

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

UNITED STATES OF AMERICA, and)	
STATE OF INDIANA,)	
)	
Plaintiffs,)	
)	Civil Action No.
)	
v.)	
)	
THE CITY OF GARY, INDIANA, and)	
GARY SANITARY DISTRICT)	
)	
Defendants.)	

CONSENT DECREE

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I. BACKGROUND

WHEREAS, Plaintiffs the United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“EPA”), and the State of Indiana (“Indiana” or “State”), on behalf of the Indiana Department of Environmental Management (“IDEM”), have filed a Complaint in this case concurrently with the lodging of this Consent Decree alleging that Defendants the City of Gary, Indiana (“Gary” or “the City”) and Gary Sanitary District (“GSD”): (1) violated Sections 301 and 309 of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1311 and 1319, the applicable provisions of Title 13 of the Indiana Code and Title 327 of the Indiana Administrative Code, and terms and conditions of GSD’s National Pollutant Discharge Elimination System (“NPDES”) Permit issued in 2006; and (2) failed to comply with a request for information issued by EPA on or around March 22, 2010, pursuant to EPA’s authority under Section 308 of the CWA, 33 U.S.C. § 1318;

WHEREAS, the Parties or their predecessors in interest were parties to consent decrees previously entered by the Court on January 3, 1979, June 15, 1983, September 8, 1987, October 23, 1992, and May 12, 2003, in *United States and Ind. Dept. of Envntl. Mgmt. v. City of Gary*, Case No. 2:78-cv-29 and 86-540 (N.D. Ind.);

WHEREAS, prior consent decrees entered among the Parties, including but not limited to the Modified Consent Decree and Judgment - 2002, entered on May 12, 2003, in Case No. 78-29 and 86-540 (“Modified Consent Decree and Judgment—2002”), have created and maintained the position of the Special Administrator and the Technical Monitor of the Gary Sanitary District, and set forth the Special Administrator’s and Technical Monitor’s duties, responsibilities and authorities;

WHEREAS, Section X of the Modified Consent Decree and Judgment - 2002 required GSD to maintain a separate, interest bearing account (“Remediation Account”) for funds needed to study and remediate the river sediments in the Grand Calumet River, as required under that Section. GSD maintains \$2,816,782.48 in such account as of the date of execution of this Decree by Defendants;

WHEREAS, Section V.C of the Modified Consent Decree and Judgment - 2002 requires Defendants to perform all aspects and meet all requirements of the Disposal/Clean Up alternative to be selected by the United States for the Ralston Street Lagoon. On April 7, 2009, EPA issued the Final Decision for Proposed Remedy for the Ralston Street Lagoon, which is attached to this Decree as Appendix 4;

WHEREAS, Defendants do not admit any liability to the United States or the State arising out of the occurrences alleged in the Complaint;

WHEREAS, the Parties recognize, and the Court by entering this Decree finds, that the Parties negotiated this Consent Decree in good faith, that the Consent Decree will avoid prolonged and complex litigation among the parties, and that this Consent Decree is fair, reasonable, and in the public interest;

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issues of fact or law and with the consent of the Parties, the Court ORDERS, ADJUDGES AND DECREES, as follows:

II. OBJECTIVES

1. The objective of this Consent Decree is to cause Defendants to take those steps that are necessary to: (1) bring its Publicly Owned Treatment Works (“POTW”) located at 3600 West 3rd Avenue in Gary, Lake County, Indiana, into compliance with: (a) the Clean Water Act,

33 U.S.C. § 1251 *et seq.*, and the regulations promulgated thereunder; (b) EPA’s Combined Sewer Overflow (“CSO”) Control Policy found at 59 Fed. Reg. 18,688 (April 19, 1994); (c) Title 13 of the Indiana Code, IND. CODE § 13; and Article 5 of Title 327 of the Indiana Administrative Code, 327 IND. ADMIN. CODE 5; (d) Defendants’ 2012 NPDES Permit, as defined below, and any successor NPDES permits; and (2) address the outstanding requirements of the Modified Consent Decree and Judgment – 2002, as regards the Ralston Street Lagoon and the Remediation Account

III. JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, and 1355, and personal jurisdiction over the Parties. The Court has supplemental jurisdiction over the State law claims asserted by Indiana pursuant to 28 U.S.C. § 1367(a). Venue is proper in this District pursuant to Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and 1395(a), because Defendants are located in this judicial district and the violations alleged in the Complaint are alleged to have occurred in this judicial district. For purposes of this Decree, or any actions to enforce this Decree, Defendants consent to the Court’s jurisdiction to enter and enforce this Decree and Defendants also consent to venue in this judicial district.

3. For purposes of this Consent Decree, Defendants agree that the Complaint states claims on which relief may be granted pursuant to Section 309 of the Clean Water Act, 33 U.S.C. § 1319, and Title 327 of the Indiana Administrative Code, 327 IND. ADMIN. CODE.

IV. APPLICABILITY

4. The obligations established in this Consent Decree shall apply to, and are binding on, the United States, Indiana, and on the City of Gary, the Gary Sanitary District, and any

successors and assigns, or other persons or entities otherwise bound by law. Any change in ownership, corporate status, or other legal status of either Defendant shall in no way alter Defendants' responsibilities under this Consent Decree.

5. If Defendants transfer any ownership or operation of their WWTP, or any other portion of their POTW, to another party, Defendants shall give written notice and a copy of this Consent Decree to any proposed transferee at least 30 Days prior to such transfer. Defendants shall condition any transfer, in whole or in part, of ownership, operation or other interest of the WWTP, or any other portion of the POTW, upon successful performance and compliance with the terms and conditions of this Consent Decree as provided in a written agreement between Defendants and the proposed transferee, enforceable by the United States and Indiana as third party beneficiaries of such agreement. At least 30 Days before such transfer, Defendants shall provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to the United States and Indiana, in accordance with Section XVIII (Notices and Submissions). Any attempt to transfer ownership or operation of Defendants' WWTP or any other portion of Defendants' POTW without complying with this Paragraph constitutes a violation of this Decree. No transfer of ownership or operation of Defendants' WWTP or any other portion of Defendants' POTW, whether in compliance with this Paragraph or otherwise, shall relieve Defendants of their obligation to ensure that the terms of this Consent Decree are implemented.

6. Defendants shall provide a copy of this Consent Decree to all of Defendants' officers, employees, and agents whose duties reasonably might include ensuring compliance with any provision of this Decree, and any contractor retained to perform work required pursuant to this Consent Decree. Defendants shall condition any such contract on performance of the work

in compliance with the terms of this Consent Decree. The requirement to provide a copy of this Consent Decree can be satisfied if Defendants provide an electronic copy or a link to a website where the Consent Decree can be found.

7. In any action to enforce this Consent Decree, Defendants shall not raise as a defense the failure by any of their officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Decree.

V. EFFECT OF PRIOR CONSENT DECREES, JUDGMENTS AND ORDERS

8. This Consent Decree supersedes and replaces all consent decrees, judgments, and orders previously entered on January 3, 1979, June 15, 1983, September 8, 1987, October 23, 1992, and May 12, 2003, between the Parties or their predecessors in interest in this District in *United States and Ind. Dept. of Env'tl. Mgmt. v. City of Gary*, Case No. 2:78-cv-29 and 86-540 (N.D. Ind.). Defendants' obligations under this Consent Decree supplant all obligations imposed by any of those prior consent decrees, judgments, and orders.

VI. DEFINITIONS

9. Unless otherwise defined in this Section, terms used in this Decree shall have the meaning(s) assigned to them in the: (a) CWA, 33 U.S.C. § 1251 *et. seq.*, and the regulations promulgated pursuant to the CWA at 40 C.F.R. Part 122; (b) Title 13 of the Indiana Code, IND. CODE § 13, and the Indiana Administrative Code, 327 IND. ADMIN. CODE 5; and (c) Defendants' 2006 NPDES Permit, Defendants' 2012 NPDES Permit, and any successor NPDES permit. The following definitions shall apply to the terms used in this Consent Decree:

“2006 NPDES Permit” means NPDES Permit No. IN0022977 that was issued to Defendants by IDEM on June 13, 2006, pursuant to Section 402(b) of the CWA, 33 U.S.C.

§ 1342(b), and IND. CODE § 13-13-5-1(1), and became effective on July 1, 2006, and any modifications, revisions, or amendments of such permit.

“2012 NPDES Permit” means NPDES Permit No. IN0022977 that was issued to Defendants by IDEM on April 18, 2012, pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), and IND. CODE § 13-13-5-1(1), and that became effective on July 1, 2012, and any modifications, revisions, or amendments of such permit.

“City” means the City of Gary, Lake County, Indiana.

“Collection System” means the municipal wastewater collection and transmission system owned and operated by Defendants, including all pipes, interceptors, force mains, gravity sewer lines, lift stations, pumping stations, manholes, and appurtenances thereto designed to collect and convey municipal sewage (including domestic, commercial, and industrial sewage) and storm water to the WWTP or to a Combined Sewer Overflow Outfall. The “Collection System” includes both the Combined Sewer System and Sanitary Sewer System.

“Combined Sewer Overflow Discharge” or “CSO Discharge” means any discharge of wastewater from the Combined Sewer System at any point prior to the headworks of the WWTP, including but not limited to discharge from any of the designated CSO Outfalls identified in Attachment A of the 2012 NPDES Permit.

“Combined Sewer Overflow Outfall” or “CSO Outfall” means any Outfall through which wastewater and/or storm water is discharged from the Combined Sewer System into the receiving waters, including the Grand Calumet River and the Little Calumet River, at any point prior to the headworks of the WWTP. CSO Outfalls include any Outfall identified in Attachment A to the 2006 NPDES Permit and/or 2012 NPDES Permit and any outfall through

which Defendants will be authorized to discharge wastewater and/or storm water from the Combined Sewer System into the receiving waters pursuant to any successor NPDES permit.

“Combined Sewer System” or “CSS” means the portion of Defendants’ Collection System that is designed and constructed to collect and convey municipal sewage (including domestic, commercial, and industrial sewage) and storm water through a single-pipe system to the WWTP or to CSO Outfalls. This term also includes any facilities and/or CSO Control Measures that are constructed pursuant to terms and conditions of this Decree.

“Complaint” means the Complaint filed by the United States and the State of Indiana in this action.

“Consent Decree” or “Decree” means this Consent Decree, all Appendices attached hereto and listed in Section XXVIII, and all Attachments to such Appendices listed in Section XXVIII.

“CSO Control Measures” means any physical and/or operational measures that are to be constructed, operated, or otherwise implemented, as set forth in the approved LTCP, to eliminate, reduce, mitigate, treat, or otherwise control the number, volume, duration, and frequency of CSO Discharges or otherwise eliminate, reduce, or control pollutant levels in CSO Discharges.

“CSO Control Policy” means the EPA’s Combined Sewer Overflow (CSO) Control Policy found at 59 Fed. Reg. 18,688 (April 19, 1994).

“CSO Financial Guidance” means EPA Office of Water/Office of Wastewater Management, *Combined Sewer Overflows - Guidance for Financial Capability Assessment and Schedule Development*, EPA 832-B-97-004 (February 1997).

“CSO Guidance” means one, or a combination of, the following guidance documents prepared by EPA: EPA Office of Water, *CSO Post Construction Compliance Monitoring Guidance*, EPA 833-K-11-001 (May 2012); EPA Office of Water, *Guidance: Coordinating CSO Long-Term Planning with Water Quality Standards Reviews* (July 2001); EPA Office of Water, *Combined Sewer Overflows Guidance for Monitoring and Modeling*, EPA 832-B-99-002 (Jan. 1999); EPA Office of Water, *Combined Sewer Overflows Guidance for Long-Term Control Plan*, EPA 832-B-95-002 (Sep. 1995); EPA Office of Wastewater Management, *Combined Sewer Overflows: Guidance for Screening and Ranking* (Aug. 1995); EPA Office of Wastewater Management, *Combined Sewer Overflows Guidance for Permit Writers* (Aug. 1995); EPA Office of Wastewater Management, *Combined Sewer Overflows Screening and Ranking Guidance*, EPA 832-B-95-004 (Aug. 1995); EPA Office of Water, *Combined Sewer Overflows Guidance for Funding Options*, EPA 832-B-95-007 (Aug. 1995); EPA Office of Water, *Combined Sewer Overflows: Guidance for Nine Minimum Controls* (May 1995).

“CSOOP” means the Combined Sewer Overflow Operational Plan for Defendants’ POTW, prepared by or on behalf of Defendants and approved by IDEM in 1994, and any updates, revisions, modifications, or subsequent versions of that Plan.

“Date of Lodging” means the Date on which this Consent Decree is filed for lodging with the Clerk of the Court for the Northern District of Indiana.

“Day” or “day” means a calendar day unless expressly stated to be a working day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

“Defendants” means the City of Gary, Indiana (including the City of Gary Common Council) and the Gary Sanitary District, either or both of them.

“Effective Date” means the date of entry of this Consent Decree by the Court, after satisfaction of the public notice and comment procedures set forth in Section XXV (Public Notice and Comment) of this Consent Decree and 28 U.S.C. § 50.7: (a) as recorded on the Court Docket; or (b) if the Court instead issues an order approving the Consent Decree, the date such order is recorded on the Court Docket.

“EPA” means the United States Environmental Protection Agency and any successor agency.

“Gary” means the City of Gary, Lake County, Indiana.

“Green Infrastructure” or “GI” means systems and practices that use or mimic natural processes to infiltrate, evapotranspire, or harvest storm water runoff on or near the site where it is generated.

“GSD” means the Gary Sanitary District, a department of the City.

“IDEM” means the Indiana Department of Environmental Management and any successor department or agency.

“Indiana” means the State of Indiana.

“Industrial User” means any of the following: (a) any user of the Collection System who discharges or causes the discharge of non-domestic wastewater into Defendants’ Collection System; (b) any commercial or industrial facility that discharges or causes the discharge of non-domestic wastewater into a combined or separate sanitary sewer that eventually reaches Defendants’ WWTP or any of Defendants’ CSO Outfalls; or (c) any such Industrial User

located in contract communities that are serviced by the Defendants and that currently include the City of Hobart, the City of Lake Station, and the Merrillville Conservancy District, Indiana.

“Knee of the curve,” as described in EPA’s *Combined Sewer Overflows Guidance for Long-Term Control Plan*, EPA 832-B-95-002 (Sept. 1995), means the point of diminishing returns in a cost-performance analysis of the CSO Control Measure alternatives.

“LTCP” means the Long-Term Control Plan that is under development and is to be completed by Defendants in accordance with this Decree, Section IV of Attachment A to the 2012 NPDES Permit, and Subpart C of Section II of the CSO Control Policy.

“Maximum Peak Treatable Flow” means the maximum flow rate, derived through the stress test required by and described in Paragraph 16 that was initiated by Defendants in 2013, at which the WWTP can treat wastewater without causing violations of final effluent limits of the applicable NPDES Permit, or otherwise impairing the WWTP’s ability to continue receiving and treating wastewater flows to achieve limits and conditions of the applicable NPDES Permit.

“Maximum Sustained Treatable Flow” means the maximum flow rate, derived through the stress test required by and described in Paragraph 16 that was initiated by Defendants in 2013, at which the WWTP can treat wastewater on a “Sustained” basis without causing violations of final effluent limits of the applicable NPDES permit or otherwise impairing the WWTP’s ability to continue receiving and treating wastewater flows to achieve limits and conditions of the applicable NPDES permit. “Sustained” shall mean the greater of: (a) 24 hours or (b) twice the duration of the Maximum Peak Treatable Flow determined pursuant to Paragraph 16.b.

“MGD” means million gallons per day.

“Nine Minimum Controls” means the nine minimum technology-based controls on CSOs enumerated in Section II, Subsection B of the CSO Control Policy, and Section III of Attachment A to the 2012 NPDES Permit.

“NPDES” means the National Pollutant Discharge Elimination System permit program described in Section 402 of the CWA, 33 U.S.C. § 1342, and other provisions of the Act.

“Outfall” means any point source that serves as a discharge point from the Defendants’ POTW.

“Paragraph” means a portion of this Decree identified by an Arabic numeral.

“Party” or “Parties” means the United States of America (on behalf of EPA), the State of Indiana (on behalf of IDEM), the City of Gary, and/or the Gary Sanitary District.

“Plaintiffs” means the United States of America and the State of Indiana.

“POTW” means the entire publicly-owned treatment works that is owned and operated by Defendants and that includes the WWTP and the Collection System.

“Precipitation” means rainfall, sleet, snow fall, and ice/snow melt.

“Pump Station” means a facility comprised of pumps that lift wastewater to a higher hydraulic elevation, including all related electrical, mechanical, and structural systems necessary to the operations of that pump station.

“RSL Final Decision” means EPA’s Final Decision for Proposed Remedy for the Ralston Street Lagoon issued on April 7, 2009, pursuant to Modified Consent Decree and Judgment—2002, and EPA Approval of GSD Request for Revised Schedule, dated September 27, 2010, attached to this Decree as Appendix 4, and any modifications, revisions, or amendments thereof.

“Receiving Waters” means the Grand Calumet River, Little Calumet River, and any of their tributaries.

“Remediation Account” means an interest bearing account established by Defendants as required by Section X, and specifically Paragraph 50, of Modified Consent Decree and Judgment - 2002.

“Sanitary Sewer System” means the portion of the Collection System designed to convey municipal sewage (domestic, commercial, and industrial wastewater) to the WWTP or to the CSS. This term does not include the portion of the Collection System that is part of the Combined Sewer System.

“Section” means a portion of this Decree identified by a Roman numeral.

“Sewer Use Ordinance” means the ordinance passed and adopted by the Common Council of the City of Gary on March 2, 2010, amending the City of Gary Municipal Code, Title XV, Section 158.

“State” means the State of Indiana.

“Storm Water Sewer System” means the portion of the Collection System designed to convey only storm water to the Receiving Waters and/or to the CSS.

“Typical Year” means the volume, intensity, frequency and duration of Precipitation that occurred during 1986 as recorded at South Bend, Indiana.

“United States” means the United States of America.

“User Charge” means the set of rates at which users of any part of the Collection System are charged for the processing of wastewater they introduce into the system.

“WWTP” means the wastewater treatment plant owned and operated by Defendants, located at 3600 West Third Avenue, Gary, Indiana, 46406.

VII. GENERAL COMPLIANCE REQUIREMENTS

10. Defendants shall at all times comply with: all terms and conditions of the 2012 NPDES Permit and any successor NPDES permit applicable to the POTW; all the applicable provisions of the CWA, 33 U.S.C. § 1251 *et seq.*; all the applicable regulations promulgated pursuant to the CWA, including but not limited to wastewater monitoring and sampling requirements set forth at 40 C.F.R. Part 136; Title 13 of the IND. CODE § 13, and the Indiana regulations, 327 IND. ADMIN. CODE 5.

11. Defendants shall at all times comply with the terms of this Decree, its Appendices (including Attachments to the Appendices), and any reports, plans or deliverables generated pursuant to the terms of the Decree or the Appendices. All reports, plans and deliverables generated pursuant to the terms of the Decree or the Appendices are incorporated by reference into this Decree and enforceable under the Decree.

12. Final Effluent Limits. Defendants shall at all times comply with all applicable requirements related to discharges from Outfall 001 A and Outfall 001 B that are specified in Part I.A.1 of the 2012 NPDES Permit, and all applicable requirements related to discharges from Outfalls 001 A and 001 B that shall be specified in any successor NPDES permit, including but not limited to any limits on quantities, loadings and/or concentrations of the listed parameters, and the related monitoring requirements.

13. Consent Decree Compliance Funding Requirements.

a. Defendants shall at all times provide sufficient funding to meet the terms and requirements of this Decree, the 2012 NPDES Permit and any successor NPDES permit, and all applicable provisions of the CWA and State law. Defendants' failure to provide such funding shall not be a defense of any kind to any failure to comply with this Decree, the 2012 NPDES

Permit and any NPDES successor permit, or any applicable provision of the CWA or State law. If unable to meet the requirements of this Decree, the 2012 NPDES Permit and any successor NPDES permit, or the requirements of any applicable provisions of the CWA or State law due to insufficient funding, Defendants shall act to obtain sufficient revenue as needed for the proper operation, maintenance, and equipment replacement needs of the POTW and for achieving compliance with this Decree, the 2012 NPDES Permit and any successor NPDES permit, and all applicable provisions of the CWA and State law. Except as provided in Paragraph 13.c, the action that is required under this subparagraph shall include, but is not limited to: (1) acting to increase the amounts charged to the users of the POTW, including contract communities; and (2) acting to increase/levy any taxes available to Defendants.

b. Defendants shall act to increase the amounts charged to the users of the POTW, including contract communities, or enact/raise any other fee or increase/levy any taxes otherwise available to Defendants, no later than 120 days after certifying that funding is inadequate pursuant to Paragraph 36 (Certificate of Sufficient Funding) of this Decree or failing to certify that such funding is adequate.

c. If Defendants choose to select another method of securing sufficient funding for compliance with the legal requirements outlined in Paragraphs 13.a and 13.b (*i.e.*, other than increasing user charges or enacting/raising available fees, levies, or taxes), Defendants shall notify EPA in writing no later than 15 Days after Defendants certify that funding is inadequate pursuant to Paragraph 36 or no later than February 15 of any calendar year during which Defendants fail to certify that such funding is adequate. Such notification shall describe: (1) the source(s) of funding; (2) the steps that Defendants have taken or plan to take to secure the funding; (3) the time period within which Defendants will obtain the funding; (4) the amount(s)

that Defendants expect to obtain; (5) the specific terms and requirements of this Decree, the applicable NPDES permit, the CWA, and/or State law that will not be complied with because of a delay in obtaining the funding; and (6) the expected date(s) of compliance with such terms and requirements.

d. The City shall repay all loans that have been extended to it by GSD, through the Effective Date of this Decree. The repayments shall be made in annual payments within seven years of the Effective Date in the following amounts:

Year 1: \$300,000

Year 2: \$300,000

Year 3: \$500,000

Year 4: \$600,000

Year 5: \$750,000

Year 6: \$1,000,000

Year 7: the remaining loan balance (approximately \$1,900,000)

The first payment shall occur within six months of the Effective Date and each subsequent annual payment shall occur on or before January 31 of each subsequent calendar year.

e. No further loans shall be extended by GSD from the funds that are available to it, to the City or any other subdivision of the City. This includes but is not limited to the funds that GSD collects through levying of taxes, collection of user charges and/or issuance of municipal bonds.

