sewage into houses or businesses;
 - (2) Work orders associated with investigation of overflows;
 - (3) A list and description of complaints from customers or others related to overflows; and
 - (4) Documentation of performance and implementation measures to address overflows; and
- (B) Make this information available to the Department for review upon request.

26.08.10.07

.07 Reports to the Public.

The owner or operator shall coordinate with the local health officer or environmental health director regarding the content of reports to the public about overflows in accordance with the procedures developed by the Department, in cooperation with the Department of Health and Mental Hygiene, local health departments, and local environmental health directors.

26.08.10.08

.08 Public Notification.

A. Unless advised by the Department of Health and Mental Hygiene, local health department, or environmental health director on a case by case basis that public notification is not necessary, the owner or operator shall notify the public as soon as practicable, but not later than 24 hours after the time that the owner or operator becomes aware of the event, about:

(1) Any overflow that enters:

- (a) Shellfish harvesting waters;
- (b) Waters protected as drinking water sources;
- (c) Waters used as public bathing beaches where people may swim; or
- (d) Waters used for public recreation where people may boat, fish, or swim; and

(2) Any situation where the Department of Health and Mental Hygiene, local health department, or environmental health director has reason to believe is a public health risk.

B. Public notification shall be made as soon as practicable, but not later than 24 hours after the time that the owner or operator becomes aware of the event and shall be made:

- (1) By a public service announcement or paid advertising in a daily newspaper, radio station, or television station serving the immediate area where the overflow occurred and any other areas where the overflow is likely to have an adverse impact; and
- (2) By posting affected areas, if the Department of Health and Mental Hygiene, local health department, environmental health director, or a designee determines that:

- (a) There is an immediate threat of human contact with contaminated water or ground where the overflow occurred;
- (b) The size and flow rate of the water body into which the discharge entered are such that the discharge constitutes a significant portion of the flow;
- (c) The potential for dilution and dispersal of the overflow into the receiving waters is minimal due to the season of the year, the period of time of the actual discharge, or the receiving water already being listed as impaired due to nonattainment of State bacteriological water quality standards; or
- (d) The concentration of the effluent increases the risk to public health.

C. In addition to the public notification requirement based on the criteria in §B(1) of this regulation, if the overflow's total volume at the time of completed repair as measured or estimated using best professional judgment is 10,000 gallons or more, the owner or operator shall notify the public by:

- (1) A public service announcement or paid advertising in a daily newspaper, radio station, or television station serving the immediate area where the overflow occurred and any other areas where the overflow is likely to have an adverse impact; and
- (2) Posting affected areas, unless advised by the Department of Health and Mental Hygiene, local health department, or environmental health director that public notification is not necessary.

D. The public advisory shall remain in effect until the Department of Health and Mental Hygiene, local health department, environmental health director, or a designee determines that sampling data for the receiving water shows return to normal or prior background levels.

E. If the overflow's total volume at the time of completed repair as measured or estimated using best professional judgment is less than 10,000 gallons, and the Department of Health and Mental Hygiene, local health department, environmental health director, or their designee determines that none of the factors listed in §B(1) and (2) of this regulation apply, the general public notification may be in the form of information provided in quarterly or annual reports, reports of incidents included with water bills, or information about incidents available on a web site in conjunction with a written notification. The information shall:

- (1) State that due to various causes, such as accidents and equipment failures, the specific sewer system experienced occasional sewage overflows;
- (2) State the time period being reported;
- (3) State the number of overflows that occurred;
- (4) State the total number of gallons released;
- (5) Advise the public in areas that are posted to avoid contact with the water or other water contact activities; and
- (6) Advise that for larger overflows with potential environmental or human health impacts the public is notified through the media and, if appropriate, by posting signs.

F. Any public notification shall state:

- (1) The approximate number of gallons of overflow;
- (2) When the overflow occurred;
- (3) Where the overflow occurred;
- (4) The name of the receiving water;
- (5) That swimming or other direct contact should be avoided in the receiving water from a specific point upstream to a specific point downstream until a specific date that is to be determined by the Department of Health and Mental Hygiene, local health department, or environmental health director; and
- (6) A telephone number for additional information.

26.08.10.09

.09 Personal Notification of Schools and Other Establishments. If there are schools, day care centers, hospitals, or similar establishments or locations with potentially sensitive populations that may be subject to exposure in the immediate area of the overflow, the owner or operator of the system or plant or a representative shall personally notify each establishment of the overflow as soon as possible.

26.08.10.10

.10 Departmental Responsibilities and Authority.

A. The Department of Health and Mental Hygiene, the local health officer, or the local environmental health director shall make all decisions and determinations as to public health issues resulting from an overflow.

B. The Department of Health and Mental Hygiene, the local health officer, or the local environmental health director may require that reports to the public concerning an overflow include specific information regarding public health.

C. Signs posted following an overflow may be removed only as directed by the Department of Health and Mental Hygiene, the local health department, or the local environmental health director.

26.08.10.11

.11 Owner or Operator Responsibilities.

A. The owner or operator shall make any local policies or procedures related to the requirements of this chapter available to the public upon request.

B. The owner or operator shall perform sampling of State surface waters that have received an overflow as directed and under the guidance of the Department of Health and Mental Hygiene, the local health department, or the local environmental health director. The owner or operator shall have samples tested for fecal coliform, *Escherichia coli* (*E. coli*), Enterococci, or any other specific organism as directed by the Department of Health and Mental Hygiene, the local health department, or the local environmental health director.

C. The owner or operator shall provide data collected after an overflow or bypass event and information about any permanent postings or health advisories to the Department within 14 days of the event. Reports of bacterial analysis shall include the dates the samples were taken, the latitude and longitude of the sampling location or Maryland Grid Coordinates if the latitude and longitude are not known, quantitative results, the name and address of the laboratory that performed the analysis, and any additional data that the Department may require. If a permanent posting or health advisory results from the monitoring, information shall be provided to the Department regarding the name and location of the receiving waters and the latitude and longitudes or Maryland Grid Coordinates of the upstream and downstream boundaries of the area to which the advisory applies, and a contact name.

26.08.10.9999

.9999. Administrative History Effective date: March 28, 2005 (32:6 Md. R.636).

APPENDIX F1 TO WSSC CONSENT DECREE
(SUPPLEMENTAL ENVIRONMENTAL PROJECT A,
FROM PARAGRAPH 35)

**Purchase of Patuxent Reservoir Buffer Properties and Easements For
Water Supply Protection**

Project Area: WSSC's Patuxent River Watershed (Triadelphia and Rock Gorge Reservoirs), Adjacent Privately Owned Buffer Properties

Lead Agency: Washington Suburban Sanitary Commission ("WSSC")

Coordinating Agencies: Maryland-National Park and Planning Commission (M-NCP&PC)
Montgomery County Department of Environmental Protection (DEP)
Howard County Government
Maryland Department of Natural Resources- Maryland Environmental Trust (MDNR-MET)

Background

The Triadelphia and Rocky Gorge Reservoirs are the source of water supply for the WSSC Patuxent Water Filtration ("PWF") Plant and provide recreational opportunities to neighboring communities. Both of these functions are negatively impacted by land use changes in the watershed of the reservoirs. The impacts are more serious when forested and sensitive lands close to the reservoirs are disturbed. Sediment associated with land disturbance reduces the storage volume of the reservoirs, and limits the WSSC's ability to provide sufficient water to its customers during dry years. The nutrients applied to lawns will eventually reach the reservoirs, increase the severity of the eutrophication and lower the water quality. These negative impacts are well recognized by the WSSC and other local agencies. In 1996, a partnership was formed by WSSC and other local agencies to actively pursue the Patuxent Reservoirs Watershed Protection ("PRWP") Program. Several state agencies, including Maryland Department of Natural Resources ("MDNR") and the Maryland Department of Environment (MDE) also participate in this program.

The reservoirs are already under considerable stress. This is evidenced by the fact that the bottom portion of both reservoirs has no/very low level of dissolved oxygen during the warm months of each year.