14. Retention of Contractors to Operate the POTW.

a. Defendants may appoint an independent contractor to operate and maintain the POTW in full compliance with this Decree, the 2012 NPDES Permit and any

successor NPDES permit, and any applicable provisions of the CWA and State law. The appointment of a contractor shall not relieve Defendants of any obligations under the Decree, the 2012 NPDES Permit or any successor NPDES permit, the CWA, or State law. Defendants shall at all times remain responsible for compliance with all applicable provisions of this Decree, the 2012 NPDES Permit and any successor NPDES permit, and any applicable provisions of the CWA and State law. This requirement expressly includes, but is not limited to, the duty set forth in Section 308 of the CWA, 33 U.S.C. § 1318, to maintain and provide, upon request by EPA, information that is reasonably required for EPA to determine whether the Defendants and/or their contractors, agents, consultants, or any other representatives, are operating the POTW in compliance with the CWA.

b. In the event of continuous non-compliance with this Decree, the 2012 NPDES Permit and any successor NPDES permit, or any applicable provisions of the CWA or State law, Plaintiffs may require Defendants to appoint a contract operator that shall be granted sufficient independent authority to take any steps necessary to operate and maintain the complete wastewater system in compliance with this Consent Decree, the 2012 NPDES Permit, any successor NPDES permit, and any applicable provisions of the CWA and State law. Prior to invoking their right under the preceding sentence, Plaintiffs shall provide Defendants with notice of their intent to do so and the Parties shall meet and confer within 30 days of the Defendants' receipt of such notice. After such meeting, Plaintiffs may issue a written demand to Defendants that Defendants appoint a contract operator. Within 180 Days of receiving a written demand from Plaintiffs, Defendants shall notify EPA and the State in writing of the name, title, and qualifications of the entity proposed by Defendants to act as the contract operator. EPA will issue a notice of disapproval or an authorization to proceed regarding hiring of the proposed

contract operator. If at any time thereafter, Defendants propose to change a contract operator, Defendants shall give such notice to EPA and the State and shall obtain an authorization to proceed from EPA, after a reasonable opportunity for review and comment by the State, before retaining the new contract operator.

**VIII. CSO OPERATIONAL PLAN AND LONG-TERM
CONTROL PLAN REQUIREMENTS**

15. CSO Operational Plan (“CSOOP”). Defendants shall at all times maintain a current copy of the CSOOP on file at the WWTP and operate the POTW in accordance with the CSOOP.

a. No later than 60 Days after the Effective Date, Defendants shall submit to Plaintiffs for review and approval a revised version of the CSOOP that was initially approved by IDEM in 1994. The revised CSOOP shall comply with Section III of Attachment A to the 2012 NPDES Permit and shall include the items identified in Appendix 1 to this Decree that are organized under the following chapters: (1) Document History and Summary of Changes, Revisions and/or Modifications; (2) System Inventory; (3) Administrative Structure; (4) Operation and Maintenance; (5) CSO Operational Control Strategy; and (6) Schedule of Future Activities.

b. By January 31 of each year following the year of submission of the revised CSOOP pursuant to Paragraph 15.a of this Decree, Defendants shall submit to Plaintiffs for Plaintiffs’ approval any updates, modifications, and/or revisions of the CSOOP pursuant to Section XIX (Plaintiffs’ Approval of Plans and Other Submissions) that: (1) Defendants determine to be necessary to achieve and maintain compliance with the CSO Control Policy and a NPDES permit applicable to the POTW at that time; or (2) are required by EPA and/or IDEM. Any such updates, modifications, and/or revisions of the CSOOP shall conform to the

requirements of the 2012 NPDES Permit or other NPDES permit applicable at that time, the CSO Control Policy, and the requirements outlined in Appendix 1 of this Decree.

c. EPA, upon consultation with IDEM, will review and approve the revised CSOOP and any CSOOP updates, modifications and/or revisions described in this Paragraph in accordance with Section XIX (Plaintiffs' Approval of Plans and Other Submissions) of this Decree.

d. Defendants shall implement and operate the POTW in accordance with all the terms of the approved revised CSOOP and any approved updates, modifications, and/or revisions of the CSOOP.

16. Stress Test. Defendants shall perform a stress test ("Stress Test") in accordance with the "Peak Flow Modeling and Stress Test Work Plan" that Defendants submitted to EPA on July 15, 2013 and the requirements set forth in Appendix 2 to this Decree.

a. The Stress Test shall be designed to evaluate the maximum flow rate that the WWTP can hydraulically convey while effectively treating the wastewater to meet the requirements set forth in the 2012 NPDES Permit and any successor NPDES permit applicable to the POTW.

b. The Stress Test shall determine the Maximum Sustained Treatable Flow and Maximum Peak Treatable Flow for the WWTP by identifying the hydraulic conveyance capacity and peak and sustained effective treatment capacities of each of the WWTP's treatment unit processes (preliminary, primary, secondary, tertiary (including the Weisman screen), and disinfection/dechlorination) and the entire WWTP. Defendants' evaluation shall include the determination of the most appropriate duration for the Maximum Peak Treatable Flow. This duration of the Maximum Peak Treatable Flow shall be no less than one hour and no more than

24 hours, and shall be selected so as to maximize the volume of wastewater treated during Defendants' Typical Year. In particular, if a higher Maximum Peak Treatable Flow can be achieved at one or more durations from 1 hour to less than 24 hours than can be achieved at 24 hours, the duration associated with the highest such flow shall be determined to be the Maximum Peak Treatable Flow duration and that highest flow shall be determined to be the Maximum Peak Treatable Flow. The Stress Test may consist of both field monitoring of the WWTP under stressed conditions and modeling of the WWTP's performance under stressed conditions. Defendants shall carry out an adequately detailed evaluation of WWTP hydraulics to identify each treatment unit's hydraulic capacity and limitations, and to identify "bottlenecks" that if eliminated would allow the use of existing "un-tapped" treatment capacity.

c. Within 120 Days of the Effective Date, Defendants shall prepare and submit a report ("Stress Test Report") to Plaintiffs for Plaintiffs' review and approval pursuant to Section XIX (Plaintiffs' Approval of Plans and Other Submissions). The Stress Test Report shall: (1) describe the performed testing and evaluations, identifying the duration (in hours) that GSD has determined is appropriate for the Maximum Peak Treatable Flow; (2) identify any instances in which the evaluations and testing deviated from the July 15, 2013 work plan developed by Defendants; (3) identify the hydraulic conveyance capacity and peak and sustained effective treatment capacities of each of the WWTP's treatment unit processes; and (4) identify the Maximum Sustained Treatable Flow and Maximum Peak Treatable Flow for full treatment at the WWTP. The Stress Test Report shall also describe any limitations of the capacity of the WWTP that were identified and address any comments Plaintiffs have shared with Defendants regarding Defendants' July 15, 2013 work plan and all draft interim Stress Test Reports.

d. Upon receiving EPA's approval of the Stress Test Report, Defendants shall revise the CSOOP, incorporating the Maximum Peak Treatable Flow and Maximum Sustained Treatable Flow for full treatment, submit the revised CSOOP for Plaintiffs' approval in accordance with Paragraph 15.b of this Decree, and shall implement the revised CSOOP and operate the POTW in accordance with the revised CSOOP as soon as it is approved by Plaintiffs.

17. Maximization of Flow.

a. Defendants shall maximize treatment and influent pumping at the WWTP and make maximum use of the transport and storage capacity of the Collection System to minimize the number, duration, and volume of CSO Discharges.

b. Defendants shall operate the POTW at the maximum treatable flow during all wet weather flow conditions to reduce the magnitude, frequency, and duration of CSOs.

c. Defendants shall make maximum use of the Collection System storage capacity. Within 180 days of the Effective Date, Defendants shall survey weir heights and compare them to basement elevations to determine the appropriate height to which the weirs can be raised, thereby increasing Collection System storage. Within 90 days of survey completion, and where possible and effective, Defendants shall raise weirs controlling CSO Discharges in order to minimize overflows without causing basement backups. Within one year of the Effective Date, Defendants shall also evaluate and implement measures, as described in Chapter 3 of EPA's Combined Sewer Overflows Nine Minimum Controls Guidance, EPA 832-B-95-003 (May 1995), to maximize the use of the Collection System for storage. Defendants shall report on Defendants' survey activities, any changes in the position of weirs, and the evaluation and implementation of any measures listed in Chapter 3 of the Combined Sewer Overflows Nine Minimum Control Guidance in the next semi-annual report as described in

Paragraph 32. Measures adopted by Defendants to maximize the use of the Collection System for storage shall be incorporated into the CSOOP.

18. Other Operational and Maintenance Requirements. Defendants shall at all times comply with the following terms and conditions regarding operation and maintenance of the facilities at the POTW, except when given written approval by EPA to deviate from such terms and conditions:

a. Defendants shall at all times keep fully open all influent gate valves of the headworks of the WWTP except as provided herein. Defendants may adjust the position of a gate valve from its fully open position in the event of an emergency, during maintenance or the institution or testing of new headworks. If wet weather requires the gate valves to be throttled, the Defendants may throttle the valves following wet weather standard operating procedures identified in the CSOOP.

b. Defendants shall have no primary clarifiers out of service, except pursuant to the requirements in Part II.B of the 2012 NPDES Permit, or pursuant to the corresponding provision(s) of any successor NPDES permit.

c. Defendants shall have no secondary clarifiers out of service, except pursuant to the requirements in Part II.B of the 2012 NPDES Permit, or pursuant to the corresponding provision(s) of any successor NPDES permit.

d. Defendants shall have no sand filter cells out of service, except pursuant to the requirements in Part II.B of the 2012 NPDES Permit, or pursuant to the corresponding provision(s) of any successor NPDES permit.

e. Defendants shall have no influent pumps out of service, except pursuant to the requirements in Part II.B of the 2012 NPDES Permit, or pursuant to the corresponding provision(s) of any successor NPDES permit

f. Defendants shall have no bar screens or grit tanks out of service, except pursuant to the requirements in Part II.B of the 2012 NPDES Permit, or pursuant to the corresponding provision(s) of any successor NPDES permit.

g. Defendants shall not have the trash rack out of service, except pursuant to the requirements in Part II.B of the 2012 NPDES Permit, or pursuant to the corresponding provision(s) of any successor NPDES permit.

h. Defendants shall operate and maintain the WWTP so as to minimize the amount of time any treatment unit is out of service, and to the extent possible, avoid having more than one type of treatment unit out of service at any one time. Defendants shall to the degree possible schedule necessary maintenance activities so as to avoid having more than one of any of the units or equipment listed above out of service at a time, and shall order replacement parts and carry out the necessary maintenance activities so as to minimize the duration of each such service outage.

19. Long-Term Control Plan Development. Defendants shall develop a long-term control plan (“LTCP”) to control discharges from the CSO Outfalls in accordance with Section IV of Attachment A to the 2012 NPDES Permit, the CSO Control Policy, all applicable provisions of the CWA and Indiana State law, and with the requirements in Appendix 3 of this Consent Decree and the LTCP Development Schedule set forth in Attachment 1 to Appendix 3.

20. Public and Regulatory Agency Participation Plan. No later than 60 Days after the Effective Date, Defendants shall submit to Plaintiffs for Plaintiffs’ approval pursuant to Section

XIX (Plaintiffs' Approval of Plans and Other Submissions) a revised plan for public and regulatory agency participation ("Participation Plan") ensuring that there will be ample opportunities for meaningful public involvement in the decision-making to select long-term CSO Control Measures and ample participation by the Plaintiffs, throughout all stages of Defendants' development of the LTCP. At a minimum, the Participation Plan shall include the following:

a. A description of the measures that the Defendants will take to make the information they develop in the course of the LTCP development process available to the public for review, and the steps that the Defendants will take to solicit public opinion on Defendants' development of the LTCP;

b. An updated schedule for holding public hearings at all relevant times during the LTCP development process in order to provide the public with the developed information and to solicit input from the public regarding the components of the LTCP;

c. A description of the manner in which the Defendants will solicit public opinion and the manner in which the information provided by the public will be incorporated into the LTCP development; and

d. A description of the measures that the Defendants will take to ensure that the Plaintiffs are kept informed of the Defendants' progress in developing the LTCP. These measures shall include scheduling quarterly meetings with EPA and IDEM during the planning process, unless EPA and IDEM determine that a meeting is not necessary.

21. Long-Term Control Plan Submission and Implementation.

a. Defendants shall submit to the Plaintiffs pursuant to Section XVIII (Notices and Submissions) of this Consent Decree and in accordance with the LTCP Development Schedule set forth in Attachment 1 to Appendix 3 of this Decree the Final CSO

Characterization Report that was developed in accordance with Section I of Appendix 3 and the CSO Guidance. Plaintiffs will review and approve the Defendants' submitted Final CSO Characterization Report according to Section XIX (Plaintiffs' Approval of Plans and Other Submissions) of this Consent Decree.

b. Defendants shall submit to the Plaintiffs pursuant to Section XVIII (Notices and Submissions) of this Consent Decree for Plaintiffs' review and comment the following deliverables in accordance with the LTCP Development Schedule set forth in Attachment 1 to Appendix 3 of this Decree: (1) Technology/Alternatives Screening developed in accordance with Section III of Appendix 3; (2) Alternatives Analysis and Recommended Plan Evaluation, that includes the Cost/Performance Analysis, and is developed in accordance with Sections III and IV of Appendix 3 and the CSO Guidance; and (3) Financial Capability Analysis ("FCA") developed in accordance with Section V of Appendix 3.

c. The Defendants shall submit to the Plaintiffs the LTCP that was developed in accordance with Appendix 3 of this Decree and the CSO Guidance, pursuant to Section XVIII (Notices and Submissions) of this Consent Decree and in accordance with the LTCP Development Schedule set forth in Attachment 1 to Appendix 3 of this Decree. The LTCP shall include, at a minimum, the following: (1) description of the required LTCP development steps taken by the Defendants pursuant to Appendix 3 of this Decree; (2) recommended CSO Control Measure alternative, or combination of alternatives ("Recommended Plan"); and (3) plan for post construction compliance monitoring ("PCCM Plan") developed according to requirements set forth in Section VII of Appendix 3 and in EPA's CSO Post Construction Compliance Monitoring Guidance (EPA 833-K-11-001).

i. The Defendants shall include, at a minimum, the following in describing the development of the LTCP pursuant to Appendix 3 of the Decree: (A) details of the Defendants' utilization of CSO Characterization as set forth in Section I of Appendix 3, and other monitoring and modeling information, in developing the LTCP; (B) description of the Defendants' implementation of the Participation Plan set forth in Section II of Appendix 3 and developed pursuant to Paragraph 20 of this Decree during the LTCP development process, including but not limited to, the results of the Participation Plan, public notices disseminated to solicit public participation, summary of public meetings held, and other opportunities provided for public involvement; (C) details of the Defendants' alternatives analysis completed pursuant to Section III of Appendix 3, including cost/performance analysis completed pursuant to Section IV of Appendix 3; (D) description of the Defendants' selection of the CSO Control Measure alternatives, or combination of alternatives, pursuant to the requirements set forth in Section VI.A of Appendix 3; (E) description of Defendants' FCA completed pursuant to Section V of Appendix 3, the results of the FCA, and the use of the FCA to develop the Implementation Schedule pursuant to Section VI.C of Appendix 3.

ii. The Recommended Plan shall include, at a minimum, the following: (A) the selected CSO Control Measure Alternative, or combination of alternatives, as described in Section VI.A of Appendix 3 of the Decree; (B) a table that identifies design criteria and performance criteria for all CSO Control Measure alternatives as described in Section VI.B of Appendix 3 and based on the example table set forth in Attachment 2 to Appendix 3 ("CSO Control Measures, Design Criteria, Performance Criteria and Critical Milestones"); and (C) a schedule for the design, construction, and implementation of all selected CSO Control Measures alternatives ("Implementation Schedule"), as described in Section VI.C of Appendix 3.

d. Plaintiffs will review the Defendants' submitted LTCP and approve the Recommended Plan and the PCCM Plan according to Section XIX (Plaintiffs' Approval of Plans and Other Submissions) of this Consent Decree.

e. Following the Plaintiffs' approval of the Recommended Plan required pursuant to Paragraph 21.d, the approved Recommended Plan shall be incorporated into and made an enforceable part of this Consent Decree. Defendants shall implement the improvements and other measures in the approved Recommended Plan following the Implementation Schedule included in the approved Recommended Plan and developed pursuant to Section VI.C of Appendix 3.

22. Completion of Post Construction Compliance Monitoring. No later than two years following completion of construction and implementation of the CSO Control Measure alternative, or combination of alternatives, set forth in the approved Recommended Plan, the Defendants shall complete post construction compliance monitoring ("PCCM"), in accordance with the approved PCCM Plan, to verify and ascertain the effectiveness of the constructed and implemented CSO Control Measures to meet performance criteria and water quality standards. Defendants shall submit to Plaintiffs for Plaintiffs' approval reports documenting PCCM activities pursuant to Section VII of Appendix 3 of this Consent Decree and in accordance with the LTCP Development Schedule set forth in Attachment 1 to Appendix 3.

**IX. RALSTON STREET LAGOON AND GRAND CALUMET RIVER
REMEDATION REQUIREMENTS**

23. Remediation of the Ralston Street Lagoon under RSL Final Decision.

a. Defendants' obligations with respect to the RSL Final Decision are incorporated into and enforceable under this Decree. For up to two years following the Effective Date, any amendments or modifications to the RSL Final Decision made pursuant to Section

XXIII (Modifications) shall be incorporated into this Decree contemporaneous to such amendments or modifications becoming final, without a motion to this Court to modify this Decree. Any amendments or modification to the RSL Final Decision proposed more than two years after the Effective Date shall be subject to the Court's approval.

b. No later than 60 Days after the Effective Date, Defendants shall submit to EPA, in accordance with Section XIX (Plaintiffs' Approval of Plans and Other Submissions) of this Decree, a proposed schedule for completion of the remediation of the Ralston Street Lagoon in accordance with the RSL Final Decision.

c. The proposed schedule shall include, without limitations, dates for:

i. Application for all necessary permits no later than three months prior to the construction start-up. Defendants shall require their contractors to acquire appropriate permits before construction.

ii. Submission of a detailed design for sludge remediation and capping.

iii. Initiation of construction of the final remedy.

iv. Completion of sludge remediation.

v. Completion of capping and remaining project activities.

24. Remediation Account Funds. Defendants shall continue to maintain the Remediation Account as a separate, interest bearing account designated for the remediation of the sediment of the Grand Calumet River. Funds in the Remediation Account may not be used for investigation or study. Any use of the Remediation Account funds is subject to advance approval by Plaintiffs in writing. Funds used from the Remediation Account may be used as part

of the local share of a larger Grand Calumet River sediment remediation project as provided in Paragraph 25.

25. Grand Calumet River Sediment Remediation. Defendants shall remediate Grand Calumet River sediment in that portion of the Grand Calumet River between the downstream terminus of the U.S. Steel remediation project (upstream of the GSD WWTP final effluent outfalls 001A and 001B) to Cline Avenue. Defendants may enter into a partnership as part of a larger Grand Calumet River sediment remediation project, provided that project is within the reach identified above in the East Branch of the Grand Calumet River. Entry into a partnership as part of a larger Grand Calumet River project does not alter Defendants' obligations to complete sediment remediation in accordance with the schedules set forth in Paragraphs 26-29.

26. Within 18 months of the Effective Date, Defendants shall provide design plans and specifications for removal of sediment from the Grand Calumet River to Plaintiffs in accordance with Section XIX (Plaintiffs' Approval of Plans and Other Submissions). The design plans and specifications shall include the identification of the potential dredging methods, sediment dewatering methods, supernatant and/or sediment treatment options, sediment disposal methods, and a health and safety plan. The design plans and specifications shall also include a list of, and an estimated schedule for, obtaining all necessary federal, state and local permits required for sediment remediation.

27. Within 90 days after receiving the Plaintiffs' approval of the proposed design plans submitted under the preceding Paragraph, Defendants shall submit to Plaintiffs a final design plan that incorporates any modifications that were requested by Plaintiffs.

28. Within 180 days after receiving the Plaintiffs' approval of the final design plan, Defendants shall obtain all required federal, state and local permits to implement the river sediment remediation and initiate construction of the Grand Calumet River remediation.

29. Defendants shall complete the Grand Calumet River sediment remediation within five years of the Effective Date.

30. Defendants shall report on their progress on the Grand Calumet River sediment remediation project, including the remaining amount in the Remediation Account as of the date of each report, in the reports required by Paragraph 35 (Reports Related to the Remediation of the Ralston Street Lagoon and Grand Calumet River Sediment Remediation).

X. SUPPLEMENTAL ENVIRONMENTAL PROJECT

31. Defendants shall complete the supplemental environmental project ("SEP") in accordance with this Section and all provisions of Appendix 5.

a. Commencing with the first semi-annual Report due pursuant to Section XI (Reporting and Certification Requirements) of the Consent Decree, and continuing until completion of the SEP, Defendants shall include in each Semi-Annual Report information describing the progress of the SEP and the amounts expended on the SEP to date.

b. Defendants certify as follows:

i. That all cost information provided to Plaintiffs in connection with the Plaintiffs' approval of the SEP is complete and accurate and that Defendants in good faith estimate that the cost to implement the SEP is \$175,000.

ii. That, as of the date of executing this Decree, Defendants are not required to perform or develop the SEP by any federal, state, or local law or regulation and are

not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum.

iii. That the SEP is not a project that Defendants were planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree.

iv. That Defendants have not received and will not receive credit for the SEP in any other enforcement action.

v. That Defendants will not receive reimbursement for any portion of the SEP from another person or entity.

vi. That Defendants represent that as governmental entities they do not pay federal or state taxes.

vii. That Defendants are not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP.

viii. That, to the best of Defendants' knowledge and belief after reasonable inquiry, there is no open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that Defendants are signing this Consent Decree (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

c. Defendants shall submit to the Plaintiffs in accordance with Section XVIII (Notices and Submissions) a final SEP Completion Report no later than 30 Days from the SEP's completion. The SEP Completion Report must be certified by an appropriate municipal official and shall contain, at a minimum:

- i. A detailed description of the SEP as implemented;
- ii. A description of any problem encountered in completing the SEP and solutions thereto;
- iii. An itemized list of all SEP costs expended, and documentation of all expenditures;
- iv. Evidence of the SEP completion (which may include, but is not limited to, photos, vendor invoices or receipts, correspondence etc.);
- v. To the extent possible, documentation supporting the quantification of benefits associated with the SEP and an explanation of how such benefits were measured or estimated.
- vi. A description of any community input that the Defendants may have sought and received, or may seek and receive, during the development, execution and/or completion of the SEP.

vii. A certificate stating:

I certify that the project has been fully implemented pursuant to the provisions of the consent decree entered in *United States et al. v. City of Gary et al.* (N.D. Ind.), that I am familiar with the information in this document, and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

- d. Following receipt of the SEP Completion Report described in the preceding Paragraph, Plaintiffs will notify Defendants in writing that:
- i. Defendants have satisfactorily completed the SEP and the SEP Completion Report; or
 - ii. Defendants have not satisfactorily completed the SEP and/or SEP Completion Report and Plaintiffs will seek stipulated penalties under Paragraph 60.
- e. Any public statement, oral or written in print, film, or other media, made by Defendants making reference to the SEP under this Decree from the date of its execution shall include the following language: “This project was undertaken in connection with the settlement of an enforcement action United States et al. v. City of Gary et al., taken on behalf of U.S. EPA and State of Indiana, to enforce federal and state laws.”