The purpose of this SEP is to allow WSSC to purchase property and/or conservation easements to protect and preserve properties adjacent to the Patuxent Reservoirs in order to preserve and/or enhance water quality in the reservoirs. Protection of forested/sensitive land in proximity to the reservoirs can be achieved in several ways. WSSC can pursue a fee-simple purchase of such lands as funds become available. Many landowners may agree to this option. Other owners may prefer to retain ownership of their land, but provide a permanent easement for a portion of their land to WSSC or other eligible agencies or entities.

Another possibility is to leverage WSSC funds by partnering with other agencies that may share similar goals for the reservoirs and watershed. For example, WSSC could utilize the existing Montgomery County Legacy Open Space Program (“LOSP”) as a partner/agent of the WSSC. The LOSP is a relatively new land preservation program proposed as a 10 year Montgomery County Planning Board initiative in 2000. The program provides for different types of open space and protection of different types of resources. The aim of LOSP is to conserve farmland and rural open space; protect environmentally sensitive natural resources; protect water supplies; conserve heritage resources; protect greenway connections; and protect urban open spaces. One of the functions of the LOSP, which is administered by the Maryland National Capital Park and Planning Commission (“MNCP&PC”), is preserving and protecting land to protect water supply resources in the Patuxent Reservoir Watershed. In the case of LOSP, Montgomery County Government would own the land. State programs such as Program Open Space and purchase of property and/or conservation easements through the Maryland Environmental Trust will also be investigated to leverage the WSSC funds.

Project Proposal

The goal of the project is to protect from development pressure the forested/sensitive areas in proximity to the WSSC reservoirs. We propose to utilize all of the options described above, including the fee-simple purchase, obtaining, maintaining and enhancing easement areas and partnering with land preservation programs to preserve land that will provide ecological benefits as well as water supply resource protection in the Patuxent Reservoir watershed. Properties eligible for inclusion in this

program must be located within the Patuxent Reservoirs' watershed, a map of which is attached as Exhibit A. SEP monies may be used for any eligible properties that are under contract for purchase and/or easement acquisition on or after May 15, 2005. The objectives of the acquisition of these lands/easements are to benefit the WSSC water supply and neighboring communities in a number of ways including, but not limited to:

- Preserving forests that filter nutrients and other pollutants and trap sediment, which in turn will reduce loss of reservoir storage capacity and limit their eutrophication.
- Limiting development in the reservoirs' watershed, particularly in environmentally sensitive areas such as areas with steep slopes and erodible soils.
- Limiting impervious surfaces in the reservoirs' watershed that lead to increased pollutant runoff. Providing restoration potential such as riparian buffer planting and-providing a continuous forested corridor.
- Supporting the efforts to ensure that the Patuxent Reservoirs and watershed remain as precious ecological resources and water supply sources for current and future generations.
- Maintain the significant conservation values of the reservoirs' watershed and prevent the use and/or development of the acquired property or easement area for any purpose that would conflict with the purpose of this project.

When purchasing property or acquiring an easement on property, a conservation easement or similar restrictive use shall be placed on the property and evidenced by way of a Deed of Conservation Easement or similar instrument, in a form consistent with those used by the Maryland Environmental Trust for such purpose. It is recognized, however, that the particular Deed of Conservation Easement for any particular property purchase or easement acquisition undertaken as a part of this program may be modified to account for the particular uses and condition of the property upon which the conservation easement or similar use restriction is placed and the particular nature and/or circumstances of the particular Grantor and/or Grantee, so long as the objectives of this proposal are met. However, any conservation easement or similar restrictive use shall contain the following restrictions unless expressly agreed otherwise by MDE/EPA.

“A. The Property shall not be partitioned or subdivided after the date of this Easement.

B. Construction of buildings, facilities, or any other structure, other than fences, is prohibited except the following: [all development rights to be reserved are stated here, such as the right to expand the footprint of the house, add ancillary structures such as a pool, garage, etc.]

C. Cutting and/or removal of trees and other native vegetative matter growing on the Property is prohibited, except with the permission of the Grantee.

D. Industrial or commercial activities, including farming, silviculture, and horticulture, are prohibited on the Property except to the extent they were occurring at the time the easement was granted, and have been documented.