XI. REPORTING AND CERTIFICATION REQUIREMENTS

32. Semi-Annual Reports. By no later than August 31 and March 1 of each calendar year, Defendants shall file with the Court, publish on Gary Sanitary District’s web site, and provide reports to the Plaintiffs as designated in Section XVIII (Notices and Submissions) describing the progress of the Defendants’ compliance with all terms and provisions of this Consent Decree, identifying each term and provision by the appropriate Section and Paragraph. The August 31 report shall cover the prior six-month period concluding on June 30, and the March 1 report shall cover the prior six-month period concluding on December 31. Semi-annual reports described in this Section are separate from and in addition to any other reporting requirements established in this Decree, the 2012 NPDES Permit and any successor NPDES permit. At a minimum, Defendants shall include in each semi-annual report the following information:

a. All obligations, including but not limited to: (1) any performance deadlines established by this Decree that were due to be achieved during the six-month time period covered by the semi-annual report; (2) any performance deadlines, established by this Decree that were due to be achieved during any earlier period and were not achieved at that time; (3) a statement regarding whether those obligations were achieved by the required dates; and (4) an identification of persons with knowledge of the status of compliance with the obligations;

b. If Defendants did not fulfill or meet a required obligation that was due to be achieved during the six-month time period covered by the report or during any other prior reporting period, the Defendants shall describe in detail: (1) reasons why the deadline was not met; (2) all steps taken by the Defendants to fulfill or meet the required deadline or the obligation; and (3) an identification of persons with knowledge of the reasons for the delay;

c. Description of all work completed pursuant to the provisions of this Decree within the six-month time period covered by the semi-annual report and a projection of work to be performed pursuant to this Decree during the next six-month period; and

d. Description of all equipment or facilities used or installed at the WWTP or any portion of the Collection System that had been out of service during the six months covered by the report, including the date the equipment or facilities were first out of service and the date when it returned to service or will be returned to service, as appropriate, including the repair/replacement costs. This includes equipment such as vacuum trucks and street sweepers.

33. If at any time the Defendants have violated, or have reason to believe that they may have violated, any requirement of this Consent Decree, the Defendants shall notify the United States and Indiana of such violation and its likely duration in writing within 10 working days of the day on which the Defendants first become aware of such violation or potential

violation. The notice required under this Paragraph shall include an explanation of the violation's likely cause and any planned or taken remedial steps to prevent or minimize such violation. If the cause of the violation cannot be fully explained at the time the report is due, the Defendants shall include a statement to that effect in the report. The Defendants shall investigate to determine the cause of the violation and then shall submit an amendment to the report, including a full explanation of the cause of the violation, within 30 days of the day the Defendants become aware of the cause of the violation. Nothing in this Paragraph relieves the Defendants of their obligation to provide the requisite notice for purposes of Section XV (Force Majeure).

34. Submissions of Reports Required by NPDES Permits. Defendants shall submit to EPA the following reports that are generated pursuant to the requirements of the 2012 NPDES Permit, or pursuant to the corresponding provision(s) of any successor NPDES permit: (a) Monthly Reports of Operation ("MROs"), Discharge Monitoring Reports ("DMRs") and CSO MROs that are required under Section I.B.3 of the 2012 NPDES Permit; and (b) any notices or reports submitted pursuant to Section II.B.2.d and II.C.3 of the 2012 NPDES Permit. All reports shall be submitted to EPA in the format required by IDEM, at the same time they are submitted to IDEM, and shall contain analyses of samples and other information in accordance with the requirements of the 2012 NPDES Permit and any successor NPDES permit. Any reports that the Defendants submit to IDEM via an electronic portal (*e.g.*, eDMR) shall be submitted by the Defendants to EPA in a text-searchable portable document format (PDF) contained on a portable electronic media (*e.g.*, a compact disc, a digital video disc, a jump drive, or other appropriate device).

35. Reports Related to the Remediation of the Ralston Street Lagoon and Grand Calumet River Sediment Remediation. By no later than the 10th day of the first month of each calendar quarter, Defendants shall file with the Court, publish on Gary Sanitary District's web site, and provide to EPA as designated in Section XVIII (Notices and Submissions) reports that shall describe the progress of the Defendants' compliance with the terms and provisions set forth in the RSL Final Decision. Each report shall cover the period of the preceding quarter. Quarterly reports described in this Paragraph are separate from and in addition to any other reporting requirements established in this Decree, the 2012 NPDES Permit and any successor NPDES permit. Each quarterly report shall include the following information: (a) all performance deadlines established by Paragraph 23 of this Decree and the RSL Final Decision that were due to be achieved during the time period covered by the quarterly report; (b) a statement regarding whether those obligations were achieved by the required dates; (c) description of work related to the obligations under Paragraph 23 of this Decree and the RSL Final Decision that was performed by the Defendants during the covered time period; and (d) an identification of persons with knowledge of the status of compliance with the obligations. If Defendants did not fulfill or meet a required obligation that was due to be achieved during the time period covered by the report, the Defendants shall describe in detail reasons why the deadline was not met, all steps taken or planned by the Defendants to fulfill or meet the required deadline or the obligation, and an identification of persons with knowledge of the reasons for the delay. During construction of the remedy, the EPA Project Manager may require, and the Defendants shall submit, reports at an increased frequency.

36. Certificate of Sufficient Funding. On or before January 31 of each calendar year, the Special Administrator, or the President of the Board of Commissioners of GSD if no Special Administrator is appointed at that time, shall do one of the following:

a. either certify that there are sufficient funds to meet all the obligations of this Decree during that calendar year, in addition to meeting all the other obligations and requirements under the applicable provisions of the NPDES permit applicable at that time, CWA and the State law; or

b. certify that such funds are inadequate; specify any increases in user charges, taxes and fees that are needed to provide sufficient funding; and specify the steps that will be taken to ensure sufficient funding in accordance with Paragraph 13 (Consent Decree Funding Requirements) of this Consent Decree.

The Special Administrator, or the President of the Board of Commissioners of GSD if no Special Administrator is appointed at that time, shall provide certificates of sufficient funding to the Plaintiffs, file them with the Court, and publish them on Gary Sanitary District's web site.

37. Failure to submit and/or file a certificate under either Paragraph 36.a or Paragraph 36.b of this Decree shall be deemed a failure to comply with this Decree on each day after January 31 of each calendar year on which the certificate regarding that calendar year is not submitted.

38. Certification Requirement. Each certificate and report required under this Section shall be signed by the appropriate official. The Certificate of Sufficient Funding required by Paragraph 36 (Certificate of Sufficient Funding) shall be signed by the Special Administrator of GSD, or the President of the Board of Commissioners of GSD if no Special Administrator is

appointed at the time such certificate is due. Each report and certificate required under this Section shall include the following certification:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gathered and presented the information contained therein. I further certify, based on my personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing and willful submission of materially false information.

39. The reporting requirements described in this Section do not relieve the Defendants of any other reporting obligations required by this Decree, the 2012 NPDES Permit or any successor NPDES permit, or any other federal, state, or local law, regulation, or permit.

40. The United States and the State may use any information generated by the Defendants and provided to Plaintiffs pursuant to this Consent Decree in any proceeding to enforce the provisions of this Decree, including but not limited to any proceeding pursuant to Section XVI (Dispute Resolution) of this Decree, and as otherwise permitted by law. Defendants shall not object to the admissibility into evidence of any such information in any of the proceedings described in the preceding sentence.

XII. SPECIAL ADMINISTRATOR

41. Objective. The Special Administrator of the Gary Sanitary District shall take steps to bring the POTW into compliance with this Consent Decree, the 2012 NPDES Permit and any successor NPDES permit, the CWA, and any State law provisions promulgated pursuant to the CWA. The appointment of the Special Administrator, the vacancy in that position, or the termination of the position, do not relieve the Defendants of any of their obligations under the

Consent Decree, the 2012 NPDES Permit and any successor NPDES permit, the CWA, and any State law provisions promulgated pursuant to the CWA. The existence of the position of the Special Administrator does not relieve Defendants of any of their obligations under the Decree.

42. Appointment, Termination and Compensation.

a. Appointment. The Mayor of the City of Gary as of the Date of Lodging, the Honorable Karen Freeman-Wilson, shall be appointed as the Special Administrator for a term of one (1) year, and her appointment shall become effective on the Effective Date. Upon the expiration of that one-year term, any subsequent Special Administrator shall be appointed by the order of this Court, following a motion filed by the Plaintiffs, for a term not to exceed one (1) year. Defendants may seek in writing an extension in the appointment of a Special Administrator, or the appointment of a new Special Administrator, at least 60 Days before the expiration of the existing appointment.

b. Compensation. Compensation of the Special Administrator, if any, shall not exceed \$54,000 annually absent a written agreement from the Plaintiffs.

c. Termination. For cause, the position of the Special Administrator is subject to termination at any time by the Plaintiffs. Plaintiffs will notify the Defendants in writing that the position is terminated. Upon the Defendants' receipt of such notification, the Special Administrator shall no longer be entitled to any compensation or have any authorities or responsibilities described in this Decree. Plaintiffs' decision to terminate the position or not appoint the Special Administrator pursuant to this Paragraph shall not be subject to the provisions of Section XVI (Dispute Resolution) of this Decree.

43. Authorities and Responsibilities.

a. Solely in order to achieve compliance with this Decree, the applicable NPDES permit, the CWA, or any State law promulgated pursuant to the CWA, the Special Administrator shall have full power and authority to control, manage and operate the POTW, and any departments, boards or divisions of the City of Gary or GSD that affect the POTW or the Defendants' compliance with this Consent Decree, the applicable NPDES permit, the CWA, or State law promulgated pursuant to the CWA.

b. The Special Administrator may apply to the Court for an order seeking any appropriate relief necessary to assure the Defendants' compliance with this Decree, the applicable NPDES permit, the CWA, or any State law promulgated pursuant to the CWA. Such an application to the Court shall include: (1) the Decree provision at issue; (2) the nature of the events impeding or frustrating compliance with those provisions; (3) the steps taken by the Administrator to cure these difficulties; and (4) the Special Administrator's recommendation as to the form and substance of the Court order needed to achieve compliance with this Decree, the applicable NPDES permit, the CWA, or any State law promulgated pursuant to the CWA. In addition to filing such an application with the Court, the Special Administrator shall serve the application on the Plaintiffs, and the Plaintiffs may submit to the Court any response or objection to the application within 21 Days, unless the Court instructs otherwise.

c. The Special Administrator shall be vested with the power and authority as provided under Fed. Rule of Civ. P. 70 to perform any act to achieve expeditious compliance with the Decree, the applicable NPDES permit, the CWA, or any State law promulgated pursuant to the CWA.

d. Solely in order to achieve compliance with this Decree, the applicable NPDES permit, the CWA, or any State law promulgated pursuant to the CWA, the Special Administrator shall manage and control all items, assets, properties and articles related to the POTW, including but not limited to: (1) the payment of the POTW's debts; (2) the collection of receivables; (3) entering into and performance of all contractual obligations of the POTW; (4) the supervision of all employees of the POTW, including their hiring or dismissal; (5) the hiring of consultants, contractors, engineering firms or counsel; and (6) securing of necessary funds. All powers delegated to the Special Administrator are subject to the established rights of existing bondholders as set forth in the Bond Ordinances of the City of Gary and/or the Gary Sanitary District, and/or bonds issued pursuant to them.

e. The members of the GSD Board of Commissioners, City Council of the City of Gary, Gary Stormwater Management District Board of Directors, and any and all other boards, departments, agents, servants and employees of the City of Gary shall comply with any and all orders, directives or requests that are issued by the Special Administrator in order to achieve compliance of the POTW with this Consent Decree, the applicable NPDES permit, the CWA, and any State law promulgated pursuant to the CWA.

f. The Special Administrator shall have the full power and authority to raise the user charge (or any other fee or tax otherwise available to the City or GSD) if he/she determines, after considering all funds actually available to the Defendants for use at the complete wastewater treatment system, that the existing user charge is inadequate to comply fully with the obligations in this Decree. The Special Administrator is required to exercise such power and authority in accordance with Section XII of this Decree.

g. The Special Administrator may appoint, subject to the Plaintiffs' written agreement, a Technical Monitor(s) to assist the Special Administrator in overseeing or carrying any of the Defendants' obligations under this Decree, the applicable NPDES permit, the CWA, or any State law promulgated pursuant to the CWA.

h. The Special Administrator may appoint, subject to the Plaintiffs' written agreement, an independent contractor to operate the POTW, in accordance with Paragraph 14 of this Decree.

i. In addition to and consistent with Paragraph 13.e of this Decree, the Special Administrator shall not use his/her powers and authorities to extend any loans or grants by GSD from the funds that are available to it to the City or any other subdivision of the City. This includes but is not limited to the funds that GSD collects through levying of taxes, collection of user charges and/or issuance of municipal bonds.

j. On or before the last day of each month, the Special Administrator shall submit to the Plaintiffs the previous month's GSD Board of Directors' meeting agenda and minutes. The Plaintiffs reserve the right to terminate this requirement, but will only do so in writing.

44. The Superintendent of the WWTP shall submit reports to the Special Administrator on a semi-annual basis describing all work undertaken by the Defendants to achieve compliance with this Decree, the applicable NPDES permit, the CWA, or any State law promulgated pursuant to the CWA. Each report shall contain sufficient information to allow the Special Administrator to determine whether the Defendants are in compliance with the requirements listed in the preceding sentence. The reports shall be due on January 15 and July 15 of each calendar year. The report due on January 15 of each calendar year will cover the

period from July 1 to December 31 of the preceding year. The report due on July 15 of each calendar year will cover the period from January 1 to June 30 of that year. The information received by the Special Administrator from the Superintendent of the WWTP will form the basis, among other things, for the semi-annual compliance reports described in Paragraph 32 of this Decree.

XIII. CIVIL PENALTY

45. Within 30 Days after the Effective Date, Defendants shall pay a total of \$75,000 as a civil penalty, together with the interest accruing from the Effective Date at the rate specified in 28 U.S.C. § 1961, to be allocated between the United States and the State as set forth in Paragraphs 46 and 47.

46. Civil Penalties Payable to the United States: Within 30 Days of the Effective Date, Defendants shall pay \$68,000 of the civil penalty, plus the interest accrued on that amount, to the U.S. Department of Justice account, in accordance with instructions provided to the Defendants by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the Northern District of Indiana after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which Defendants shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Frederic Andes
Barnes & Thornburg LLP
One North Wacker Dr.
Suite 4400
Chicago, IL 60606-2833
(312) 214-8310
fandes@btlaw.com

47. Civil Penalties Payable to the State. Within 30 Days after the Effective Date, Defendants shall pay \$7,000 of the civil penalty to the State of Indiana, plus interest accrued on that amount at the rate established pursuant to IND. CODE § 24-4.6-1-101 from the Effective Date to the date of payment of the penalty. Payment shall be made by a check made payable to “Indiana Department of Environmental Management Special Fund,” delivered to:

Cashier
Indiana Department of Environmental Management
100 N. Senate Ave
MC 50-10C
Indianapolis, IN 46207-7060

48. At the time of payment, Defendants shall send notice that payments have been made to: (i) EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; and (ii) the United States via email or regular mail in accordance with Section XVIII (Notices and Submissions). Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States of America and the State of Indiana v. The City of Gary, Indiana, and Gary Sanitary District* and shall reference the civil action number, CDCS number and DOJ case number 90-5-1-1-2601/2.

49. If Defendants fail to tender the payments required in this Section, interest shall continue to accrue in accordance with the provisions of 31 U.S.C. § 3717.

XIV. STIPULATED PENALTIES

50. The Defendants shall be liable for stipulated penalties to the Plaintiffs in the amounts set forth in this Section for failure to comply with the requirements of this Consent Decree as specified below, unless excused under Section XV (Force Majeure). “Compliance” by the Defendants shall include performance of all obligations required under this Decree and/or its

Appendices, including the performance of all work pursuant to any plans or other documents approved by Plaintiffs pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

51. Payment of Civil Penalty. Defendants shall pay \$1,000 per Day for each Day on which the civil penalty to either the United States or to the State of Indiana is not made by the due dates listed in Section XIII.

52. Bypassing of Treatment Facilities. Defendants shall pay \$500 per Day per bypass, as defined by 40 C.F.R. § 122.41(m), per each treatment unit, when the bypass is prohibited under Part II.B of the 2012 NPDES Permit or any applicable provision of a successor NPDES permit that prohibits bypassing.

53. Dry Weather Discharges. Defendants shall pay the following stipulated amounts for each Day on which a dry weather discharge occurs. One or more dry weather discharges on a single Day shall be considered as separate violations for the purposes of this Paragraph.

<u>Period of Noncompliance</u>	<u>Stipulated Penalty</u>
1st to 3rd Day of a dry weather discharge	\$ 500 per Day per violation
4th to 10th Day of dry weather discharge	\$ 750 per Day per violation
After 10 Days of dry weather discharge	\$ 1,250 per Day per violation

54. Final Effluent Limits. For each violation of the requirement under Paragraph 12 of this Decree to comply with all daily, weekly, or monthly effluent limits on parameters set forth in Part I.A.1 of the 2012 NPDES Permit, or any corresponding provision(s) establishing final effluent limits under any successor NPDES permit, Defendants shall pay a stipulated penalty as follows:

\$500 for each violation of each daily limit;

\$1,000 for each violation of each weekly or seven-day limit;

\$3,000 for each violation of each monthly or 30-day limit.

55. Ralston Street Lagoon and Grand Calumet River Remediation Requirements. For failure to comply with the requirements set forth in Section IX of this Consent Decree, including any requirements to meet any deadline set forth in that Section or any documents developed pursuant to the requirements of that Section, the Defendants shall pay a stipulated penalty as follows:

<u>Period of Noncompliance</u>	<u>Stipulated Penalty</u>
1st to 30th Day of Violation	\$1,000 per Day per violation
31st to 90th Day of Violation	\$2,000 per Day per violation
After 90 Days of Violation	\$3,000 per Day per violation

56. CSOOP. Defendants shall pay the stipulated amount of \$250 per Day for each Day on which they fail to do one or more of the following: (a) submit the revised CSOOP by the time period provided in Paragraph 15.a of the Decree; (b) submit annual modifications and/or revisions of the CSOOP as required by Paragraph 15.b of the Decree; (c) implement the provisions of the revised CSOOP and any modifications/revisions or updates, as required by Paragraph 15.d of this Decree.

57. Maximizing Flow. Defendants shall pay the stipulated amount of \$100 per Day per CSO Discharge per CSO Outfall when, at the time of such CSO Discharge, the Defendants fail to maximize flow in accordance with Paragraph 17 of this Decree.

58. Public and Regulatory Agency Participation Plan. Defendants shall pay the stipulated amount of \$500 per Day for failure to submit the Public and Regulatory Agency Participation Plan in accordance with Paragraph 20.

59. Long-Term Control Plan Submission and Implementation. Defendants shall pay the following stipulated penalty for each Day on which they fail to submit any deliverables and perform any actions by the deadlines established in the LTCP Development Schedule and the Implementation Schedule, as required by Paragraph 21.

<u>Period of Noncompliance</u>	<u>Stipulated Penalty</u>
1st to 14th Day of violation	\$1,000 per Day per violation
14th through 60th Day of violation	\$2,000 per Day per violation
After 60 Days of violation	\$4,000 per Day per violation

60. Stipulated Penalties for Failure to Implement SEP. If Defendants violate any requirement outlined in Section X, Defendants must pay stipulated penalties as follows, in addition to any stipulated penalties set forth in Section XIV (Stipulated Penalties):

a. If Defendants do not complete the SEP according to the requirements of Section X and Appendix 5, Defendants must pay a penalty amounting to \$175,000.

b. If Defendants complete the SEP satisfactorily, but spend less than \$175,000, Defendants must pay a penalty amounting to the difference between \$175,000 and the amount actually spent.

c. If Defendants do not meet one or more of the deadlines set forth in Appendix 5, Defendants shall pay penalties in the following amounts for each Day after the deadline:

<u>Penalty per Violation per Day</u>	<u>Period of Violation</u>
\$200	1st through 14th Day
\$500	15th through 30th Day
\$1,000	31st Day and beyond

d. If Defendants do not submit the SEP Completion Report required by Paragraph 31.c above in a timely manner, Defendants must pay penalties in the following amounts for each Day after the report was due until Defendants submit the report:

<u>Penalty per Violation per Day</u>	<u>Period of Violation</u>
\$100	1st through 14th Day
\$250	15th through 30th Day
\$500	31st Day and beyond

61. Noncompliance with Reporting, Notice and Submission Requirements.

Defendants shall pay the following stipulated penalty for each Day on which they fail to submit to the Plaintiffs by the specified deadlines any work plan, report, or any other submission under this Decree not otherwise specified and addressed in this Section. The submissions to which this requirement applies include, but are not limited to: submissions under Section XI (Reporting and Certification Requirements) and Section XVIII (Notices and Submissions) of this Decree.

<u>Period of Noncompliance</u>	<u>Stipulated Penalty</u>
1st to 30th Day of violation	\$100 per Day per violation
31st to 60th Day of violation	\$200 per Day per violation
After 60 Days of violation	\$500 per Day per violation

62. Inadequate Funding: Defendants shall pay a stipulated penalty of \$1,000 per day for each Day on which non-compliance with any portion of this Decree is caused by insufficient funding.

63. Certification of Sufficient Funding: Defendants shall pay a stipulated penalty of \$250 per Day for each Day on which the Special Administrator or the President of the Board of Commissioners of GSD fails to meet the deadline for the required written certification as to

whether sufficient funds are available to the Defendants in accordance with Paragraph 36 of this Decree.

64. Increase of User Charge and Other Fees, Taxes or Charges: Defendants shall pay a stipulated penalty of \$1,000 per Day whenever the Special Administrator or the President of the Board of Commissioners of GSD: (a) certifies pursuant to Paragraph 36 of this Decree that GSD does not have adequate funds available to comply with this Decree, in addition to other regulatory requirements specified in that Paragraph; and (b) 120 Days elapse after such determination without the Defendants completing the process of increasing the user charge or any other fee, tax or charge to supply adequate funds as required by Paragraph 13 and certifying that the Defendants will thus have adequate funds available to comply with the Decree and the CWA. The stipulated penalty under this Paragraph shall start accruing on the Day on which the 120-Day period specified herein elapses.

65. Other Violations: Defendants shall pay the stipulated penalty of \$500 per Day for any other noncompliance with any other requirement of the Decree that is not specified in this Section.

66. All stipulated penalties shall begin to accrue on the Day after the performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue through the final day of the correction of noncompliance or until the violation ceases. Nothing herein shall prevent the simultaneous accrual of separate penalties outlined in this Section for separate violations of this Consent Decree.

67. Defendants shall pay any stipulated penalty within 30 Days of receiving a written demand by either Plaintiff. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether the Plaintiffs have notified the Defendants of a violation. Either

the United States, or the State, or both, may elect to demand stipulated penalties under this Section. However, the United States and the State shall consult with each other before making any demand. Where both Plaintiffs demand stipulated penalties, any such penalties determined to be owing shall be paid 50 percent to the United States and 50 percent to the State. Where only one Plaintiff demands stipulated penalties, the entire amount of stipulated penalties determined to be owing shall be payable to that Plaintiff. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff. In no case shall the determination by one Plaintiff not to seek stipulated penalties preclude the other Plaintiff from seeking stipulated penalties in accordance with this Decree. A decision by the United States or the State to waive, in whole or in part, penalties otherwise due under this Section shall not be subject to judicial review.

68. Penalty Accrual During Dispute Resolution. Stipulated penalties shall continue to accrue during any dispute resolution as described in Section XVI (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 (for penalties payable to the United States) and at the rate established pursuant to IND. CODE § 24-4.6-1-101 (for penalties payable to the State), but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of a Plaintiff that is not appealed to this Court, accrued penalties determined to be owing shall be paid within 30 Days of the agreement or the receipt of the decision or order;

b. If the dispute is appealed to this Court and the United States and/or Indiana substantially prevail, Defendants shall, within 60 Days of receipt of the District Court's

decision or order, pay all accrued penalties determined by the Court to be owing, together with accrued interest, except as provided in Paragraph 68.c, below;

c. If the District Court's decision is appealed by any Party, the Defendants shall, within 15 days of receipt of the final appellate order in which Plaintiffs substantially prevail, pay all accrued penalties determined to be owing to the Plaintiffs, together with accrued interest.

69. If the Defendants fail to pay stipulated penalties when due, Defendants shall pay Interest on the unpaid stipulated penalties as follows: (1) if the Defendants have timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 68 until the date of payment; and (2) if the Defendants fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 67 until the date of payment. If the Defendants fail to pay stipulated penalties and Interest when due, the Plaintiffs may institute proceedings to collect the penalties and Interest.

70. Payment of Stipulated Penalties to the United States.

a. Payment. Stipulated penalties payable to the United States shall be paid in accordance with instructions set forth in Paragraphs 46 and 48, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

b. Late Payment. If Defendants fail to pay stipulated penalties and accrued interest payable to the United States in accordance with the terms of this Decree, Defendants shall be liable for Interest as provided in Paragraph 69, accruing as of the date payment became

due, together with the costs (including attorneys' fees) incurred in any action necessary to collect any such stipulated penalties, interest, or late payment costs or fees.

71. Payment of Stipulated Penalties to the State

a. Payment. Stipulated penalties payable to the State shall be paid by certified or cashier's check in the amount due, payable to the "Indiana Department of Environmental Management Special Fund," and delivered to:

Indiana Department of Environmental Management
Cashier's Office – Mail Code 50-10C
100 N. Senate Avenue
Indianapolis, IN 46204-2251

b. Late Payment. Should Defendants fail to pay stipulated penalties and accrued interest payable to the State in accordance with the terms of this Decree, the State shall be entitled to collect interest and late payment costs and fees, as set forth in Paragraph 70.b. (Payment of Stipulated Penalties to the United States) together with the costs (including attorneys' fees) incurred in any action necessary to collect any such stipulated penalties, interest, or late payment costs or fees.

72. Subject to the provisions of Section XX of this Decree (Effect of Settlement and Reservation of Rights), the stipulated penalties provided in this Decree shall be in addition to any other rights, remedies, or sanctions available to the United States or the State for Defendants' violation of this Decree, applicable laws or regulations, and applicable permits.

73. The payment of penalties and interest, if any, shall not alter in any way Defendants' obligation to comply with all provisions of this Decree,

74. Notwithstanding any other provision of this Section, the United States or the State may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued

pursuant to this Consent Decree. A decision by the United States or the State to waive, in whole or in part, penalties otherwise due under this Section shall not be subject to judicial review.

XV. FORCE MAJEURE

75. “Force majeure,” for purposes of this Decree, is defined as any event arising from causes beyond the control of Defendants, their agents, consultants and contractors, or any entity controlled by Defendants that delays or prevents the performance of any obligation under this Decree despite Defendants’ best efforts to fulfill the obligation. The requirement that Defendants exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential Force Majeure event and best efforts to address 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 greatest extent possible. “Force Majeure” does not include Defendants’ financial inability to perform any obligation under this Consent Decree.

76. When Defendants know or if Defendants should know, 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, Defendants shall provide notice to Plaintiffs orally or by electronic or facsimile transmission within five Days after Defendants first knew, or in the exercise of reasonable diligence under the circumstances, should have known of such event. Within 10 Days thereafter, Defendants shall provide in writing to Plaintiffs an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendants’ rationale for attributing such delay to a Force Majeure event if they intend to assert such a claim; and a statement as to whether, in their opinion, such event may cause or contribute to an

endangerment to public health, welfare, or the environment. Defendants shall include with any notice all available documentation supporting the claim that the delay was attributable to a Force Majeure event. Failure to comply with the above requirements shall preclude Defendants from asserting any claim of Force Majeure for that event for the period of time for such failure to comply, and for any additional delay caused by such failure. Defendants shall be deemed to know of any circumstances of which Defendants, any entity controlled by Defendants, or Defendants' contractors knew or should have known.

77. If Plaintiffs agree that the delay or anticipated delay is attributable to a Force Majeure event, the time for performance of the obligations under this Consent Decree that are affected by the Force Majeure event will be extended by Plaintiffs for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the Force Majeure event shall not, of itself, extend the time for performance of any other obligation. Plaintiffs will notify Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure event.

78. If Plaintiffs do not agree that the delay or anticipated delay has been or will be caused by a Force Majeure event, Plaintiffs will notify Defendants in writing of their decision within 60 Days of receipt of the submission described in Paragraph 76 above.

79. If Defendants elect to invoke the dispute resolution procedures set forth in Section XVI (Dispute Resolution), they shall do so no later than 15 Days after receipt of Plaintiffs' notice. In any such proceeding, Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the

effects of the delay, and that Defendants complied with the requirements of Paragraph 76, above. If Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Defendants of the affected obligation of this Consent Decree identified to Plaintiffs or the Court.

80. Defendants' 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 shall not, in any event, serve as a basis for excusing violations of or granting extensions of time under this Consent Decree. However, a permitting authority's failure to act in a timely manner on an approvable permit application may serve as a basis for an extension under the Force Majeure provision of this Consent Decree. Defendants shall make a showing of proof regarding the cause of each delayed incremental step or other requirements for which an extension is sought under this Paragraph. Defendants may petition for the extension of more than one compliance date in a single request.

81. Compliance with the terms of this Decree is not conditioned on the receipt of any federal, State or local funds. Applications 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 the Defendants shall not be considered Force Majeure nor a cause for extension of any compliance date in this Decree. Changed financial circumstances or unanticipated or increased costs or expenses associated with implementation of this Consent Decree shall not constitute Force Majeure events nor serve as bases for excusing violations of or granting extensions of time under this Consent Decree.

XVI. DISPUTE RESOLUTION

82. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising

under or with respect to this Consent Decree. If a dispute is subject to this Section, Defendants' failure to seek resolution of the dispute under this Section shall preclude Defendants from raising any such issue as a defense to an action by the Plaintiffs to enforce any obligation of Defendants arising under this Decree.

83. Informal Negotiations. Any dispute which arises under or with respect to this Decree shall first be the subject of informal negotiations between the parties to the dispute. The dispute shall be considered to have arisen when Defendants send the Plaintiffs a written Notice of Dispute in accordance with Section XVIII (Notices and Submissions). Such Notice shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 45 Days from the date the dispute arises, unless the Parties agree in writing to extend this period. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the Plaintiffs shall be considered binding unless, within 30 Days after the conclusion of the informal negotiation period, Defendants invoke formal dispute resolution procedures as set forth below.

84. Formal Dispute Resolution. Defendants shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the Plaintiffs, in accordance with Section XVIII (Notices and Submissions) of this Decree, a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendants' position and any supporting documentation relied upon by Defendants.

85. The Plaintiffs shall serve their Statement of Position within 45 Days of their receipt of Defendants' Statement of Position. The Plaintiffs' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the Plaintiffs.

86. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to Paragraphs 83-85.

87. The Plaintiffs' Statement of Position shall be binding on Defendants, unless Defendants file a motion for judicial review of the dispute in accordance with the following Paragraph. In the event the Plaintiffs are unable to reach agreement with regard to Defendants' claim, the position of the United States shall be the Plaintiffs' final position.

88. Defendants may seek judicial review of the dispute by filing with the Court and serving on the Plaintiffs, in accordance with Section XVIII of this Decree (Notices and Submissions), a motion requesting judicial resolution of the dispute. The motion must be filed within 30 Days of receipt of the Plaintiffs' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendants' position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Decree.

89. The Plaintiffs shall respond to Defendants' motion within the time period allowed by the Local Rules of this Court. Defendants may file a reply memorandum, to the extent permitted by the Local Rules.

90. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Decree, in any dispute brought under Paragraph pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules, or any other items requiring approval by the Plaintiffs under this Decree, the adequacy of the performance of

work undertaken pursuant to this Decree, and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendants shall have the burden of demonstrating based on the administrative record that the Plaintiffs' position is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Decree, in any other dispute brought under Paragraph 84, Defendants shall bear the burden of demonstrating that their position complies with this Decree and better furthers the objectives of the Decree. Any judicial review of such dispute shall not be based on the administrative record.

91. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of the Defendants under this Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 68. If Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XIV (Stipulated Penalties)

XVII. ACCESS TO INFORMATION AND DOCUMENT RETENTION

92. The United States, the State, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree at all reasonable times upon presentation of credentials to allow such representatives to: (a) monitor the progress of activities required under this Decree; (b) verify any data or information submitted to the United States or the State in accordance with the terms of this Decree; (c) obtain samples and, upon request, splits of any samples taken by Defendants

or their representatives, contractors, or consultants; (d) obtain documentary evidence, including photographs and similar data; and (e) assess Defendants' compliance with this Decree.

93. Upon request, Defendants shall provide to Plaintiffs or their authorized representatives splits of any samples taken by Defendants. Upon request, Plaintiffs shall provide to Defendants splits of any samples taken by Plaintiffs.

94. Until five years after the termination of this Decree, Defendants shall retain, and shall instruct their contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in their or their contractors' or agents' possession or control, or that come into their or their contractors' or agents' possession or control, and that relate in any manner to Defendants' performance of their obligations under this Decree. This information retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or the State, Defendants shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

95. At the conclusion of the information retention period provided in the preceding Paragraph, Defendants shall notify the Plaintiffs at least 90 Days prior to the destruction of any records subject to the requirements of and listed in the preceding Paragraph and, upon request by the United States or the State, Defendants shall deliver any such documents, records, or other information to Plaintiffs. Defendants may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendants assert such a privilege, they shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c)

the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Defendants. However, no documents, records, or other information created or generated pursuant to the requirements of this Decree shall be withheld on grounds of privilege.

96. Defendants may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Defendants seek to protect as CBI, Defendants shall follow the procedures set forth in 40 C.F.R. Part 2. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, the public may be given access to such documents or information without further notice in accordance with 40 C.F.R. Part 2, Subpart B.

97. This Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or the State pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendants to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XVIII. NOTICES AND SUBMISSIONS

98. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered submitted on the date they are postmarked and sent by certified mail, overnight delivery service or electronic mail. Notices required to be sent to EPA, and not the

United States, under the terms of this Consent Decree should not be sent to the U.S. Department of Justice.

To the United States:

EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-5-1-1-2601/2

eescdcopy@usdoj.gov
Re: DJ # 90-5-1-1-2601/2

and

United States Attorney
Northern District of Indiana
5400 Federal Plaza, Suite 1500
Hammond, IN 46320

To U.S. EPA:

Chief, Water Enforcement and Compliance Assurance Branch
(WC-15J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

and

Project Manager (LU-9J) (for Paragraph 32 and Section IX only)
Land and Chemicals Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

and

Regional Counsel (C-14J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

To the State:

Chief, Environmental Section
Office of the Attorney General
Indiana Government Center South
5th Floor
402 West Washington Street
Indianapolis, IN 46204

and

Chief, Compliance Branch
Indiana Department of Environmental Management
Office of Water Quality, Mail Code 65-40
100 North Senate Avenue
Indianapolis, IN 46204-2251

and

Office of Legal Counsel
Mail Code 60-01
100 North Senate Street
Indianapolis, IN 46204-2251

To Defendants:

Director
Gary Sanitary District
3600 West Third Avenue
Gary, IN 46402

and

Corporation Counsel
City of Gary
401 Broadway
Gary, IN 46402

99. Each notice or submission submitted by Defendants under this Consent Decree shall be signed by an official of the submitting Party and shall include the following

“Certification Language”:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gather and present the information contained therein. I further certify, based on my inquiry of those individuals immediately responsible for obtaining the information, that I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

100. Any information provided pursuant to this Consent Decree may be used by the Plaintiffs in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

XIX. PLAINTIFFS’ APPROVAL OF PLANS AND OTHER SUBMISSIONS

101. Following receipt of any report, plan, or other submission by Defendants under this Decree, the Plaintiffs may do one of the following, in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; (d) disapprove the submission; or (e) any combination of the foregoing.

102. Plaintiffs also may modify the initial submission to cure deficiencies in the submission if: (a) Plaintiffs determine that disapproving the submission and waiting for a resubmission would cause substantial disruption to the Work; or (b) previous submission(s) has/ have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable plan, report or deliverable.

103. Resubmissions. Upon receipt of a notice of disapproval under Paragraph 101(c) or 101(d), or if required by a notice of approval upon specified conditions under Paragraph 101(b), Defendants shall, within 10 days or such longer time as specified by Plaintiffs in such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval. After review of the resubmitted plan, report, or other deliverable, Plaintiffs may: (a) approve, in whole or in part, the resubmission; (b) approve the resubmission upon specified conditions; (c) modify the resubmission; (d) disapprove, in whole or in part, the resubmission, requiring Defendants to correct the deficiencies; or (e) any combination of the foregoing.

104. Material Defects. If a resubmitted plan, report, or other deliverable contains a material defect, and the plan, report, or other deliverable is disapproved or modified by Plaintiffs under Paragraphs 101, 102 or 103 due to such material defect, then the material defect shall constitute a lack of compliance for purposes of Section XIV (Stipulated Penalties). The provisions of Section XVI (Dispute Resolution) and Section XIV (Stipulated Penalties) shall govern the accrual and payment of any stipulated penalties regarding the Defendants' submissions under this Section.

105. Implementation. Upon approval, approval upon conditions, or modification by Plaintiffs of any plan, report, or other deliverable, or any portion thereof: (a) such plan, report, or other deliverable, or portion thereof, shall be incorporated into and enforceable under this Consent Decree; and (b) Defendants shall take any action required by such plan, report, or other deliverable, or portion thereof, subject only to their right to invoke the dispute resolution procedures set forth in Section XVI (Dispute Resolution) with respect to the modifications or conditions made by the Plaintiffs. The implementation of any non-deficient portion of a plan,

report, or other deliverable submitted or resubmitted under this Section shall not relieve Settling Defendant of any liability for stipulated penalties under Section XIV (Stipulated Penalties).

XX. EFFECT OF SETTLEMENT AND RESERVATION OF RIGHTS

106. This Decree resolves the civil claims of the United States and the State for the violations alleged in the Complaint filed in this action through the Date of Lodging.

107. The Plaintiffs reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 106. This Decree shall not be construed to limit the rights of the Plaintiffs to obtain penalties or injunctive relief under the CWA or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 106. The Plaintiffs further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendants' POTW, whether related to the violations addressed in this Decree or otherwise.

108. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, civil penalties, other appropriate relief relating to the POTW or Defendants' violations, Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 106.

109. This Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendants are responsible for achieving and maintaining

complete compliance with all applicable federal, State, and local laws, regulations, and permits, and Defendants' compliance with this Decree shall not be a defense to any action commenced by the Plaintiffs pursuant to any such laws, regulations, or permits, except as set forth herein. The Plaintiffs do not, by their consent to the entry of this Decree, warrant or aver in any manner that Defendants' compliance with any aspect of this Decree will result in compliance with provisions of the CWA or with any other provisions of federal, State, or local laws, regulations, or permits.

110. This Decree does not limit or affect the rights of Defendants or of the United States or the State against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendants, except as otherwise provided by law.

111. Nothing in this Decree limits the rights or defenses available under Section 309(e) of the CWA, 33 U.S.C. § 1319(e), in the event that the laws of the State, as currently or hereafter enacted, may prevent Defendants from raising the revenues needed to comply with this Decree.

112. This Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Decree.

113. Performance of the terms of this Decree by Defendants 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 Defendants shall not be cause for extension of any required compliance date in this Decree.

XXI. COSTS

114. The Parties shall each bear their own costs of litigation of this action, including attorneys' fees, except that the United States and State shall 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 by Defendants.

XXII. RETENTION OF JURISDICTION

115. The Court shall retain jurisdiction of this case until termination of this Decree, for the purpose of resolving disputes arising under this Decree or entering an order modifying this Decree, pursuant to Sections XVI (Dispute Resolution) and XXIII (Modifications), or effectuating or enforcing compliance with the terms of this Decree.

XXIII. MODIFICATIONS

116. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties or by an order of the Court. Defendant's request for modification may be based, among other things, on: (a) an integrated plan developed in accordance with EPA's Integrated Municipal Stormwater and Wastewater Planning Approach Framework, issued on June 5, 2012; or (b) a current Financial Capability Assessment (per EPA's Financial Capability Assessment Framework, issued on November 24, 2014). If either the Integrated Municipal Stormwater and Wastewater Planning Approach Framework or the Financial Capability Assessment Framework is modified after the Effective Date, the Defendants' request for modification shall be based on the version of the Framework(s) that is in effect on the day that the request for modification is submitted to the Plaintiffs.

117. Any modification of this Consent Decree or any documents that are developed pursuant to the requirements of this Decree and that become a part of the Decree, that effect a material change to the terms of the Decree or materially effects the ability to meet the objectives of the Decree shall become effective upon a subsequent written agreement signed by all Parties and approved by the Court as a modification to this Decree. Any schedule that is included in this

Decree or in any document developed pursuant to the Decree may be extended, modified or revised upon written agreement of the Parties, without Court approval, unless any such modification effects a material change to the terms of this Decree or materially affects the ability to meet the objectives of this Decree.

118. Any disputes concerning the modification of this Consent Decree, as defined in Section VI, shall be resolved pursuant to Section XVI (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 90, the party seeking the modification of the Decree bears the burden of demonstrating that it is entitled to the requested modification in accordance with Fed. R. Civ. P. 60(b).

XXIV. TERMINATION

119. After Defendants have complied with all obligations under this Decree, have paid the civil penalty contained in Section XIII (Civil Penalty), and all stipulated penalties accrued under Section XIV (Stipulated Penalties) which they did not successfully challenge under Section XVI (Dispute Resolution), and have demonstrated satisfactory compliance with the requirements of this Decree and the NPDES Permit in effect at such time for a period of one year, Defendants may file and serve upon the Plaintiffs a “Request for Termination of Consent Decree,” with supporting documentation demonstrating that the conditions for termination set forth in this Section have been met.

120. Following the Plaintiffs’ receipt of Defendants’ Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendants have satisfactorily complied with the requirements for termination of this Decree. If the United States, after consultation with the State, agrees that the

Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

121. If the United States, after consultation with the State, does not agree that the Decree may be terminated, Defendants may invoke dispute resolution under Section XVI (Dispute Resolution) of this Decree. However, Defendants shall not seek dispute resolution of any dispute regarding termination, under Section XVI, until 60 days after service of its Request for Termination. Defendants shall have the burden of proof that the conditions for termination of the Decree have been satisfied. This Decree shall remain in effect pending resolution of the dispute by the Parties or the Court in accordance with Section XVI (Dispute Resolution).

XXV. PUBLIC NOTICE AND COMMENT

122. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The Plaintiffs reserve the right to withdraw or withhold their consent if the comments regarding the Decree disclose facts or considerations indicating that the Decree is inappropriate, improper, or inadequate. Defendants consent to entry of this Decree without further notice and agree not to withdraw from or oppose entry of this Decree by the Court or to challenge any provision of the Decree, unless the Plaintiffs have notified Defendants in writing that they no longer support entry of this Decree.

XXVI. SIGNATORIES/SERVICE

123. Each undersigned representative of Defendants, the State, and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Decree and to execute and legally bind the Party he or she represents to this document.

124. This Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendants hereby agree to accept service of process by mail with respect to all matters arising under or relating to this 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.

XXVII. INTEGRATION

125. This Decree, as defined in Section VI, and the documents approved under this Decree constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersede all prior agreements and understandings, whether oral or written. Other than the Decree, as defined in Section VI, and documents that are required under this Decree and that will be incorporated into this Decree, no other document, nor 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. APPENDICES

- Appendix 1: CSOOP Requirements.
- Appendix 2: Stress Test Requirements.
- Appendix 3: LTCP Development Requirements.
 - Attachment 1 to Appendix 3: LTCP Development Schedule.
 - Attachment 2 to Appendix 3: CSO Control Measures, Design Criteria, Performance Criteria and Critical Milestones.
- Appendix 4: EPA's Final Decision for Proposed Remedy for the Ralston Street Lagoon, dated April 7, 2009 and EPA Approval of GSD Request for Revised Schedule, dated September 27, 2010.
- Appendix 5: Supplemental Environmental Project Proposal.

Attachment 1 to Appendix 5: Map of the Location of the Supplemental Environmental Project.

XXIX. FINAL JUDGMENT

126. Upon approval and entry of this Decree by the Court, this Decree shall constitute a final judgment between the United States, the State, and Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS _____ DAY OF _____, _____.

United States District Judge

Signature Page for the Consent Decree in *United States and the State of Indiana v. The City of Gary, Indiana et al.* (N.D. Ind.):

FOR THE UNITED STATES OF AMERICA:

DATE: _____



JOHN C. CRUDEN
Assistant Attorney General
Environment & Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

DATE: 12/12/2016



IVA ZIZA
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-3211

DAVID CAPP
United States Attorney

WAYNE T. AULT
Assistant United States Attorney
Northern District of Indiana
5400 Federal Plaza, Suite 1500
Hammond, IN 46320

Signature Page for the Consent Decree in *United States and the State of Indiana v. The City of Gary, Indiana et al.* (N.D. Ind.):

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

DATE: 10/12/14



ROBERT A. KAPLAN
Acting Regional Administrator
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

DATE: 9/26/16



MARK J. KOLLER/
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Signature Page for the Consent Decree in *United States and the State of Indiana v. The City of Gary, Indiana et al.* (N.D. Ind.):

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

DATE: _____

[REDACTED]

MARK POLLINS
Division Director
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

DATE: _____

[REDACTED]

SUSHILA NANDA
Attorney Advisor
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

Signature Page for the Consent Decree in *United States and the State of Indiana v. The City of Gary, Indiana et al.* (N.D. Ind.):

FOR THE STATE OF INDIANA

DATE: 11/1/2014



CAROL S. COMER

Commissioner
Indiana Department of Environmental Management
100 North Senate Street
P.O. Box 6015
Indianapolis, IN 46206

DATE: 11/1/2014



BETH ADMIRE

Attorney
Indiana Department of Environmental Management
100 North Senate Street
P.O. Box 6015
Indianapolis, IN 46206

DATE: November 29, 2014



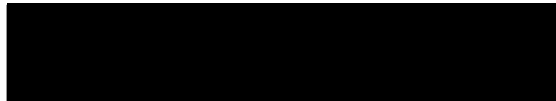
PATRICIA ORLOFF ERDMANN

Chief Counsel for Litigation
Office of the Indiana Attorney General
402 West Washington Street
IGCS, 5th Floor
Indianapolis, IN 46204

Signature Page for the Consent Decree in *United States and the State of Indiana v. The City of Gary, Indiana et al.* (N.D. Ind.):

FOR THE CITY OF GARY

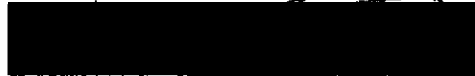
DATE: NOV 18 2016



Mayor
City of Gary
401 Broadway
Gary, IN 46402

FOR THE GARY SANITARY DISTRICT

DATE: 11-18-16



President of the Board of Commissioners
Gary Sanitary District
3600 West Third Avenue
Gary, IN 46406

Appendix 1 to Consent Decree among the United States of America, State of Indiana, the City of Gary, Indiana, and Gary Sanitary District

(N. D. Ind.)