E. Display of billboards, signs, or advertisements is prohibited on or over the Property, except: (1) to state solely the name and/or address of the Property and/or the owners; (2) to advertise the sale or lease of the Property; (3) to commemorate the history of the Property or its protection under this Conservation Easement or environmental or game laws; (4) to advertise the sale of goods or services produced by permitted uses of the Property; and (5) to prevent trespassing or regulate hunting. However, no sign or billboard on the Property shall exceed four feet by four feet. Multiple signs shall be placed at least 500 feet apart and shall not damage living trees except that signs permitted under exception (5) may be placed the lesser of 100 feet apart or the distance required by law.

F. Dumping of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, or machinery, or other materials on this Property is prohibited, except that soil, rock, other earth materials, vegetative matter, or compost may be placed as may be reasonably necessary for reforestation or protection and enhancement of natural forest and foliage, or protection from erosion.

G. Excavation, dredging, mining, and removal of loam, gravel, soil, rock, sand, coal, petroleum, and other materials are prohibited, except for the purpose of combating erosion or flooding or maintenance or protection of accesses and wildlife habitat or archeological investigations.

H. Diking, draining, filling, or removal of wetlands is prohibited.

I. Pesticides, insecticides, herbicides, or fertilizers shall not be used or deposited within fifty (50) feet of streams or shorelines.

J. Manure and compost shall not be stored within one hundred (100) feet of streams or shorelines.

K. There shall be no activities or uses detrimental or adverse to the maintenance of water quality, water conservation, erosion control, soil conservation, and, subject to permitted residential and forestry uses, the preservation of wildlife habitat. There shall be no manipulation or alteration of natural water courses, lake shores, marshes, or other water bodies, nor shall there be activities conducted on the Protected Property that would be detrimental to water quality, or which could alter either natural water level or flow, or both.

L. All rights reserved by or not prohibited to Grantor shall be exercised so as to prevent

or to minimize damage to water quality, air quality, land/soil stability and productivity, wildlife, scenic and cultural values, and the natural topographic and open-space character of the Property.

M. Except to the extent that prior written approval of Grantee is required by any paragraph of this Article, all rights reserved by or not prohibited to Grantor are considered to be consistent with the conservation purposes of this Easement and require no prior notification or approval, except that, if Grantor believes or reasonably should believe that the exercise of a reserved right may have a significant adverse effect on the conservation interests associated with the Property, Grantor shall notify Grantee in writing before exercising such right.”

WSSC shall file and properly record the conservation easement in the Property Records Office of the appropriate jurisdiction.

Property purchased pursuant to this SEP shall not be sold for at least fifteen (15) years from the date of purchase.

Proposed Scope

WSSC will pursue the options described above and coordinate its work with agencies such as MNCP&PC, Montgomery County, Howard County, and MDNR-MET to identify potential properties for purchase or obtaining easements. WSSC will focus on properties that are:

- Immediately adjacent to existing WSSC property;
- Border Rocky Gorge Reservoir where the intake is located;
- Adjacent to existing narrow reservoir buffer areas.