CSO Operational Plan (CSOOP) Requirements

I. Required CSOOP Chapters

A. Document History and Summary of Changes, Revisions and/or Modifications.

Summarize the history of the CSOOP, including a list of all changes/revisions that have been made to the CSOOP, including dates of such changes/revisions and references of the pages(s) that have been modified.

B. System Inventory.

Provide description of the system, which includes the service area and users, the Collection System, and the WWTP, that includes, at a minimum, the following information:

1. Information about the service area, including but not limited to:
 - a. Population served by the WWTP (*i.e.*, total population, number of households, etc.);
 - b. Service connections, including residential, commercial and industrial connections;
 - c. Industrial Users (IUs), including but not limited to: (i) total number of IUs; (ii) number, name, and contact information of each IU; (iii) classification of each IU (e.g., significant, categorical, etc.);
 - d. Satellites (also known as “contract communities”).
2. Information about the Collection System, including but not limited to:
 - a. Map of the Collection System that identifies at a minimum the following items: (i) all CSO Outfalls; (ii) all CSO control regulators; (iii) all Pump Stations (indicating whether the particular Pump Station services the Sanitary Sewer System, Storm Water Sewer System, or Combined Sewer System); (iv) interceptors; (v) force mains; (vi) locations where satellites join the Collection System; (vii) Receiving Waters; and (viii) precise delineation of combined and separate sanitary portions of the Collection System;
 - b. Information about the Collection System (specifying whether the information pertains to the Sanitary Sewer System, the Combined Sewer System, or portions of the Storm Water Sewer System that

- convey storm water to the CSS), including: (i) physical condition of the pipes; (ii) age, length, materials, sizes, and depths of the pipes; and (iii) problem areas;
- c. Information about Pump Stations, including: (i) identification of all Pump Stations; (ii) explanation of whether the identified Pump Stations services the Sanitary Sewer System, Storm Water Sewer System, or Combined Sewer System; (iii) location of each Pump Station, identified by address and GPS coordinates; (iv) design capacity of each Pump Station and whether that capacity is “firm” (largest pump out of service); (v) number of pumps per each Pump Station; and (vi) discharge disposition of each pump (e.g., to a particular force main, CSO Outfall, storm water outfall, etc.);
 - d. Information about each CSO Outfall, including: (i) name, as listed on the NPDES Permit, and location of each CSO Outfall, identified by address and GPS coordinates; (ii) identification number of each Outfall; (iii) Receiving Water into which wastewater is discharged from the CSO Outfall; (iv) explanation of whether the CSO Outfall is remotely controlled or monitored in real time; (v) information pertaining to each regulator, including number, types, and locations, identified by address and GPS coordinates, and identified relative to the CSO Outfall; and (vi) identification of any tributary IUs; and
 - e. Information about rain gauges, including: (i) location; (ii) type; and (iii) years in service.
3. Information about the WWTP, including but not limited to:
- a. Current WWTP process flow diagram;
 - b. Detailed description of each unit operation, process, and major piece of equipment employed at the WWTP, including: (i) design specification (including average and maximum flow ratings); (ii) age; and (iii) current effective capacities; and
 - c. Description of electronic monitoring/controlling system.

C. Administrative Structure.

Provide a detailed description of the administrative organization of GSD and specific administrative mechanisms that are implemented to monitor and control CSOs. At a minimum, this description shall include the following:

1. Positions and duties of GSD staff that is responsible for monitoring and controlling CSOs;
2. Sewer Use Ordinance and other user agreements with the City of Gary, satellites, IUs and any other entities; and
3. Record-keeping practices and reporting procedures that document CSO monitoring and control.

D. Operation and Maintenance

Provide a detailed description of the personnel, procedures, schedules, and logs for maintenance and operation of existing and proposed facilities. At a minimum, include the following:

1. Information about operation and maintenance of the Collection System, including but not limited to: (i) employed crews, positions, and responsibilities; (ii) operating procedures; (iii) predictive/preventative procedures; (iv) corrective/emergency procedures; and (v) equipment available for maintenance;
2. Information about operation and maintenance of the WWTP during wet weather, including but not limited to: (i) employed crews, positions, and responsibilities; (ii) predictive/preventative procedures; and (iii) corrective/emergency procedures;
3. Information about systems and methods used to monitor CSOs, including but not limited to: (i) description of monitoring systems and equipment; (ii) predictive/preventative procedures; (iii) corrective/emergency procedures;
4. Information about operation and maintenance record procedures, including but not limited to: (i) field inspections; (ii) service requests; (iii) repairs;
5. Examples of current maintenance checklists/inspection sheets, including but not limited to checklists or inspection sheets during the inspections of: (i) CSO Outfalls/Regulators; (ii) Pump Stations; (iii) WWTP equipment; (iv) Service work cards; and (iv) any other inspection sheets;
6. Inventory of equipment and parts to control CSOs, including: (i) Collection System; (ii) WWTP; (iii) maintenance equipment including, but not limited to, vacuum trucks and street sweepers; and (iv) critical spare parts;
7. Maintenance schedule.

E. CSO Operational Control Strategy.

Provide a detailed description of the steps taken to control CSOs, including the implementation of the Nine Minimum Controls. At a minimum, include the following:

1. Source controls;
2. Collection System controls;
3. Treatment controls;
4. Wet weather standard operating procedures (SOPs) for CSO control including, but not limited to SOPs for throttling the influent gate valves;
5. Implementation of Nine Minimum Controls, including: (i) proper operation and regular maintenance; (ii) maximum use of the Collection System for storage; (iii) review/modification of pretreatment requirements; (iv) maximization of flow to the WWTP for treatment (include a summary of results of the Stress Test); (v) elimination of CSOs during dry weather; (vi) control of solids and floatable materials in CSOs; (vii) pollution prevention programs; (viii) public notification; and (ix) monitoring (including precipitation measurements, flow measurements, overflow sampling, river levels, in-stream sampling program).

F. Schedule of Future Activities

Provide a detailed description and schedule of capital improvements, modifications, replacements, upgrades, construction of future facilities, and staff or organizational changes that pertain to controlling CSOs and properly maintaining WWTP and Collection System.

**Appendix 2 to Consent Decree among the United States of America, State of Indiana,
the City of Gary, Indiana, and Gary Sanitary District**
(N. D. Ind.)

Stress Test Requirements

I. Execution of Stress Test

- a. As part of the Stress Test, Defendants shall evaluate available plant operating data, utilizing the most representative data, to develop summary statistics for critical operating parameters.
- b. Defendants shall use the summary statistics to determine details of the Stress Test protocol.
- c. Defendants shall follow, as part of the Stress Test, quality assurance protocols that are consistent with EPA Guidance for Quality Assurance Project Plans, EPA QA/G-5, EPA 240-R-02-009 (Dec. 2002).

II. Field monitoring

- a. Prior to conducting the field monitoring, Defendants shall address all correctable conditions (i.e., uneven weirs, leaky weir plates, uneven flow distributions, etc.) and shall ensure that all equipment in the units tested is in good operating condition.
- b. Defendants shall collect representative field monitoring (flow and sampling) data for an adequate range of flows to allow calibration of the model for peak flow conditions.
- c. Defendants shall collect field monitoring data and model the performance of its final clarifiers without polymer addition (polymer is currently being added to reduce effluent solids while the filters are undergoing rehabilitation and upgrade).

III. Modeling

- a. If Defendants utilize a WWTP process model, Defendants shall utilize a widely accepted WWTP process model such as BioWin (EnviroSim Associates Ltd.), and shall configure and calibrate the model in accordance with the software provider's user manuals and current good engineering practice.
- b. Defendants shall adequately consider the aeration system's current deficiencies in the calibration and subsequent use of the WWTP process model.
- c. Defendants shall evaluate and compare the maximum capacity of sewers that convey flow to the WWTP to the WWTP's overall capacity and the capacities of the individual treatment units.

**Appendix 3 to Consent Decree among the United States of America, State of Indiana,
the City of Gary, Indiana, and Gary Sanitary District**
(N. D. Ind.)

Long-Term Control Plan (“LTCP”) Development Requirements

At a minimum, the development of the LTCP shall include the following steps:

I. CSO Characterization

A. The Defendants shall complete the system characterization of the POTW, CSO Discharges, and the WWTP Service Area¹ in accordance with the CSO Control Policy and CSO Guidance.

B. As part of the system characterization, the Defendants shall include the identification of Sensitive Areas to which its CSOs discharge and shall consider the following:

1. “Sensitive Areas, as determined by the NPDES authority in coordination with State and Federal Agencies, as appropriate, include, designated Outstanding National Resource Waters, National Marine Sanctuaries, waters with threatened or endangered species and their habitat, waters with primary contact recreation, public drinking water intakes or their designated protection areas, and shellfish beds;” and
2. future and existing primary contact recreation activities on the Receiving Waters and Lake Michigan.

C. The Defendants shall submit a final report (“Final CSO Characterization Report”) documenting the results of system characterization, completed pursuant to Section I.A above, to Plaintiffs pursuant to Section XVIII (Notices and Submissions) of this Consent Decree. Plaintiffs will review and approve the Defendants’ submitted Final CSO Characterization Report pursuant to Section XIX (Plaintiffs Approval of Plans and Other Submissions) of this Consent Decree.

D. The Defendants shall submit the Final CSO Characterization Report in accordance with the schedule defined in Attachment 1 to this Appendix.

¹ “Service Area” means the geographic area within which any wastewater (including domestic, commercial, and industrial sewage), that may be combined with storm water, is conveyed to the WWTP for treatment. The Service Area includes the following: (1) the geographic area of retail (directly billed) customers from which wastewater is conveyed to the WWTP for treatment; (2) the geographic area of wholesale customers (“Satellites”) from which wastewater is conveyed to the WWTP for treatment; and (3) the geographic area of any Satellites of GSD’s Satellites from which wastewater is conveyed ultimately to the WWTP for treatment.

- E. The Final CSO Characterization Report shall include, at a minimum:
1. description of GSD's Collection System and Service Area this description shall include, at a minimum:
 - a. identification of GSD's ownership, operation, and maintenance responsibilities, and any services provided (*e.g.*, conveyance, treatment) for all of the entities that comprise GSD's Service Area;
 - b. area (in acres) of Service Area; area shall be identified in total and shall be broken down by each entity that is included in GSD's Service Area (*i.e.*, area of retail customers; area of individual Satellites; area of Satellites of Satellites, and area of any other entities in a geographic area that is not included within the area of aforementioned Service Area entities, but that receives wastewater treatment services from GSD;
 - c. percentage, by area (identified pursuant to Section I.E.1.b of this Appendix), that each of the entities that comprise GSD's Service Area are served by the Combined Sewer System, Sanitary Sewer System, and Storm Water Sewer System. Defendants shall contact in writing the entities that comprise GSD's Service Area to obtain required information. If Defendants are not able to obtain certain information for all entities within the GSD Service Area, Defendants shall include the following in the CSO Characterization Report: 1) delineation and identification of all areas on the map(s) for which GSD was not able to obtain the relevant information; 2) identification of information that GSD was not able to obtain; and 3) documentation of Defendants' attempts to obtain relevant information;
 - d. length (in feet) of gravity sewers and force mains in GSD's Collection System and, if known, in each of the entities in the GSD Service Area;
 - e. tabular summary of Pump Station characteristics (*e.g.*, number, type and capacity of pumps, etc.) for each Pump Station that GSD owns, operates, and/or maintains in GSD's Service Area and, if known, Pump Station characteristics of each Pump Station within GSD's Service Area;
 - f. tabular summary of current CSO regulator characteristics, including structure name/number, associated CSO Outfall, structure type, current weir length and height, and identification of any weir adjustments that have been made since the submission of the 2011 Collection System Model;

- g. map(s) illustrating the major components (CSO Outfalls, regulators, interceptors, major trunk sewers, Pump Stations, force mains, and the WWTP) within GSD's Service Area; map(s) shall include the delineation of boundaries of areas served by the Combined Sewer System, Sanitary Sewer System, and Storm Water Sewer System. Defendants shall contact in writing the entities that comprise GSD's Service Area to obtain information on major components that Defendants are missing. If Defendants are unable to obtain certain information for all entities within the GSD Service Area, Defendants shall include the following in the CSO Characterization Report: 1) delineation and identification of all areas on the map(s) for which GSD was not able to obtain the relevant information; 2) identification of information that GSD was not able to obtain; and 3) documentation of Defendants' attempts to obtain relevant information;
- h. map(s) identifying all geographic locations where GSD Service Area entities (excluding retail customers) connect to GSD's Collection System;
- i. map(s) accurately illustrating the boundaries of GSD's entire Service Area and clear delineation of the boundaries of each entity that comprises GSD's Service Area;
- j. Service Area population, identified as a total and by each entity that comprises GSD's Service Area for each of the following years: 1960, 1970, 1980, 1990, 2000, and 2010. Defendants may estimate areas that are sewered versus non-sewered for the various entities that comprise GSD's Service Area if that information is not available. Defendants must also include the basis for any estimates provided and document Defendants' attempts at obtaining the information;
- k. general discussion of the GSD's POTW operational characteristics and GSD's operating practices under dry weather conditions;
- l. general discussion of the GSD's POTW operational characteristics and GSD's operating practices under wet weather conditions (specifically addressing the operation of all gate structures);
- m. discussion of POTW system deficiencies that are known or suspected to impact CSO activation frequency and/or CSO Discharge volumes, including bottlenecks, sediment accumulations, river intrusion, and inadequate Pump Station capacities;
- n. tabular summaries of the past 5 years of actual flow statistics, including annual average flows to the WWTP and flows from each of the

- e. summaries of available water quality data, comparisons of that data to applicable water quality standards, and recent 305b designated use attainment for each Receiving Water and any downstream waters, including Lake Michigan;
 - f. identification of all current POCs from both point and non-point sources within the Little Calumet and Grand Calumet Rivers watersheds; provide the basis for choosing the POCs and include all other relevant information, including but not limited to maps of point and non-point sources; and
 - g. results of any evaluation GSD undertook to consider future change in point and non-point source POCs identified in the Little Calumet and Grand Calumet Rivers.
3. documentation of an updated evaluation of Sensitive Areas within the GSD Service Area in accordance with Section I.B. of this Appendix that shall include, at a minimum:
- a. documentation of GSD's efforts and summaries of the results of those efforts to update its information regarding the presence of each type of Sensitive Area within its Service Area and in and/or adjacent to Receiving Waters, including correspondence with appropriate federal, state, and local agencies;
 - b. documentation of GSD's efforts to identify existing and planned future recreational activities in and/or adjacent to the Receiving Waters and any downstream waters, including Lake Michigan;
 - c. identification of all Sensitive Areas, and an analysis of whether GSD's CSO Discharges reach and/or impact those Sensitive Areas; such analysis shall utilize GSD's 2011 Little Calumet and Grand Calumet Receiving Water models and shall be clearly documented; and
 - d. map(s) identifying all Sensitive Areas evaluated by GSD including those that GSD considered but determined are not effected by GSD's CSO Discharges; the map(s) shall represent all Sensitive Areas using appropriate georeferenced symbols; for example, all singular locations shall be represented by points at the location; all areas shall be represented by polygons such that the polygon area represents the on-the-ground area when applying the map scale and the on-the-ground locations when compared to other map features; and all linear features shall be represented by lines such that the line length represents the on-the-ground length when applying the map scale and the on-the-ground location when compared to other map features.

4. identification and description of CSO Discharge characteristics that shall include, at a minimum:
 - a. tabular summary of data describing *E. coli*, fecal coliform, biological oxygen demand, total suspended solids concentrations, event mean concentrations (EMCs) developed for POCs in GSD's CSO Discharges;
 - b. tabular summary of data describing actual CSO Discharge activation frequencies and volumes identified by CSO Outfall for the previous 5 years:
 - c. tabular summary of typical year model predicted CSO Discharge activation frequencies and volumes, by CSO Outfall; and
 - d. detailed examination of and explanation for any discrepancies between actual CSO Discharges (in terms of activation frequency and volume, at a minimum) and model predicted CSO Discharges (in terms of activation frequency and volume, at a minimum); include the identification of the likely cause(s) of such discrepancies and the identification of benefits and drawbacks of relying on model predicted results.

II. Implementation of Participation Plan

Defendants shall implement the Participation Plan developed pursuant to Paragraph 20 of this Consent Decree throughout the LTCP development process.

III. Alternatives Analysis

A. In identifying, assessing, and selecting CSO Control Measure alternatives for its LTCP, Defendants shall give the highest priority to controlling CSO Discharges to Sensitive Areas (as identified in the approved CSO Characterization Report). Defendants' LTCP shall prohibit new or increased overflows to Sensitive Areas. Defendants' LTCP shall, where physically possible and economically achievable, and where doing so does not provide less environmental benefits than additional treatment, eliminate or relocate CSO Outfalls that discharge to Sensitive Areas. Where elimination or relocation of a CSO Outfall to a Sensitive Area is not physically possible and economically achievable, or would provide less environmental benefit than additional treatment, Defendants' LTCP shall provide for treatment as necessary to meet water quality standards for full protection of all designated and existing uses.

B. Defendants' shall conduct a screening level analysis of the alternatives, including a description and evaluation of a wide range of alternatives for eliminating or reducing and treating CSO Discharges during wet weather, and the assessment of the costs, effectiveness, feasibility, and water quality benefits of each of the alternatives. The range of the alternatives shall include, at a minimum:

1. taking no action (other than any improvements required by Section VII of this Decree (General Compliance Requirements));
2. complete separation of sewer pipes that carry storm water from the sewer pipes that carry sanitary wastewater that would result in the elimination of the CSS;
3. separation of specific portions of the CSS into sets of pipes that would separately collect and convey storm water and sanitary wastewater;
4. construction of storage basins or tunnels at locations throughout the Collection System that would store wastewater before it is conveyed to the WWTP;
5. construction of additional facilities (such as high rate treatment or ballasted flocculation facilities) for providing primary treatment or advanced primary treatment to CSO Discharges;
6. construction of additional facilities for providing disinfection and dechlorination of CSO Discharges (disinfection may only be employed in concert with adequate treatment such that effective disinfection will be provided);
7. construction of facilities for removing floatables from CSO Discharges;
8. construction of relief sewers;
9. relocation of CSO Outfalls;
10. use of real time controls;
11. implementation of pretreatment measures to reduce flows and or pollutants discharged into the Collection System from Industrial Users;
12. construction and/or implementation of Green Infrastructure (“GI”) measures;
13. construction and/or implementation of combinations of these alternatives; and
14. modification of the WWTP.

C. Defendants’ analysis of the alternatives remaining after the screening step described in Section III.B above shall include, at a minimum, an assessment of the impacts that each alternative, or mix of alternatives, under consideration has on the in stream water quality of the Receiving Waters (including an evaluation of the reduction in POCs identified in the CSO Characterization Report that are discharged to the Receiving Waters).

D. Defendants' analysis of the alternatives remaining after the screening step described in Section III.B above shall include an evaluation of the impact that each alternative or mix of alternatives will have on the Maximum Sustained Treatable Flow and Maximum Peak Treatable Flow to the WWTP for a range of storm events of varying durations and return frequencies during the Typical Year.

E. Defendants' analysis of the alternatives remaining after the screening step described in Section III.B above shall include the identification and selection of additional remedial measures that are necessary to insure that the CSO Discharges comply with the requirements of the 2012 NPDES Permit and any NPDES successor permits, including, but not limited to, any specific or general water quality or technology-based effluent limitations applicable to the CSO Discharges, the CWA, and the CSO Control Policy.

F. Defendants' analysis of the alternatives remaining after the screening step described in Section III.B above shall consider a reasonable range of alternative sizes (*i.e.*, sized to achieve 0, 2, 4, 6, 8 and 10 CSO Discharges in a Typical Year), and reasonable mixes of alternative technologies, including (where appropriate) alternatives that address multiple CSOs.

G. Defendants' analysis of the alternatives remaining after the screening step described in Section III.B above shall include an assessment of the frequency and volume of CSO discharge from each CSO Outfall during the Typical Year for each alternative or mix of alternatives considered.

H. Defendants' analysis of any alternatives, remaining after the screening step described in Section III.B above, that incorporate GI measures shall include, at a minimum:

1. description of prioritization criteria and procedures used to select locations and specifications for GI measures that are evaluated to eliminate or reduce CSO Discharges; the prioritization scheme for selecting locations and specifications shall include, but is not limited to:
 - a. GI measures that can remove storm water flows from the Collection System, thereby reducing the number, duration, and volume of CSO Discharges;
 - b. GI measures that will help reduce flooding and basement backups;
 - c. GI measures whereby land use will readily accommodate permanent installation and maintenance of the GI measures, such as areas where vacant parcels can be retrofitted into "storm water parks," which would store and infiltrate or reuse rainfall and runoff and also be an amenity for local residents; and
 - d. GI measures that can improve socioeconomic conditions in the POTW Service Area, with the highest priority given to neighborhoods where the need for improvement is greatest.

2. evaluation of potential obstacles in local codes and ordinances that may be encountered by the implementation of GI measures;
3. identification of opportunities to partner with State, local, and/or federal entities in the implementation of GI measures, such as housing authorities and transportation entities; and
4. identification and qualification of the co-benefits of all GI measures analyzed and evaluated.

I. Defendants shall provide to EPA and IDEM, upon request, any digital geospatial data that are used to evaluate alternatives and/or that are used to identify the location of POTW features and/or the location of features outside of the POTW, but inclusive of contract communities.

IV. Cost/Performance Analysis

A. Defendants shall perform a cost/performance analysis as part of the Alternatives Analysis (as described in Section III of this Appendix) and in accordance with the CSO Control Policy. The analysis shall include, at a minimum:

1. Knee of the Curve cost-performance analyses of the range of options under consideration that would allow for the comparison of the costs per unit of measure (in mass) of pollutants removed from the discharge and volume of CSOs eliminated or controlled, for each of the alternatives that is being considered;
2. evaluation of the effectiveness of each alternative (including, where appropriate, a range of sizes of a single alternative) in reducing the volume and number of untreated CSO Discharges to a range of numbers of overflows per each CSO Outfall per Typical Year (such as 0, 2, 4, 6, 8, and 10 overflows per CSO Outfall per year); and
3. evaluation of the “project costs,” as that term is described on pages 3-49 through 3-51 of the EPA Combined Sewer Overflows Guidance for Long-Term Control Plan (EPA 832-B-95-002), for each alternative, or mix of alternatives, that the Defendants have evaluated. The determination of project costs shall be carried out using a consistent and identified year dollar (i.e., “costs are provided in January 2012 dollars”) and shall include, at a minimum:
 - a. the total project costs for each alternative or mix of alternatives, and a breakdown of the capital costs, annual operation and maintenance (“O&M”) costs, and life-cycle costs that were used to calculate the total project costs for each alternative or mix of alternatives; and

- b. the project costs for each separate component of each alternative or mix of alternatives, and a breakdown of the capital costs, annual O&M costs, and life-cycle costs that were used to calculate the project costs for each separate component of each alternative or mix of alternatives. The terms “capital costs,” “annual O & M costs,” and “life cycle costs” are described on pages 3-49 through 3-51 of the EPA Combined Sewer Overflows Guidance for Long-Term Control Plan (EPA 832-B-95-002).

V. Financial Capability Analysis

A. Defendants shall conduct a Financial Capability Analysis (“FCA”) to evaluate the Defendants’ ability to fund and schedule the implementation of the selected CSO Control Measure alternative or combination of alternatives. The Defendants shall conduct the FCA consistent with the CSO Financial Guidance and based upon the financial characteristics of the entire GSD wastewater Service Area.

1. The FCA shall include the identification and analysis of the following (including the source of data):
 - a. current annual operations and maintenance expenses;
 - b. current annual revenue bond debt service;
 - c. total projected CSO costs (current dollars);
 - d. estimated annual operations and maintenance expenses;
 - e. interest rate for debt service;
 - f. bond term for debt service;
 - g. residential factor;
 - h. total number of households in Service Area;
 - i. adjusted median household income (MHI) (weighted average of wastewater Service Area, adjusted for inflation);
 - j. national median household income;
 - k. bond rating and date of issue;
 - l. debt of overlapping entities;
 - m. full market value of property;
 - n. local unemployment rate;
 - o. national unemployment rate;
 - p. property tax revenues;
 - q. property tax levied;
 - r. previous, current, and projected residential, commercial, and industrial user fees and rate structure;
 - s. grant and loan eligibility and availability; and
 - t. other viable funding mechanisms and sources of financing.
2. The FCA shall produce the following results using the information identified in Section V.A.1 above:
 - a. total current wastewater costs;

- b. annual debt service on CSO projects to be funded;
- c. total projected CSO costs;
- d. total current and projected wastewater and CSO annual costs;
- e. residential share of wastewater and CSO annual costs;
- f. annual wastewater cost per household (CPH);
- g. CPH as a percent of adjusted MHI;
- h. overall net debt as a percent of full market property value;
- i. wastewater Service Area unemployment compared to national employment;
- j. adjusted MHI compared to adjusted national MHI;
- k. property tax revenues as a percent of full market property value; and
- l. property tax collection rate.

B. Defendants may provide for Plaintiffs' consideration any additional relevant information pertaining to Defendants' unique circumstances to supplement the FCA conducted according to Section V.A above.

VI. Alternative(s) Selection, Criteria Identification, and Implementation

As part of the LTCP, Defendants shall submit to Plaintiffs for Plaintiffs' approval a Recommended Plan as part of the LTCP pursuant to Paragraph 21 of this Consent Decree. The Recommended Plan shall include the results of the following LTCP development steps:

A. Selection of CSO Control Measure Alternative(s). Defendants shall select the appropriate CSO Control Measure alternative, or combination of alternatives, based on the information that the Defendants have gathered and developed pursuant to Sections I-V of this Appendix. The selected alternative or combination of alternatives will eliminate, reduce, and/or treat CSO Discharges in compliance with the CSO policy, the 2012 NPDES Permit, and any successor NPDES Permit. The selection of the alternative or combination of alternatives will be based on the considered information, such as the costs, effectiveness, and water quality benefits of such alternative(s). Selection of GI measures as a CSO Control Measure alternatives, or part of a combination of alternatives, shall include evaluation and documentation of long-term institutional mechanisms required to ensure that the Defendants will be able to preserve and maintain constructed GI measures, retain access and sufficient control over the lands used for the constructed GI measures, and that ensure that future site or land use changes do not result in the loss of the runoff reduction benefits of constructed GI measures. The engineering design of any GI measures selected as CSO Control Measure alternatives, or part of a combination of alternatives, shall include detailed documentation of Defendants' GI analyses, including detailed modeling results, engineering calculations, summaries of underlying assumptions and the basis for those assumptions, and detailed summaries of all data used. The documentation shall also include detailed analysis and discussion of the long-term effectiveness and expected performance of any or all implemented GI measures.

B. Identification of Design and Performance Criteria. Defendants shall create a table identifying the design criteria and performance criteria for each proposed CSO Control Measure alternative or combination of alternatives. An example table ("CSO Control Measures, Design

Criteria, Performance Criteria and Critical Milestones”) is provided as Attachment 2 to this Appendix.

C. Development of Implementation Schedule. Defendants shall develop a schedule for the design, construction, and implementation of all selected CSO Control Measures (“Implementation Schedule”) such that the design, construction, and implementation of selected CSO Control Measures occurs as expeditiously as possible, and in no event later than 25 years after the Effective Date. If it is not possible for Defendants to design, construct, and implement all CSO Control Measures simultaneously, the schedule shall include a phased schedule based on the relative importance of each CSO Control Measure. Highest priority shall be given to eliminating or reducing and treating CSO Discharges to Sensitive Areas and to those CSO Control Measures that will provide the greatest reduction in discharge of POCs. Defendants shall specify in the Implementation Schedule critical milestones for the implementation of each CSO Control Measure, including dates for: (1) commencement of design; (2) commencement of construction; and (3) achievement of successful full operation of all CSO Control Measures. The requirement to complete the implementation of all CSO Control Measures within 25 years of the Effective Date may be extended, subject to Section XXIII (Modifications), considering additional information arising during development of the LTCP.

VII. Post Construction Compliance Monitoring

A. Defendants shall develop a plan for post construction compliance monitoring (“PCCM Plan”) that shall result in the assessment of the effectiveness of the selected and completed CSO Control Measures, and validate compliance with water quality standards. The PCCM Plan shall include and PCCM activities shall follow a Quality Assurance Project Plan (“QAPP”), and documentation and verification of the steps that will be taken to ascertain the effectiveness of Defendants’ CSO Control Measures and to assess and validate compliance with the technology-based and water quality-based requirements of the CWA, State laws and regulations, and the applicable provisions of its NPDES Permit.

B. The PCCM Plan shall include and PCCM activities shall be comprised of monitoring, modeling, and post construction water quality assessment activities and shall be fully documented in the following reports submitted to Plaintiffs pursuant to Section XVIII (Notices and Submissions) of this Consent Decree and in accordance with the LTCP Development Schedule set forth in Attachment 1 to Appendix 3 of this Decree for Plaintiffs’ approval according to Section XIX (Plaintiffs’ Approval of Plans and Other Submissions) of this Consent Decree:

1. Initial Hydraulic Model Validation Report;
2. Hydraulic Model Recalibration and Validation Report (if necessary);
3. Water Quality Standards Assessment Report Related to Post Construction Compliance Monitoring;
4. Final Post Construction Compliance Monitoring Report;
5. Supplemental CSO Control Plan and Schedule to Address Performance Criteria (if necessary); and

6. Supplemental CSO Control Plan and Schedule to Address Water Quality Standards (if necessary).

C. Defendants shall perform in accordance with the approved PCCM Plan, as part of PCCM, the following activities that will be documented in reports identified in Section VII.B. of this Appendix:

1. Initial Data Collection after LTCP Implementation

Upon full implementation of all of the CSO Control Measures in the approved Recommended Plan, Defendants must determine whether its CSO Control Measures are performing as required. Defendants shall collect precipitation data and CSO activation data for a period of 12 months. Such data shall be collected, reviewed, edited, and utilized in accordance with the QAPP developed as part of the PCCM and included in the PCCM Plan and in accordance with Section VII.B of this Appendix.

2. Validation of Hydraulic Model – Initial Effort

- a. Prior to undertaking the analysis described below, Defendants shall update their existing hydraulic model to reflect the actual approved CSO Control Measures as built, as well as any other system changes and improvements implemented since the development of the LTCP and approval of the Recommended Plan.
- b. Defendants shall utilize the rainfall and CSO Discharge activation data collected as described above to validate the current state of calibration of its hydraulic model, by carrying out a continuous simulation of the entire post construction monitoring period.
- c. If the continuous simulation produces at least the same number of CSO Discharges at the respective CSO Outfalls as observed at each of the actual CSO Outfalls as documented by field monitoring activities (and at similar times and for similar time durations) then the hydraulic model shall be considered to be adequately calibrated and validated.

3. Initial Hydraulic Model Validation Report (if successfully calibrated and validated)

If Defendants determines the hydraulic model has been calibrated and validated in accordance with Section VII.C.2, above, Defendants shall submit to Plaintiffs for Plaintiffs' approval in accordance with Section VII.B of this Appendix, an *Initial Hydraulic Model Validation Report* documenting this calibration and validation effort and results. Following Plaintiffs approval, Defendants shall proceed to Section VII.C.7 of this Appendix, below.

4. Where Initial Continuous Simulation Does Not Demonstrate a Validated Hydraulic Model

If the continuous simulation does not produce at least the same number of CSO Discharges (at similar times and for similar time durations) at each of the CSO Outfalls as was documented by the field monitoring activities, then Defendants shall recalibrate and validate the hydraulic model. The extent of recalibration necessary will depend on the severity of the deviation between the modeled activations and those monitored during the initial PCCM period.

5. Hydraulic Model Recalibration (where recalibration is required)

Prior to undertaking the hydraulic model recalibration effort, Defendants shall submit to Plaintiffs for Plaintiffs' approval in accordance with Section VII.B of this Appendix, an *Initial Hydraulic Model Validation Report* documenting their monitoring and model validation efforts. This report shall also describe in detail the Defendants' proposed approach to model recalibration, including a description of the proposed flow and precipitation monitoring if required. The extent of recalibration necessary will depend on the severity of the deviation of the modeled activation frequency and the monitored values. If Defendants determine that a major or minor failure to validate the hydraulic model has occurred, and if circumstances occur that prevent recalibration during the PCCM (such as a lack of precipitation events), Defendants may include in its *Initial Hydraulic Model Valuation Report* a request to extend the deadline, but the proposed extended deadline shall be as expeditious as possible.

a. Minor Failure to Validate Hydraulic Model

In the case of a minor failure to validate the hydraulic model in the initial simulation, recalibration using the previously collected rainfall and activation data may allow for adequate recalibration of the hydraulic model. In such cases, recalibration will take place with a minimum of three storms collected during the PCCM period. Validation will take place by re-running the entire PCCM period based on the criteria in Section VII.C.2 in this Appendix.

b. Major Failure to Validate Hydraulic Model

In the case of a major failure to validate, the Defendants shall collect additional precipitation, flow, and activation data so as to allow a technically sound recalibration and validation of all portions of the hydraulic model that failed the initial calibration/validation effort. The recalibration will be done using a minimum of three appropriate rainfall events from the data collected as described in the *Initial Hydraulic Model Validation Report*. The model will then be

calibrated and validated by re-running the data from this new PCCM period based on the criteria in Section VII.C.2 in this Appendix.

6. Hydraulic Model Recalibration and Validation Report (where recalibration of model was necessary)

If Defendants determine that the hydraulic model has been adequately calibrated and validated based on its recalibration efforts, the Defendants shall submit to Plaintiffs for Plaintiffs' approval in accordance with Section VII.B of this Appendix, a *Hydraulic Model Recalibration and Validation Report* documenting this recalibration and validation. Following Plaintiffs' approval, Defendants shall proceed to Section VII.C.7 of this Appendix, below.

7. Use of Calibrated Model to Evaluate Post Construction Performance

a. Defendants shall next use the validated or recalibrated model to test post construction performance as set forth below.

i. Testing CSO Control Measure(s) performance relative to the established performance criteria set forth in the approved Recommended Plan shall be accomplished by using the validated hydraulic model to simulate system hydraulic performance (such as number of CSO Discharges) for the pre-established Typical Year. If, in the Typical Year continuous run, the predicted performance of the WWTP and the CSO Discharges meets or exceeds the performance criteria identified in the approved Recommended Plan, then Defendants' CSO Control Measures shall be considered to have met the specified performance criteria.

ii. If the Typical Year continuous simulation results do not meet the listed performance criteria, then Defendants' CSO Control Measures in the approved Recommended Plan shall be considered not to have met the specified performance criteria.

8. Water Quality Standards Assessment

a. In addition to the evaluation of the hydraulic performance criteria identified in the approved Recommended Plan, Defendants shall collect information on the impact of remaining CSO Discharges on achievement of water quality standards and the current NPDES permit requirements.

b. The sampling data and surface water quality model should also evaluate the extent to which any remaining CSO Discharges would impact achievement of water quality criteria if background sources of pollution were eliminated and reduced. A goal of collecting sampling data is to determine the effects of the remaining CSO Discharges on receiving water

quality and achievement of prevailing water quality standards. For example, are the CSO Discharges causing exceedances of water quality criteria? Or, to the extent that criteria are already being exceeded due to upstream sources, are the remaining CSO Discharges increasing the magnitude of exceedances of water quality criteria? Whether the water quality standards are achieved shall be decided on a case by case basis in consultation with EPA and IDEM.

- c. At the conclusion of this post construction water quality assessment, Defendants shall submit to Plaintiffs for Plaintiffs approval in accordance with Section VII.B of this Appendix, a *Water Quality Standards Assessment Report Related to Post Construction Compliance Monitoring*, setting forth its conclusions whether Defendants are meeting the water quality and NPDES permit-based requirements of the CSO Discharges.

9. Final Post Construction Monitoring Report

Defendants shall document in detail all of their post construction compliance monitoring efforts, conducted by Defendants and as described in Section VII in this Appendix, in a *Final Post Construction Compliance Monitoring Report*, which Defendants shall submit to Plaintiffs for Plaintiffs' approval in accordance with Section VII.B of this Appendix.

10. Submission of Plan to Address Failure to Meet Performance Criteria and/or Failure to Meet Water Quality Standards

- a. If Defendants' CSO Control Measures in the approved Recommended Plan have been determined not to have met the performance criteria specified in the approved Recommended Plan, Defendants shall submit to Plaintiffs for Plaintiffs' approval in accordance with Section VII.B of this Appendix, a *Supplemental CSO Control Plan and Schedule to Address Performance Criteria* for the evaluation and implementation of additional CSO Control Measures necessary to allow Defendants to meet the hydraulic performance criteria (such as number of CSO Discharges) established in the approved Recommended Plan. This *Supplemental CSO Control Plan and Schedule* will include technical information as is necessary to adequately demonstrate that the proposed additional CSO Control Measures will achieve the approved Recommended Plan performance criteria.
- b. If the water quality monitoring shows continued deleterious effects in-stream as a result of the Defendant's remaining CSO Discharges, Defendants shall submit to Plaintiffs for Plaintiffs' approval in accordance with Section VII.B of this Appendix, a *Supplemental CSO Control Plan and Schedule to Address Water Quality Standards*. Because in-stream water quality may be a more complex issue than simply meeting agreed

upon end of pipe performance standards, it is strongly advised that the Defendants consult with EPA and IDEM prior to preparing such a supplemental plan.

Attachment 1 to Appendix 3 to Consent Decree among the United States of America, State of Indiana, the City of Gary, Indiana, and Gary Sanitary District
(N. D. Ind.)

LONG-TERM CONTROL PLAN (LTCP) DEVELOPMENT SCHEDULE

	DELIVERABLE	SUBMIT FOR REVIEW AND COMMENT	SUBMIT FOR REVIEW AND APPROVAL
1	CSO Characterization Report	<u>Priority Responses to Agencies' Comments:</u> Ongoing	<u>Final Version:</u> Within 120 Days of Effective Date
2	Technology / Alternatives Screening <i>(described as screening level analysis in Appendix 3, Paragraph III.B)</i>	<u>Final Version:</u> Will be submitted as part of the Draft and Final Version of Alternatives Analysis and Recommended Plan Evaluation	N/A
3	Alternatives Analysis and Recommended Plan Evaluation <i>(including Cost/Performance Analysis)</i>	<u>Draft:</u> Within 150 Days of Plaintiffs' approval of Final Version of CSO Characterization Report <u>Final Version:</u> Will be incorporated into Draft LTCP document	N/A
4	FCA <i>(incorporating Recommended Plan CSO Control Measures)</i>	<u>Draft:</u> Will be submitted with the Draft Alternatives Analysis and Recommended Plan Evaluation <u>Final Version:</u> Will be incorporated into Draft LTCP document	N/A
6	LTCP <i>(Description of Defendants' required and completed)</i>	<u>Draft:</u> Within 90 Days of receipt of notice from Plaintiffs that	N/A

	DELIVERABLE	SUBMIT FOR REVIEW AND COMMENT	SUBMIT FOR REVIEW AND APPROVAL
	<i>LTCP development steps + Recommended Plan + PCCM Plan)</i>	Plaintiffs do not have any further comments on the Draft Alternatives Analysis and Recommended Plan Evaluation, whichever is later	
		N/A	<u>Final Version:</u> Within 60 days of receipt of notice from Plaintiffs that Plaintiffs do not have any further comments on the Draft LTCP, whichever is later.
7	PCCM - Initial Hydraulic Model Validation Report	N/A	Within 15 months of construction and achievement of successful full operation of all CSO Control Measures set forth in approved Recommended Plan
8	PCCM - Hydraulic Model Recalibration and Validation Report (<i>if necessary for a minor or major failure to validate hydraulic model</i>)	N/A	Within 24 months of construction and achievement of successful full operation of all CSO Control Measures set forth in approved Recommended Plan, unless a later date is requested by the Defendants, pursuant to Appendix 3, Section VII.C.5, and has been approved by Plaintiffs
9	PCCM – Water Quality Standards Assessment Report Related to Post Construction Compliance Monitoring	N/A	Within 90 Days of Plaintiffs’ approval of Initial Hydraulic Model Validation Report, or Hydraulic Model Recalibration and Validation Report (if necessary)
10	PCCM - Final Post Construction Compliance Monitoring Report	N/A	Within 90 days of completion of PCCM

DELIVERABLE		SUBMIT FOR REVIEW AND COMMENT	SUBMIT FOR REVIEW AND APPROVAL
11	PCCM – Supplemental CSO Control Plan and Schedule to Address Performance Criteria (<i>if necessary</i>)	N/A	Within 150 days of receipt of notice from EPA or IDEM that the performance criteria have not been met
12	PCCM – Supplemental CSO Control Plan and Schedule to Address Water Quality Standards (<i>if necessary</i>)	N/A	Within 150 days of receipt of notice from EPA or IDEM that the water quality standards have not been met

**Attachment 2 to Appendix 3
CSO Control Measures, Design Criteria, Performance Criteria and Critical Milestones**

PROJECT #	CSO CONTROL MEASURE	DESCRIPTION	CSO OUTFALLS CONTROLLED	DESIGN CRITERIA	PERFORMANCE CRITERIA (TYPICAL YEAR)	CRITICAL MILESTONES
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						

Gary Sanitary District

USDC IN/ND case 2:16-cv-00512 (document 2-5 filed 12/12/16 page 1 of 40
(N.D. Ind.)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

APR 07 2009

REPLY TO THE ATTENTION OF:
L-8J

Certified Mail: 7001 0320 0006 1453 9797
Return Receipt Requested

Honorable Rudolph Clay
Mayor of Gary
401 Broadway Street
Gary, Indiana 46402

Certified Mail: 7001 0320 0006 1453 9803
Return Receipt Requested

Ms. Luci Horton
Director
Gary Sanitary District
3600 West 3rd Avenue
Gary, Indiana 46406

Subject: EPA's Final Decision for Proposed Remedy Under
Modified Consent Decree and Judgment – 2002
Gary Ralston Street Lagoon Project

Dear Mayor Clay and Ms. Horton:

This is to advise you that under the terms of the 2002 Modified Consent Decree and Judgment, EPA has made a Final Decision regarding the disposal/clean-up alternative for the Ralston Street Lagoon (RSL). EPA has made this selection based on the Administrative Record and public comments received for the project.

A copy of the Final Decision is enclosed. The Final Decision incorporates EPA's Response to Comments, the Administrative Record Index, the EPA Proposed Plan document, and an EPA-approved Implementation Schedule. The final remedy selected by EPA is Alternative 8, Filling the Lagoon. This alternative is the same as that specified in the EPA Proposed Plan sent to you on October 28, 2008. EPA has made the determination that Alternative 8 best meets the evaluation criteria described within the Modified Consent Decree and Judgment.

A copy of the Administrative Record is maintained at our offices located at 77 West Jackson Boulevard, Chicago, Illinois, on the 7th floor, and may be viewed during the hours of 8:00 AM to 4:00 PM, Monday through Friday. In addition, a copy is available for public viewing at the Gary Public Library located at 220 West 5th Avenue, in Gary, Indiana.

The disposal/clean-up remedy selected for the RSL, along with all related schedules and other specifications adopted by the EPA in selecting that remedy, shall be treated as part of the Decree and shall be enforceable by the United States under the Decree.

We look forward to working with you to complete this important project. If you have any questions, please contact me, or your staff may feel free to contact Michael Mikulka, of my staff, at 312-886-6760.

Sincerely,



Margaret M. Guerriero
Director
Land and Chemicals Division

Enclosure

cc: Mr. Hamilton Carmouche, Esquire
Legal Counsel for GSD and City of Gary Corporation Counsel

Mr. Richard Comer
President
Gary Sanitary District Board of Commissioners

Ms. Beth Admire, Esquire
Indiana Department of Environmental Management

Mr. Wayne Ault, Esquire
Assistant United States Attorney

Mr. Mark Koller, Esquire
Associate Regional Counsel

FINAL DECISION

Ralston Street Lagoon
Gary Sanitary District
Gary, Indiana
IND 077 001 808

Introduction

This Final Decision is presented by the U.S. Environmental Protection Agency (EPA) for the Ralston Street Lagoon (RSL) site owned and operated by the City of Gary and the Gary Sanitary District (GSD), Gary, Indiana. This Final Decision incorporates EPA's Response to Comments (Attachment 1), Administrative Record Index (Attachment 2), Proposed Plan (Attachment 3) and Implementation Schedule (Attachment 4).

The Final Decision selects the remedy to be implemented by the City of Gary and GSD to address sludge and water contaminated with polychlorinated biphenyls (PCBs) at GSD's Ralston Street Lagoon site consistent with the requirements of the Toxic Substances Control Act (TSCA), its implementing regulations found at 40 C.F.R. Part 761, and the terms of the Modified Consent Decree and Judgment – 2002, entered into in civil actions H78-29 and H86-540. The Final Decision is based on the Administrative Record and public comments received.

Assessment of the Facility

The actions documented in this Final Decision are needed to protect human health and the environment.