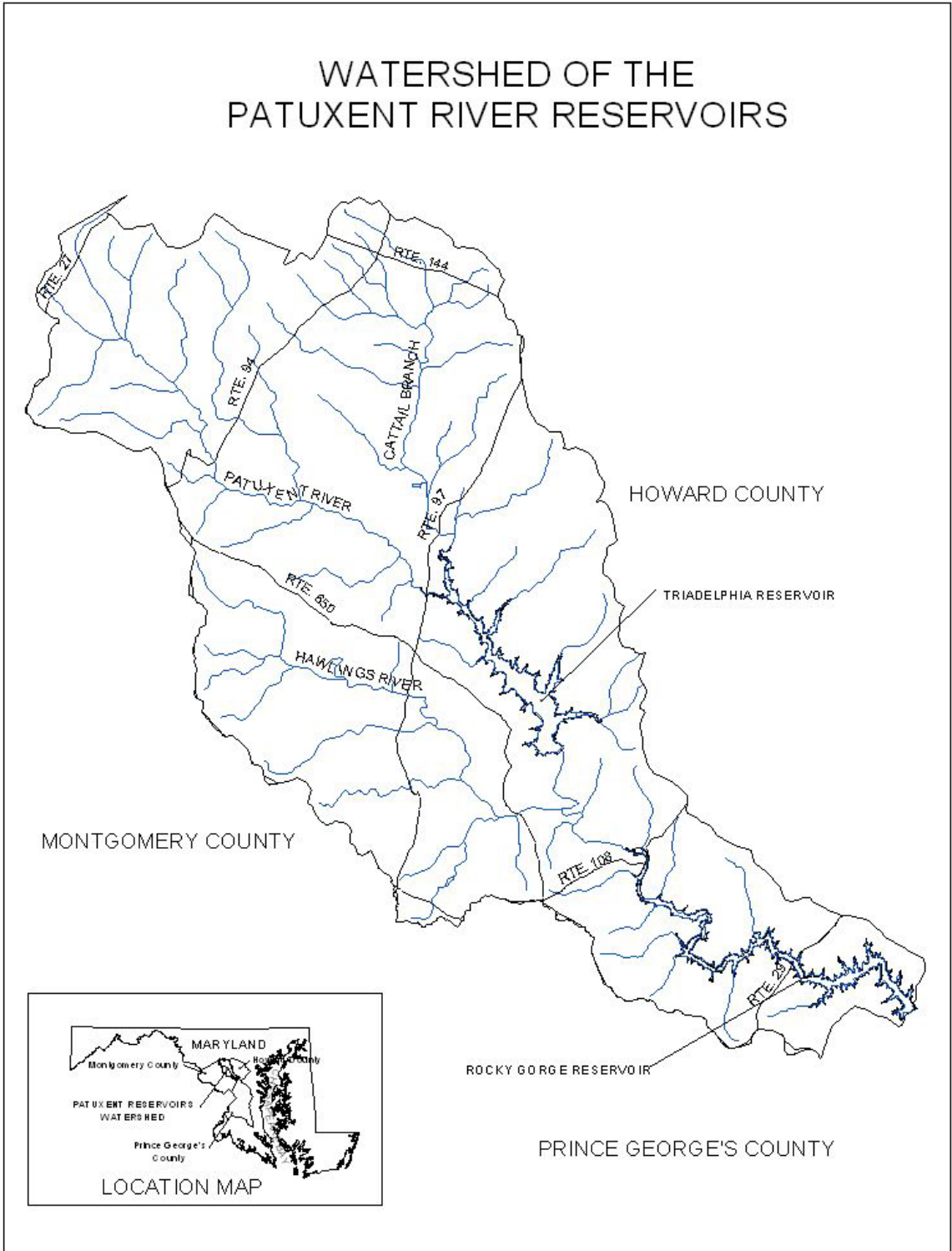
Once properties for purchase or for easement acquisition are identified, WSSC, alone or in partnership with other agencies, will purchase those properties and/or acquire those easements that are the most beneficial and cost effective up to the limit of funding.

Project Schedule

The duration of the project will be approximately five (5) years from the Date of Entry of the Consent Decree.

EXHIBIT A

**WATERSHED OF THE
PATUXENT RIVER RESERVOIRS**



APPENDIX F2 TO WSSC CONSENT DECREE
(SUPPLEMENTAL ENVIRONMENTAL PROJECT B,
FROM PARAGRAPH 35)

Private Property Inflow Elimination Program

Project Area: Prince George’s and Montgomery Counties, MD.

Lead Agency: Washington Suburban Sanitary Commission
 (“WSSC”)

Coordinating Agencies: Prince George’s County, MD
 Montgomery County, MD

Background

Private property inflow is a source of extraneous flow into the WSSC Collection System. The magnitude of the private property contributions vary from neighborhood to neighborhood. Prior to 1965, WSSC permitted connection to the sanitary sewer system of areaway drains and up to 30 square feet of stairs and pad from the outside basement entrance of a residence. After 1965, residences in WSSC’s service area (*i.e.* Montgomery County and Prince George’s County, Maryland), could no longer be constructed in such a way to allow stormwater to enter WSSC’s Collection System.

Many older communities throughout the bi-county service area have extensive areaway drains which are significant sources of inflow. These private property inflow contributions are considered by WSSC when capacity assessments of downstream sewers are performed. However, additional private property sources of inflow have developed over time; some intentionally by homeowners and others through the deterioration of private plumbing.

Purpose of the SEP

The purpose of the SEP is to reduce extraneous flow entering the Collection System as a result of private property stormwater discharges. This SEP complements the requirements in Section V, Article Eight. It is the purpose of this SEP to finance the removal of legal stormwater discharge from properties

constructed prior to 1965 that homeowners are not required to remove and illegal stormwater connections for certain qualified owners of properties constructed after 1965. This SEP provides financial support and management resources to customers in order to eliminate stormwater discharges to WSSC's collection system in two eligible categories;

- Owners of Properties constructed prior to 1965;
- Owners of Properties constructed after 1965 where the customer meets low income test criteria.

The SEP will benefit both the public at large and the low income customer who is receiving financial assistance to eliminate the illegal stormwater discharges who might otherwise face financial hardship due to the cost of this work.

The program goals are to:

- Eliminate legal stormwater discharges to the collection system from properties constructed prior to 1965 which were "grandfathered" at the time of WSSC plumbing code revisions;
- Provide assistance to low income customers in eliminating the illegal stormwater discharges; and
- Reduce the amount of extraneous flow into the collection system.

Proposed Scope

WSSC proposes to use information gathered during the SSES and other collection system inspections to document the private property inflow sources. The methods used will include smoke testing, dyed water flooding, camera inspections and building inspections. In conjunction with the capacity assessments of the downstream sewers, WSSC will evaluate and prioritize the most cost-beneficial private property stormwater discharges to target for correction in the two eligible categories.

Administration of SEP

WSSC will be the Project Manager for the SEP. The cost of investigations to identify the sources, design of the repairs, managing the repair contracts and administering the program will be absorbed by WSSC.

To assist the WSSC in coordination with low income customers who may qualify for financial assistance, WSSC shall contract with a local non-profit agency such as the Salvation Army or similar Third Party Administrator to administer that component of the program. The income eligibility threshold shall be 60% of the median household income as described by the current Maryland Department of Planning data.

Project expenses will be limited to the actual repair/replacements of the private property infrastructure and reasonable costs of the Third Party Administrator.

WSSC will manage the project and distribute the funds paid for the repairs. WSSC shall maintain proper accounting and documentation regarding funds disbursed for repairs to demonstrate compliance with the SEP.

SEP Budget and Schedule

The maximum budget for this project is 15% of the total SEP amount in Section X of the Consent Decree or \$660,000 for removing eligible stormwater discharges under this SEP. It is expected that the funding provided will address up to 300 properties with stormwater discharges that meet the project criteria. The costs of the WSSC staff shall not be counted against this SEP.

In the first 24 months after the Date of Entry, WSSC shall establish the program management structure for the SEP, identify the initial properties eligible for the SEP, and qualify the initial group of low income customers at those properties eligible for financial assistance. Standardized repair specifications for the work to be performed will be established by the end of the first 24 months following Date of Entry.

WSSC shall have five years (60 months) following Date of Entry to spend the entire \$660,000 on eligible properties plumbing corrections.

APPENDIX F3 TO WSSC CONSENT DECREE
(SUPPLEMENTAL ENVIRONMENTAL PROJECT C,
FROM PARAGRAPH 35)

Western Branch WWTP Winter Denitrification Through Methanol Addition

Project Area: **Western Branch Watershed of the Patuxent River**

Coordinating Agency: **Washington Suburban Sanitary Commission (“WSSC”)**

Background

The Western Branch watershed of the Patuxent River is located in southern Prince George’s County, MD. WSSC provides wastewater collection and treatment services for over 38,000 sewered acres of this watershed. An estimated 165,000 population is served by the Western Branch WWTP which treats the wastewater flow from the Western Branch and Horsepen sewersheds. Treated effluent is discharged from the Western Branch WWTP in accordance with Maryland Department of the Environment’s NPDES permit limits for the plant, which include, among others, a Total Nitrogen as N limit for the period 4/1 through 10/15 of each year, of:

- Monthly Loading Rate - 340 kilograms per day (750 lbs/day)