Final Remedy

EPA selects the following remedial components as the final remedy to address contaminated sludge and water contained within the Ralston Street Lagoon. The remedy selected was described in the EPA Proposed Plan (Attachment 3) as Alternative 8, Filling the Lagoon. In short, the remedy components are draining off and treating the lagoon surface water, bulking the sludge with solid bulking materials, then solidification/stabilization via mixture with cement until the mixture solidifies and achieves sufficient bearing capacity, then capping with an impermeable cap. Such remedy is hereby approved as a risk-based disposal for PCB remediation wastes found at 40 C.F.R. § 761.61(c). The selected remedy includes the following remedial components:

- Purchase of the adjacent 6 acres of residential property to be converted to use as a contractor's staging area, and for other necessary project activities including water pre-treatment;
- Relocating existing residents;
- Preparation of the access road for remedy construction;
- Demolition of existing homes, and site clearing for construction of the remedy;

- Removal of existing utilities and installation or refurbishment of a sewer line to the GSD wastewater treatment plant (WWTP);
- Stabilizing a portion of the northern berm by installing a permanent sheet pile wall for approximately 2,200 lineal feet;
- Raising and widening the perimeter berm with imported fill to an elevation two feet above the 100 year floodwater elevation which in this case is to elevation 589.4, consistent with the requirement for flood protection found at 40 C.F.R. § 761.75(b)(4);
- Installation of a low permeability soil-bentonite or cement-bentonite barrier wall around the perimeter of the RSL, with a permeability equal to or less than 1×10^{-6} cm/sec, and demonstrated to be chemically compatible with the site soils and groundwater;
- Installation of an augmented clay cover over the slurry wall;
- Decanting and pre-treatment of lagoon surface water in the vicinity of the RSL for PCB removal to less than 3 $\mu\text{g/L}$ consistent with 40 C.F.R §761.79(b)(1)(ii), with final treatment of decanted water for all pollutants at the GSD WWTP;
- Importing and storing bulk material (solids content of 85 percent) and cement on-site;
- Installation of cross-berms (if necessary) for equipment access;
- Mixing of bulk material with RSL sludges to increase solids content to 50 percent (final solids content to be determined during design);
- Addition of approximately 15 percent cement (final mix to be determined during design) to the bulked sludges to solidify/stabilize the bulked material in place (to a target of 50 psi unconfined compressive strength);
- Installation of a leachate collection system consistent with the requirements found at 40 C.F.R 761.75(b)(3) and (7);
- Installation of a low permeability cap meeting the requirements for caps found at 40 C.F.R. § 761.61(a)(7), to prevent infiltration of precipitation and surface water into the solidified/stabilized mass, including a sand venting layer, gas vents (1 per acre); a 60 mil HDPE liner, a drainage layer, a common fill layer, topsoil and installation of a vegetative cover;
- Repair/replacement of existing fencing to prevent access by the public to the site consistent with 40 C.F.R. § 761.61(a)(4)(B)(2);
- Seeding and grading outside the lagoon to promote surface runoff off-site consistent with the requirements found at 40 C.F.R. § 761.75(b)(4)(ii);

- Submission of a plan for an upgraded monitoring well network at least 180 days prior to completion of construction (can be submitted with final plans and specifications) and installation of the EPA-approved monitoring well network upon completion of construction consistent with the requirements for monitoring systems at 40 C.F.R § 761.75(b)(6);
- Engineering design of the above components, including pilot testing of the selected remedy (a separate work plan is required to be submitted for pilot testing (including air monitoring) after completion of the pre-design investigation);
- Sampling and analysis must be performed in accordance with the approved Quality Assurance Project Plan previously approved by EPA, and in accordance with an addendum submitted within 60 days of the effective date of this decision and subsequently approved by EPA;
- Engineering services during construction;
- Installation of signage within 60 days of the effective date of this decision to identify the site as a PCB disposal site and to restrict access consistent with 40 C.F.R. §§ 761.61(a)(4)(B)(2) and 761.45(a);
- Within 90 days after completion of the remedy, submit a completion report to EPA along with a copy of the as-built plans;
- Within 60 days after completion of construction, record deed restrictions for the site to prevent its use for other than as a PCB disposal site consistent with the requirements for deed restrictions found at 40 C.F.R § 761.61(a)(8);
- Implement annual monitoring of the installed well network to evaluate remedy success consistent with the requirements found at 40 C.F.R § 761.75(b)(6);
- Perform cap, fence and sign maintenance in perpetuity as required to ensure cap, fence and sign integrity consistent with the requirements found at 40 C.F.R § 761.61(a)(8); and
- Preparation and submission of an Operation and Maintenance Plan for the site 180 days prior to completion of construction, and implementation thereafter in perpetuity after approval by EPA.

The EPA-approved schedule for implementation is found in Attachment 4 to this Final Decision.

At GSD's request, EPA is allowing some parallel work to further evaluate the feasibility of Alternative 7, Compression Cap, to occur while design of the selected plan, Alternative 8, proceeds. If later shown to be feasible, EPA may be requested to revise the selected remedy at a future date. This would only occur after further public notice and comment.

In the interim, EPA anticipates design of the selected remedy to proceed, with the next step being submission of detailed design work plans for EPA approval.

Public Participation Activities and Comments

The Proposed Plan provided EPA's proposed remedy which was available for public review and comment from November 3, 2008, through December 19, 2008. A public meeting regarding the remedy was held at the administrative offices of the Gary Sanitary District in Gary, Indiana, on November 18, 2008. During that meeting, the proposed remedy was presented, questions were answered, and oral comments were received. Subsequently, several written comments on the Proposed Plan were received from a number of parties, including the Gary Sanitary District. EPA's Response to Comments (Attachment 1) provides the comments received during the comment period, and EPA's responses. Copies of the comments received are contained in the Administrative Record for the site.

Administrative Record

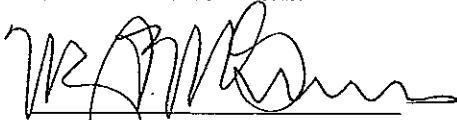
The Administrative Record for the site is available for review at the following locations: EPA's Record Center located on the 7th floor of the EPA Region 5 offices at 77 West Jackson Boulevard, Chicago, Illinois 60604; and the Gary Public Library, 220 West 5th Avenue, Gary, Indiana. Attachment 2 is an index which identifies the documents relied upon by EPA in making the final remedy selection. A copy of each document is contained at each location identified above.

Future Actions

The Modified Consent Decree and Judgment – 2002, requires that GSD implement the final remedy selected by EPA in the manner and on the schedule established by EPA in this Final Decision. Attachment 4 provides the schedule established by EPA for implementation of this project. EPA will update the Administrative Record with new information (correspondence, plans, reports, etc.) as it becomes available during the design and subsequent implementation phase of the project.

Declarations

Based on the Administrative record compiled for this site, EPA has determined that the final remedy selected for the Ralston Street Lagoon site is appropriate and protective of human health and the environment.



Margaret M. Guerriero
Director
Land and Chemicals Division

April 7, 2009

Effective Date

ATTACHMENT 1

EPA RESPONSE TO COMMENTS ON EPA'S PROPOSED PLAN FOR THE RALSTON STREET LAGOON SITE, GARY, INDIANA

March 2009

Overview

The EPA Proposed Plan for the Ralston Street Lagoon owned and operated by the City of Gary and the Gary Sanitary District (GSD) was made available for public review and comment from November 3 through December 5, 2008. Upon request, the comment period was extended through December 19, 2008.

This Response to Comments documents EPA's response to public comments and their effects, if any, on the selection of the remedy. All comments received by EPA during the public comment period were reviewed by EPA and are contained in the administrative record.

Comments Received

Comments were received from the following parties:

Jayson Reeves, Gary, IN
Lin Kaatz Chary, Indiana Toxics Action, Gary, IN
Luci L. Horton, Gary Sanitary District, Gary, IN
Scott Pruitt, U.S. Fish & Wildlife Service, Bloomington, IN
Charlotte J. Read, Chesterton, IN
Thomas R. Anderson, Save the Dunes Council, Michigan City, IN
Lori Bult, NG Land

Response to Comments

EPA has summarized the comments received on EPA's Proposed Plan for the Ralston Street Lagoon (RSL or lagoon) below. Some comments were made by more than one party, and some comments are similar to other comments made such that only one response is needed. The comment summaries are set forth in italics. EPA's response to the comments follows the individual comment(s) and appear in a regular font.

Comment: Request an extension to the public comment period and a meeting with EPA.

The public comment period was extended through December 19, 2008, and a meeting with interested property owners was held on December 11, 2008.

Comment: The Ralston Street Lagoon may consist of environmental contaminants but the water and water table elevation seems to be at a controlled level.

The water level in the lagoon appears to be directly influenced by the water levels in the adjacent Grand Calumet River, clearly documenting the hydraulic interconnection of the lagoon and the River. EPA's proposed plan is needed to prevent further releases of contaminants from the lagoon into the Grand Calumet River, to prevent inundation of the lagoon by the Grand Calumet River, and to finally resolve the current RSL PCB contamination consistent with the requirements of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601, *et. seq.*

Comment: The Grand Calumet River has potential of rising in elevation and is contaminated, but is of only minor concern.

EPA's Proposed Plan will ensure, by raising the berm of the lagoon, that the Grand Calumet River will not inundate the RSL. The remainder of the project will ensure the Grand Calumet River will be protected from the contents of the RSL.

Comment: The Little Calumet River and the containment of flooding is out of control during most of the year with severe hazards of all kinds.

The RSL is adjacent to the Grand Calumet River, not the Little Calumet River. The flooding problems of the Little Calumet River are outside the scope of EPA's Proposed Plan for the RSL.

Comment: It is incorrect to say that the surface water in the RSL has no PCBs because detection limits for testing are too high.

The most recent testing that was done on the waters in the lagoon for PCBs has results documenting that the PCBs in the surface waters (approximately the top 6 to 9 feet) of the lagoon were below the detection levels of the EPA Method 608 test for PCBs at the time(s) the most recent testing was done. The testing conducted in 2005 had a detection limit of .4 micrograms of PCBs per liter of water. While there could be PCBs in the surface water of the lagoon, the concentration of such PCBs would be below the .4

micrograms per liter detection limit.

Comment: Based on waterfowl use of the RSL, and harvesting of these waterfowl for human consumption, clean up of the RSL should be accelerated.

EPA has worked with the GSD and its consultants to develop a schedule for clean-up which is aggressive in light of the work to be done to implement the plan. This schedule was presented to the public and is part of the administrative record for the site. EPA is interested in completing this project as quickly as possible, and will continue to work with the GSD to reduce time frames for implementation where possible.

Comment: The RSL is an unsuitable disposal location for GCR sediment.

EPA is not proposing as part of its proposed plan that the RSL be used for sediment disposal from the Grand Calumet River. EPA is aware there is a parallel process ongoing with the Indiana Department of Environmental Management (IDEM), the Indiana Department of Natural Resources (IDNR) and the U.S. Army Corps of Engineers to evaluate remedies and disposal sites for the sediments in the Grand Calumet River. However, that process has not yet been completed. There are a significant number of issues associated with using the RSL as a sediment disposal site which were not evaluated as part of EPA's proposed planning process. Hence, at this time, EPA will not incorporate sediment disposal from the Grand Calumet River into the RSL as a part of the proposed remedy for the site. If using the lagoon as a sediment disposal site were later shown to be feasible, EPA would prepare a remedy amendment document and hold another public comment period before making a decision to amend the remedy.

Comment: Off-site disposal is the best option for the site, using remediation technologies such as those used for the Winston-Thomas municipal treatment plant in Bloomington, Indiana.

Off-site disposal was considered for the site, and developed in detail. EPA has determined that the proposed plan is the best alternative for the lagoon based on the required criteria in the Modified Consent Decree and Judgment – 2002, and the administrative record. The pathways to ecological risk discussed in the comments will be severed once the proposed plan is implemented, just as it would be with the off-site disposal alternative. At a similar site with PCB contamination of lagoon-contained sewage sludge in Madison, Wisconsin, EPA's selected remedy for 12 acres of PCB-contaminated sludge in excess of 50 mg/kg was an in-place vegetative/soil cover, plus institutional controls. At the Winston-Thomas site, EPA cleaned-up two small former sludge storage lagoons as well as a 17 acre tertiary treatment pond. The character of the sludge storage lagoons was substantially different than the character of the Ralston Street Lagoon, in that the sludge there had much higher percent solids with little or no overlying water, and hence volatilization could more readily occur. Removal was able to occur with standard excavation equipment directly to transport vehicles. The 17 acre tertiary treatment pond, while containing water, had less than 2 feet of overlying water and generally less than 6 feet of sludge, also with much higher PCB concentrations. Hence removal of the waste materials was technically simpler at Winston-Thomas.

Comment: It is obvious that the PCBs have leached through the sand and contaminated the Grand Calumet River and groundwater. PCBs have also migrated into the environment through volatilization.

There is no recent data showing that PCBs have leached through the sand and contaminated the Grand Calumet River. The recent monitoring data from the wells installed in the lagoon dikes does not show detectable levels of PCBs in the groundwater within the dike. This is not unexpected because PCBs are hydrophobic (that is, repel water) and have an affinity for solid particles which have high carbon content, such as sewage sludge but not the sand or other coarse grained materials in the dike. PCB contamination in the Grand Calumet River in the vicinity of the RSL is more likely predominantly from historical lagoon overflows into the Grand Calumet River. With regard to the assertion that PCBs have also migrated into the environment through volatilization, this is possible. However, due to the affinity of PCBs for solid particles, this seems an insignificant pathway for exposure. During design, the potential for volatilization of PCBs during treatment will be evaluated further.

Comment: The proposed plan is not acceptable because no liner or leachate collection system is part of the remedy.

The proposed remedy for the site will isolate the materials in place with a barrier wall, drain off and treat the surface water in the lagoon, solidify the materials in place using additives to form a solid mass, and then cap the solidified materials with a low permeability cap contoured to route surface drainage off-site. As noted in Section 2.4 of the RSL Technical and Cost Assessment (TCA), the RSL is underlain by the Wadsworth Till of the Wedron Formation, which is an impervious gray clay till unit approximately 70 to 80 feet thick. The perimeter barrier wall will be keyed into this low-permeability till to provide vertical and horizontal containment of the sludge. Under this scenario, a liner is not needed. The proposed remedy meets the technical requirements for soils for chemical waste landfills found at 40 C.F. R. §761.75.

With regard to a leachate collection system, some means to drain water from under the cap and prevent an excessive build-up of hydrostatic pressure against the barrier wall will be needed. The details of such a system will be determined during the design phase for the project. The cost for a leachate collection system was included as a cost item in the engineer's cost estimate found at Section 7 of the TCA, and will be included as part of the selected remedy.

Comment: The cap proposals are inadequate.

The cap is required to be designed to meet the specifications for hazardous waste landfill closure specified at 40 C.F.R. § 264.310(a). In addition, the soils in the cap must meet the soil specifications for chemical waste landfills found at 40 C.F.R. §§ 761.75(b)(1)(ii) through (v), or a synthetic membrane liner must be constructed pursuant to 40 C.F.R. § 761.75(b)(2). The proposed cap will be designed to these specifications.

Comment: It is not clear what material will be used to solidify the sludge.

Initially, the RSL sludge would be mixed with bulking materials to increase the solids content of the sludge. The characteristics of the bulking materials to be used include physical and chemical characteristics capable of being mixed with the RSL sludge; materials which are capable of densification and/or solidification such that the final volume is less than the capacity of the RSL; and material having a solids content of at least 85%. Materials which are available locally and meet these criteria include sands and crushed slag. Once bulking materials are added, approximately 15% cement would be added and mixed into the bulked sludge, which based on the water content of the RSL contents, would then form into a strong, slow-hardening mass. Additive and bulking tests have already been performed during the planning phase and the results were presented in the Supplemental Alternatives Evaluation Study, which is part of the administrative record. Further evaluation of the best method to solidify and stabilize the RSL sludge, including which materials to use, will be evaluated in detail during the design phase.

Comment: It is not clear how water will be transported to the wastewater treatment plant.

There is an existing sewer line which was used in the past to transport water from the RSL to the GSD WWTP. This line is plugged. As part of the design investigation, the ability to use this line as part of the project will need to be assessed, because part of the proposed plan is to pipe the water from the lagoon to the GSD WWTP for final treatment prior to discharge to the Grand Calumet River.

Comment: It is not clear that the wastewater treatment plant can properly treat PCBs.

The proposed plan is that the water be pre-treated adjacent to the RSL prior to final transport to the GSD WWTP for final treatment. PCBs would be removed as part of the pre-treatment process, not at the GSD. The details of the pre-treatment will be established during the design phase.

Comment: A waste-oil facility in Westville, Indiana was the subject of an emergency removal action in the late 1980s. Why have the lagoon and the residents of Gary been treated differently?

The facility in question was the Cam-Or facility located in Westville, Indiana. The facility was under an order which required that it take action to abate imminent threats. Rather than implement the order, the facility was shut down and the company declared bankruptcy. At the time, there were eight lagoons on-site and environmental releases to surface water were ongoing. Rather than allow the releases to go on, EPA stepped in to abate the threat and implemented a removal action. The lagoons were consolidated and closed and materials properly disposed. In the case of the RSL, GSD has implemented interim actions to increase the width and height of the berm, and closed and plugged both the lagoon overflow to the Grand Calumet River as well as the sewer line back to the GSD WWTP. Monitoring wells were also installed to assess off-site impacts.

Comment: EPA should review all federal programs to see if the remediation of the RSL would qualify for federal money.

Several programs were mentioned as a source of federal or state funds to assist GSD in implementing various aspects of the RSL clean-up project. EPA had previously consulted with the IDEM and was advised that GSD could potentially qualify for assistance with the project under the Clean Water Act revolving loan program. GSD may be eligible to apply through IDEM for such loans.

Other possible sources of funds mentioned included a Superfund Innovative Technology Evaluation (SITE) grant; a Great Lakes restoration or Legacy Act grant; and funding under brownfield, economic revitalization, clean-up, restoration and environmental justice programs. EPA's SITE program ended about 3 years ago; hence funding under that program is not possible. More recently, EPA has partnered with the Department of Energy and the Department of Defense (DoD) to conduct research on environmental technologies. The next opportunity to apply for funding for fiscal year 2010 is in March 2009, through DoD's Environmental Security Technology Certification Program. A copy of the announcement was added to the administrative record.

Funding under EPA's brownfields program is also not possible because the lagoon is not a "brownfields site" and because of the Potentially Responsible Party (PRP) status of the City of Gary and the GSD.

EPA's project manager has forwarded GSD's comments on to the EPA program manager for EPA's Great Lakes Legacy Act for possible consideration.

Comment: The City of Gary should not be solely responsible for the financial burden of cleaning the Site.

Comment: The citizens of Gary are not responsible for the PCBs contained in the RSL. EPA should identify the PRPs that are responsible for the PCBs in the RSL so that they may be held accountable.

U.S. EPA long ago identified the City of Gary and the GSD as liable parties and is holding those parties accountable for disposing PCB-contaminated sludge at the RSL. The RSL was formed in the 1950s as fill material was removed in order to construct the Indiana Toll Road. The GSD, which continues to operate the wastewater treatment plant on behalf of the City of Gary, used the RSL as a storage facility for sewage sludge from the wastewater treatment plant from 1962 to 1988. Approximately 100,000,000 gallons of PCB-contaminated sludge are contained in the RSL, with PCB concentrations reaching as high as 1,300 parts per million. The City of Gary and the GSD are responsible for the decision to dispose of the PCB-contaminated sludge in the RSL, for the transportation of the PCB-contaminated sludge to the RSL, and for the operation of the RSL. Through settlement agreements dating back to 1987, the City of Gary and the GSD are jointly and severally liable for remediation of the RSL.

Comment: EPA should facilitate discussions with IDEM and USACE to explore the suitability of the RSL for placement of Grand Calumet River sediment.

Discussions have taken place between the City of Gary, the GSD, EPA, the U.S. Army Corps of Engineers and the IDEM about using the RSL as a disposal facility for sediment. Of the comments EPA received regarding the use of the RSL as a disposal facility for Grand Calumet River sediment, more were against the possibility than in favor. EPA is not proposing as part of its proposed plan that the RSL be used for sediment disposal from the Grand Calumet River. EPA is aware there is a parallel process ongoing with the IDEM, the IDNR and the U.S. Army Corps of Engineers to evaluate remedies and disposal sites for the sediments in the Grand Calumet River. However, that process has not yet been completed. There are a significant number of issues associated with using the RSL as a sediment disposal site which were not evaluated as part of EPA's proposed planning process. Hence, at this time, EPA will not incorporate sediment disposal from the Grand Calumet River into the RSL as a part of the proposed remedy for the site. If using the lagoon as a sediment disposal site were later shown to be feasible, EPA would prepare a remedy amendment document and hold another public comment period before making a decision to amend the remedy.

Comment: The source(s) of the PCBs must be found.

The source(s) of the PCBs need not be discovered in order for the RSL to be remediated.

Comment: Northern Indiana Public Service Company is the source of the PCBs.

No evidence was presented along with this comment such that EPA could evaluate the claim. However, as stated above, the source(s) of the PCBs need not be discovered in order for the RSL to be remediated.

Comment: The Site should have been remediated through the CERCLA process, meaning PRPs were not otherwise identified, the source of the material was not identified, and the public was not adequately consulted.

The reality is that the Site was not remediated through the CERCLA process. The decision to file a lawsuit against the City of Gary and the GSD pursuant to the Toxic Substances Control Act is over twenty years old. Furthermore, the lawsuit was settled over twenty years ago. Nothing can or will change that. The two parties with culpability for the presence of PCBs in the Ralston Street Lagoon were identified, were sued, and agreed to remediate the lagoon under the Consent Decree. EPA expects those parties to comply with the Consent Decree.

However, EPA is willing to discuss with interested individuals and groups the role of the public in the ongoing remediation process.

Comment: Inadequate input was allowed for during the negotiation of the consent decrees.

As recently as March 8, 2006, the EPA Office for Enforcement and Compliance Assurance has endorsed earlier guidance documents restricting communications with outside parties regarding enforcement.¹ EPA enforcement staff are instructed not to discuss settlement negotiations with outside parties (which includes members of the general public) whether or not a confidentiality agreement exists between the negotiating parties. Barring a change in the guidance, the public will continue to have little input during the negotiation of consent decrees.

The public is, however, accorded the opportunity to comment on proposed settlements in actions to enjoin the discharge of pollutants into the environment. The U.S Department of Justice policy found at 28 C.F.R. § 50.7 provides for not less than a 30 day public comment period before such settlements can be signed by a federal judge. Notices of a 30 day comment period for both the Second Modified Consent Decree and Judgment (1992) and the Modified Consent Decree and Judgment - 2002, were published in the *Federal Register* on November 14, 1991 (56 Fed. Reg. 57901) and June 18, 2002 (67 Fed. Reg. 41448), respectively. Future settlements will also be offered for public comment before being made final.

Comment: Did the Ralston Street Lagoon score high enough to be placed on the National Priorities List?

This question was posed at the public meeting on November 18, 2008, at the GSD. At that meeting, an EPA representative stated in response that a Hazardous Ranking System package was prepared for the RSL, but that to his recollection, the RSL did not have a high enough score to be considered for the National Priorities List of contaminated sites. After the public meeting, a review of documentation shows that the response provided at the public meeting was in error. A draft Hazardous Ranking System package was prepared in 1993. Contrary to what was stated at the public meeting, the RSL did score high enough to be considered for listing on the National Priorities List. Despite the score, EPA did not propose that the Ralston Street Lagoon be placed on the National Priorities List. It should be noted that inclusion of a site or release on the National Priorities List does not imply that Superfund money will be expended to remedy the site or releases from the site.