- Weekly Loading Rate - 510 kilograms per day (1,100 lbs/day)

- Monthly Average - 3.0 milograms per liter

- Weekly Average - 4.5 milograms per liter

The NPDES permit for Western Branch currently has no effluent limits for Total Nitrogen as (“N”) during the period 10/16 through 3/31 of each year. Nitrogen is a key nutrient that plays a significant role in the health of the Patuxent River and the Chesapeake Bay. Reducing nitrogen through Biological Nutrient Reduction (“BNR”) technologies is a key strategy in MDE’s nutrient reduction strategy, which will be implemented in the State’s 66 largest wastewater treatment plants. BNR

technology is designed to reduce nitrogen in effluent down to 8 mg/l, while Enhanced Nutrient Reduction (“ENR”) is intended to further reduce nitrogen levels to approximately 3 mg/l. Implementing ENR at the 66 largest plants will reduce the amount of nitrogen flowing into the estuary -by an estimated 7.5 million pounds annually statewide.

Project Proposal

The Western Branch WWTP is one of the 66 largest plants in the state. This plant achieves BNR through a high rate activated sludge (“HRAS”) process followed by a two-stage nitrification/denitrification. The total nitrogen (“TN”) permit limits for the WWTP cover the warmer months of the year, April 1 to October 15. Adding methanol to the BNR stream is one method for increasing nitrogen removal with the same treatment technologies in place. Continuing methanol addition through the cooler months of the year, October 16-March 30, enhances total nitrogen reduction throughout the year.

Although WSSC is not required to add methanol for nitrogen reduction during the cooler months to reach permit limits, WSSC agrees to this treatment technology modification as a Supplemental Environmental Project (“SEP”). The benefits of adding methanol at Western Branch include reducing total nitrogen loads to the Patuxent River watershed and gaining insight into the efficacy of nitrogen removal processes during the winter months.

Proposed Scope

WSSC agrees to add methanol to the treatment stream at Western Branch WWTP during the next three winter seasons, each running from October 16-March 30, to evaluate the feasibility of achieving <8 mg/l TN concentrations in that application. Western Branch has a typical winter season TN effluent **average monthly** concentration of approximately 15 mg/l for an estimated total winter (*i.e.*, 10/1-3/30) nitrogen loading of 440,000 lbs. A successful application of methanol would achieve approximately a 50% nitrogen reduction during the winter season (*i.e.*, a total winter nitrogen loading of no more than 220,000 lbs., as measured at the final effluent outfall for the WWTP). Recognizing that unused methanol in the treatment process has the unintended impact of raising BOD loadings to the stream in the effluent, the rate of application will be monitored to balance the objective of nitrogen reduction with meeting other enforceable, effluent limits within WSSC’s permit for this facility. However, the conducting of this SEP shall not constitute a defense to any effluent limit violations that may occur at the Western Branch WWTP.

WSSC has commenced this SEP, by continuing the application of methanol without interruption beyond October 15, 2004, notwithstanding the fact that its current NPDES permit does not require such methanol application. WSSC's addition of methanol commencing on October 16, 2004, will be credited for compliance for the first year of this proposed SEP. WSSC will perform the lab testing to identify the total nitrogen concentration in the influent and the effluent, record the rate of methanol application, record the rate of flow through the plant and report all of the same to the MDE on an annual basis. WSSC shall spend no more than \$1,110,000 on this SEP.

Project Schedule

WSSC conducted the initial methanol trial application during the 2004-2005 winter, which was determined to be successful. WSSC shall receive credit for the monies expended on that 2004-2005 trial application, provided that the monies spent were in accordance with the terms of the SEP Section (Section X) of the Consent Decree. WSSC shall continue this SEP until the \$1,110,000 figure is reached, or until the condition described below occurs.

Condition for Termination of this Project

WSSC's current NPDES permit for the Western Branch WWTP is set to expire on December 31, 2005. Should the next reissued NPDES permit for the Western Branch WWTP contain a Total Nitrogen as N limit for the cooler months, when the reissued permit becomes effective, WSSC shall cease making expenditures for the methanol addition from the SEP monies under this Consent Decree.