¹ <http://www.epa.gov/compliance/resources/policies/civil/io/commrestrictions-nakayamamemo030806.pdf>

Attachment 2
 EPA Administrative Record Index
 Gary Sanitary District
 Ralston Street Sludge Lagoon
 IND 077 001 808

AR #	CY	CY #	Date	Document Type	Author	To	Subject	Pages
1	1984	1	06/04/84	Memorandum	Dan Strahl, IN Board of Health	Earl Bohner, IN Board of Health	GSD	29
2	1985	2	11/09/84	Letter	IN Board of Health	Aravind Muzumdar, GSD	Prehearing Conference	3
3		1	07/08/85	Letter	Parmamury Talluri, I A E, Consulting Engineers, Inc.	Sheldon Simon, EPA	Request to meet	4
4		2	07/29/85	Letter	Parmamury Talluri, I A E, Consulting Engineers, Inc.	Steve Wolfe, IN Board of Health	Conceptual Alternate for Review and Comment Sludge Disposal Over the Next 20 Years into RSL, GSD, Gary, IN	3
5	1986	3	08/20/85	Letter	Canonie Engineers	Joseph C. Stallsmith, IN Board of Health	Addendum Proposed Technical Program, Preliminary Field Studies, RSL, GSD, Gary, IN	8
6		1	08/29/86	Report	I A E, Inc. Consulting Engineers	GSD	Report on Content Sampling & Geologic Structural Sampling RSL August 29, 1986	60
7	1989	2	09/30/86	Letter	Motryo Keambhoro, GSD	Eric Cohen, EPA	Consent Decree 1/10/86 Intern and Long Term Stabilization at RSL	1
8		1	03/28/89	Letter	Lincoln Donaldson, Director, GSD,	Donald Shregardus, EPA	RSL Study	9
9		2	05/12/89	Letter	Deirdre Tanaka, EPA	Jackie Shropshire, Esq. GSD	Summary of Commitments	3
10		3	07/28/89	Report	James Alleman, Ernest Blatchley, Jean-Lou Chameau, Purdue University	GSD	Final Report on the Ralston St. Lagoon Remediation Project for GSD	154
11		4	08/01/89	Letter	Lincoln Donaldson, GSD	Donald Shregardus, EPA	RSL Study	1
12		5	08/25/89	Memorandum	Jerrri-Anne Gatl, EPA	Anne Weinert, EPA	RSL Study	1
13		6	10/16/89	Letter	Anne Weinert, EPA	Indiana DNR	Improvements at RSL	2
14		7	10/24/89	Letter	Anne Weinert, EPA	Lincoln Donaldson, GSD	File Copy RSL Study	2
15		8	11/28/89	Letter + Fax Cover	Lincoln Donaldson, GSD	Donald Shregardus, EPA	Acceptance of RSL Master Closure Plan	5
16		9	12/22/89	Letter	Arthur Smith, ORC, EPA	Lincoln Donaldson, GSD	Civil Actions Nos. H78-29 and H86-540	1
17	1990	10	12/26/89	Letter	Lincoln Donaldson, GSD	Donald Shregardus, EPA	RSL Groundwater Sampling	7
18		1	01/05/90	Letter	Lincoln Donaldson, GSD	Martha Anne Weinert, EPA	RSL Study Meeting of 12/01/89	12
19		2	01/09/90	Memorandum	Jerrri-Anne Gatl, EPA	Anne Weinert, EPA	RSL Study Meeting of 12/01/89	1
20	1991	3	08/08/90	Letter	Stephen Johnson, EPA	Lincoln Donaldson, GSD	Comments on RSL remediation Project.	8
21		1	07/01/91	Report	Roy F. Weston, Inc.	North-West Engineering Company, Inc.	Proposal for Alternative Disposal Method Selection, RSL Gary IN	19
22		2	12/30/91	Letter	Fluor Daniel, Inc.	Eugene Kezy, GSD	RSL	1
23	1992	3	12/30/91	Report	Fluor Daniel, Inc.	GSD	RSL Report	130
24		1	01/28/92	Memorandum	Stephen Johnson, EPA	John Cornell, EPA	Comments on Fluor Daniel, Inc. Report on RSL, GSD dated December 1991	11
25		2	02/20/92	Memorandum	Stephen Johnson, EPA	Howard Duckman, EPA	Fluor Daniel, Inc. Meeting RSL Project Tracing and Electronic Worksheets for PCB Exposure Calculations	3
26		3	03/26/92	Letter	Fluor Daniel, Inc.	Howard Duckman, EPA	GSD 2/20/92 Meeting Notes	5
27		4	04/10/92	Letter	Fluor Daniel, Inc.	Lincoln Donaldson, GSD	RSL Response to USEPA Comments-100-Year Floodplain	8

EPA Administrative Record Index
 Gary Sanitary District
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AR #	CY	CY #	Date	Document Type	Author	To	Subject	Pages
28		5	04/27/92	Memorandum	Stephen Johnson, EPA	Howard Duckman, EPA	Response to April 10, 1992 Communication by Fluor Daniel, Inc. to GSD	1
29		6	04/30/92	Telephone Record	Stephen Johnson, EPA	File	Discussion of grid sampling of lagoon Tim Maley, Fluor Dan/H Duckman EPA	4
30		7	04/30/92	Telephone Record	Stephen Johnson, EPA	File	Discussion of vertical elevations, berms, dattums etc. Donna Urbikas	2
31		8	05/06/92	Memorandum	Fluor Daniel, Inc.	Fluor Daniel, Inc.	Interoffice Memorandum - Meeting Notes from April 24, 1992 GSD, EPA, and Fluor Daniel, Inc. ESD	3
32		9	06/26/92	Facsimile	Fluor Daniel, Inc.	Stephen Johnson, EPA	RSL	3
33		10	06/30/92	Letter	Fluor Daniel, Inc.	Howard Duckman, EPA	Meeting Minutes	5
34		11	06/30/92	Memorandum	Stephen Johnson, EPA	John Connell, EPA	Notes from Meeting	6
35		12	07/01/92	Workplan	Fluor Daniel, Inc.	EPA	Gary Sanitary Dist. Ralston St. Lagoon	2
36		13	07/09/92	Memorandum	Stephen Johnson, EPA	Howard Duckman, EPA	Review and corrections from Fluor Daniel, Inc. letter dated June 30, 1992 concerning meeting of 6/29/92 with outline for TSCA application	10
37		14	10/01/92	Report	Fluor Daniel Environmental Services, Inc.	EPA	Final Report RSL 100-Year Floodplain, Sludge Characterization and Electromagnetic Survey Report	5
38	1993	15	12/21/92	Letter	Donna Urbikas & Tim Maley, Fluor Daniel, Inc.	Washington C. Alston, GSD	Analytical PCB Results of July 1992 Sludge Samples and 100-Year Flood Data Amendment, RSL, Gary, Indiana	92
39		1	01/04/93	Calculations, notes, to (Draft) Memorandum printout out of electronic figures draft	Stephen Johnson, EPA	File	Excerpts from: Ralston Street Lagoon, 100-Year Flood Plain, Sludge Characterization and Electromagnetic Survey Report, Gary Sanitary District, Gary, Indiana, hand drawn Berm Design, illustrations, hydrography by S. Johnson on excerpts from Fluor Dan. Report of Oct. 1992	12
40		2	01/07/93	file, "berm, 1-07-93"	Stephen Johnson, EPA	John Connell, EPA	GSD Berm Design, summary of Jan. 4, 1993 meeting	2
41		3	05/04/83	Chart	Stephen Johnson, EPA	File	RSL PCB concentrations, based on 1983 data	2
42		4	05/04/83	Chart	Stephen Johnson, EPA	File	PCB concentrations, 1983, RSL	1
43		5	07/28/93	Letter	Washington C. Alston, GSD	Howard Duckman, EPA	Consent Decree, Section VI, F.24, pg 38 - Conceptual Design for Short-Term Stabilization of RSL	8
44		6	09/14/93	Memorandum	Stephen Johnson, EPA	Howard Duckman, EPA	Consent Decree, Section VI, F.24, pg 38, Remedial Measures, Lagoon Sampling for Possible TSCA Declassification Purposes	4
45		7	09/22/93	Letter	Fluor Daniel, Inc.	Howard Duckman, EPA	GSD RSL PCB Sampling Approach	15
46		8	10/08/93	letter	Fluor Daniel, Inc.	G. Schupp, Chief Q.A. Sec. EPA	Cover letter for draft QAPP on PCB sampling at RSL	2
47		9	10/27/93	letter	Fluor Daniel, Inc.	Howard Duckman, EPA	RSL, GSD Meeting Minutes of October 21, 1993 EPA/GSD/Fluor Daniel, Inc.	4

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50		3	11/09/94	Graph	Howard Duckman, EPA	File	Lagoon Sampling Methodology	2
51	1995	1	02/10/95	Memorandum	Stephen Johnson, EPA	Howard Duckman, EPA	GSD Short-Term Measures	1
52		2	02/10/95	Letter	Barry DeGraff, EPA	Thomas Barnes, Mayor, Gary and Washington Alston, Director, GSD	File copy Civil Action # H78-29, H 86-540	2
53		3	03/01/95	Document	Stephen Johnson, EPA	File	Chronology EPA/GSD	3
54		4	03/02/95	Draft Chart	Howard Duckman, Stephen Johnson, EPA	File	Proposed Lagoon sampling methodology.	1
55		5	03/16/95	Letter	Washington C. Alston, GSD	Brian Barwick, ORC, EPA	Proposed Sampling Approach RSL	5
56		6	03/24/95	Cost Estimate	Aravind Muzumdar, P.E. Pres. NW Engineering Co. Inc.	Gilbert King, Esq., Washington Alston, GSD	Preliminary itemization pre construction bid (Exhibit A)	1
57		7	04/03/95	Memorandum	Ed Karecki, USFWS	Jan Pels, EPA	Preliminary Ecological Assessment GSD-Lake Station Sewage Treatment Plant, South Bend, Indiana	4
58		8	07/12/95	Report	Indiana Department of Health	EPA	Health Consultation, RSL, CERCLIS NO. IND 077001808, Gary, Lake Co, Indiana	12
59		9	07/20/95	Letter	Michael Mikulka, EPA	Washington C. Alston, GSD	Letter of Concurrence w/GSD Sampling	2
60	1996	1	03/08/96	Report	Southwest Laboratory of Oklahoma	OSD	POB Analyses	87
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62		3	03/28/96	Memorandum	David Payne, EPA	Donna Urbikas, et al, Fluor Daniel, Inc.	Data Package (Example), Initial Calibration and Quantitation of Arcolor 1248, GSD	10
63		4	03/29/96	Facsimile	Donna Urbikas, Fluor Daniel, Inc.	Brian Barwick, ORC, EPA	Outline for Preliminary Risk Assessment	2
64		5	04/01/96	Facsimile with copy of published article	David Payne, EPA	Richard Rowen, Swok, Environmental Standards, Inc.	The generation of calibration curves for multi-point standardizations displaying high relative standard deviations	9
65		6	04/24/96	Letter + cover email	Donna Urbikas, Fluor Daniel, Inc.	David Payne, EPA	Gary Sanitary District, Ralston Street Lagoon Draft QAPP Submittal	2
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69		10	07/30/96	Letter	Donna Urbikas, Fluor Daniel GTI	Howard Duckman, EPA	Revised Page 3 for QAPP	2
70		11	08/07/96	Letter	David A. Payne, EPA	Dr. Donald Love, GSD	Returning 4 approval pgs. signed by appropriate	4
71		1	01/01/97	Report	Fluor Daniel GTI, Chicago, IL	GSD	Sludge and Surface Water POB Sampling RSL, GSD, Gary, Indiana, January, 1997	450
72		2	01/27/97	Letter	Daniel A. Gmitro, Fluor Daniel, Inc., Inc.	Howard Duckman, EPA	Revised Data Sheets for Samples	36
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75	1999	1	10/05/99	Letter	Donna Urbikas, Quality Environmental, Inc.	Thomas A. Mariani, DOJ	Record of Decision	42

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163		32	11/13/08	Proof of Publication	State of Indiana County of Lake SS	EPA	Publisher's Affidavit Proof of Publication	1
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171		40	12/01/08	E-mail	Joe Callahan, L&L Cartage	Rafael Gonzalez, EPA	Public Comment Period	1
172		41	12/02/08	E-mail	Robert Built, Lori Built, Joseph Callahan, NG Land	Rafael Gonzalez, EPA	Extension to Comment Period on EPA's Proposed Plan - RSL, Gary, Indiana	1
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183		52	11/17/08	E-mail	Lin Kaatz Charly, Indiana Toxics Action	EPA	Comments on RSL Proposed Plan	4
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188		57	03/31/97	Document	William E. Muro, Director, SFD, R5	Administrative Record	Record of Decision for Madison, WI Sewage District Lagoon	43
189		58	05/05/98	Document	OHM Remediation Services Corp.	CBS (f/k/a Westinghouse Electric Corporation), Pittsburgh, PA	Excerpt from Remediation Work Plan Abandoned Lagoon Winston Thomas WWTP, Bloomington, IN	5
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EPA Proposes Fill and Cover to Clean Up Lagoon

Ralston Street Lagoon

Gary, Indiana

October 2008

We want your opinions

The public is encouraged to comment on this proposed cleanup plan for the Ralston Street Lagoon. EPA will be accepting comments on the proposal from **November 3 to December 5**. A comment sheet is enclosed for your convenience. You can also fax your comments to Michael Mikulka at 312-353-4342 or E-mail mikulka.michael@epa.gov.

EPA also encourages the public to attend and participate in a public meeting, **6:30 p.m. to 8:00 p.m. on November 18**, at the **Gary Sanitary District offices at 3600 West 3rd Avenue in Gary**. EPA representatives will present the cleanup proposals, answer questions and take written and oral comments at the meeting. The Agency could alter its proposed plan or choose a different alternative based on public comments so your input is important.

Contact EPA

For questions: technical questions
Michael Mikulka, Project Manager
EPA Region 5 Chicago Office
312- 886-6760; **Rafael P. Gonzalez**
Public Affairs, 312-886-0269
gonzalez.rafaelp@epa.gov

Region 5 toll-free:

800-621-8431, 8:30 a.m. – 4:30 p.m., weekdays

Repository Location, official site records can be examined at the Gary Public Library, 220 West 5th Ave. Gary, Indiana, or in the 7th floor records center at EPA's office at 77 West Jackson Boulevard, Chicago, IL.

U.S. Environmental Protection Agency is proposing a plan to clean up and contain hazardous materials at the Ralston Street Lagoon by encasing the site with a special underground wall, draining lagoon water, mixing in dry fill material with the sludge, solidifying it, and then capping the facility. The proposed cleanup plan also calls for buying 6 acres of adjacent residential parcels to be used as a staging area, raising the current berm to protect from 100-year floods, fencing the site and monitoring underground water supplies (called ground water) to ensure the cleanup plan is working.

This set of cleanup steps is among eight options or alternatives considered by EPA. This preferred option is estimated to cost more than \$66 million. The public can participate in the decision-making process through a comment period and public meeting (*see left-hand box*). Based on public comments, EPA could modify the preferred option or select another alternative.

The lagoon was used for municipal sewage sludge disposal beginning in 1962. It is now filled with about 553,000 cubic yards of sludge. Studies document the sludge is contaminated with hazardous polychlorinated biphenyls (PCBs). The federal Toxic Substances Control Act regulates the handling of all materials containing PCBs in concentrations higher than 50 mg/kg.

History of Ralston Street Lagoon

The lagoon covers 19 acres and is owned and operated by the Gary Sanitary District, a unit of the City of Gary. The lagoon is located in a fenced area along the Grand Calumet River in Gary, just north of the Indiana Toll Road and south of the Gary/Chicago International Airport. Residential and commercial parcels lie to the east of the lagoon, and additional residential and commercial sections sit south of the toll road. The figure on Page 2 shows an aerial view of the Ralston Street Lagoon and vicinity.

Studies and investigations of the lagoon dating back more than 20 years have documented problems with the facility. In 1997, a consultant's study described the nature and extent of PCBs in the sludge and surface water of the lagoon. More than 96 percent of the sludge was found to be contaminated with PCBs (in the form of a chemical known as Aroclor 1248) in excess of the 50 mg/kg level. A little more than 10 percent of the sludge exceeded 500 mg/kg. The average PCB concentration in the sludge was more than 180 mg/kg, with a range of 19 to 1,300 mg/kg. The measurement of 1 mg/kg is a tiny amount, equal to one second in 12 days, but even small amounts of hazardous materials can cause health problems. Fortunately, PCB levels in the surface water were found to be minimal.

A legal document called a consent decree requires the City of Gary and Gary Sanitary District to clean up and contain the lagoon contamination.

Several investigations since 2003 have looked at the soil, underground water and geology of the area. Technicians and scientists have also examined various cleanup techniques to give environmental regulators such as EPA and state partner Indiana Department of Environmental Management some options to consider.

Ground-water monitoring wells were installed in and around the lagoon and Grand Calumet River to judge the extent of pollution, if any, escaping from the facility.

After several years of studies and discussions between the responsible parties and EPA over cleanup options, the Agency approved a document called a "technical and cost assessment" last February. The consent decree requires that any cleanup alternative be evaluated against seven criteria: 1) effectiveness; 2) overall protection of public health and the environment; 3) long-term effectiveness and permanence; 4) technical feasibility; 5) administrative feasibility; 6) availability of services and materials; and 7) costs.

Risks to people and the environment

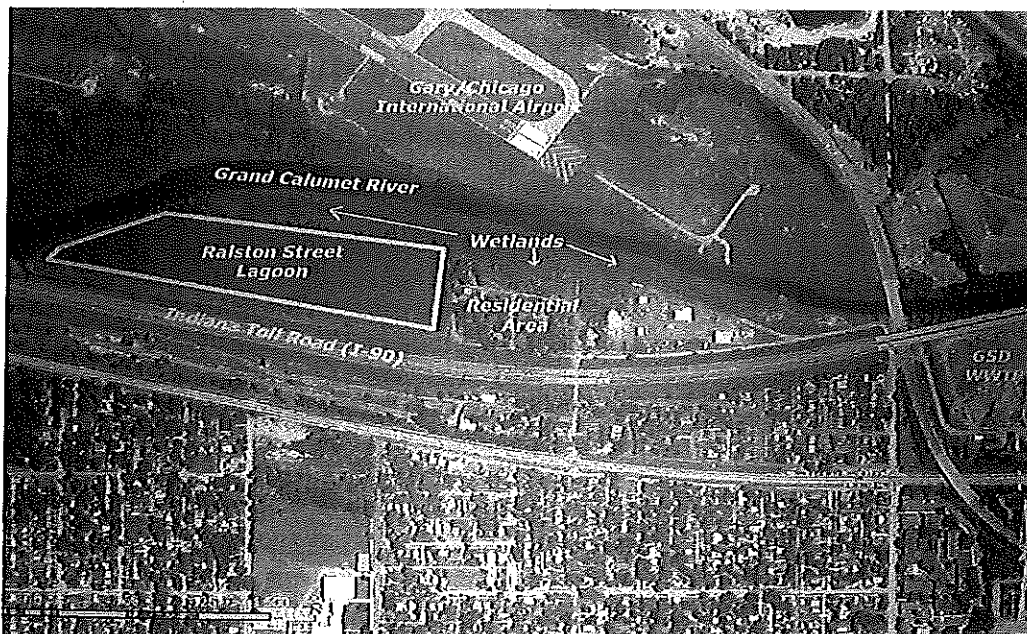
Existing health risks from PCB exposures were examined by Gary Sanitary District in the technical and cost assessment approved by EPA. The district used recently collected ground water, soil, sludge and surface water data, supplemented by older figures. The site is fenced and access by the public is restricted so immediate exposure to the pollutants is not the problem. The PCBs in the sludge could pose a health threat if they "leached"

out of the lagoon into ground water or surface water such as the Grand Calumet River. The current berm could also fail or overflow in flooding, causing health risks. The lagoon contains an estimated 42 million gallons of water lying over the sludge at a depth of about 7 feet.

Fortunately, no PCBs were detected in any of the monitoring wells, so the compound does not appear to be moving out of the lagoon and contaminating ground water. Testing also revealed no PCBs in the lagoon's surface water.

Assessment of both cancer and non-cancer hazards associated with various exposure possibilities showed the following:

- Exposure to the maximum level of PCBs is unlikely (highest concentration found at 20 feet below the surface).
- Non-cancer risks from exposure to both the maximum and average concentrations of PCBs were also small.
- Cancer risks through breathing air particles tainted with PCBs was measurable but not at high levels.
- Trespassers who gain access to the site and accidentally swallow or have skin contact with the sludge could face slightly elevated cancer risks.
- On-site or construction workers would have slightly less cancer risk than trespassers because presumably workers would use personal protective equipment such as gloves and coveralls.



Ralston Street Lagoon and Vicinity

To summarize, the health risk study found cancer risks for trespassers, sanitary district workers and contractors are all above the acceptable risk range if they are regularly exposed over long periods to the maximum PCB concentrations found at the site. These situations are unlikely to happen, experts concluded. Still, officials decided the lagoon needs to be cleaned up and contained because the PCBs were improperly disposed and do represent a health threat.

Cleanup goals

The Gary Sanitary District's technical and cost assessment report suggested several cleanup goals for the lagoon. The goals include preventing swallowing, breathing or direct skin contact with sludge or surface soil that contain PCBs, permanently and significantly reducing the movement of the PCB-tainted sludge, and preventing lagoon surface water from releasing PCBs into the Grand Calumet River.

EPA agreed with these goals but is adding one more objective -- preventing lagoon water containing other contaminants from discharging to the Grand Calumet River through the ground water.

Cleanup options considered by EPA

The consent decree specified that at a minimum, disposal/clean-up alternatives to be considered should include: (a) disposal at an off-site location; (b) disposal on-site (on property at or near the wastewater treatment plant); (c) any one or more of a combination of the following -- (i) in-place solidification/stabilization; (ii) in-place bioremediation; (iii) in-place vegetation/soil cover; and (d) any other option of choice to Gary and the sanitary district.

The above options were incorporated into the technical and cost assessment report and screened in Section 6 of the report if you wish to read it. This screening process resulted in a detailed analysis of eight alternatives against the seven criteria specified in the consent decree and described earlier in this fact sheet. The sanitary district assigned points for each of the criteria, with technical feasibility weighted most heavily (90 points). The weightings are based on the district's interpretation of the relative importance of the factors required to be considered. The highest possible score for any option is 200 points. The

Read the documents

The public is encouraged to review the official documents associated with the site. These are records EPA considered in support of the proposed plan.

They are contained in public repositories at the Gary Public Library, 220 West 5th Avenue, Gary, and also at EPA's offices at 77 W. Jackson Blvd., 7th floor Records Center, in Chicago, IL.

final alternatives developed in the report for EPA consideration are as follows:

Alternative 1: No action: No action options are always included for comparison purposes. This alternative requires only semi-annual ground-water sampling. Total cost -- \$287,000; Points -- 96/200.

Alternative 2: On-site containment. This alternative includes land acquisition of adjacent residential parcels, site preparation, installing lagoon water surface controls, raising the perimeter berm with fill, stabilizing the north portion of the perimeter berm with permanent sheeting, a special "slurry" wall composed of a soil-bentonite mixture, and site grading and fencing. In addition, annual ground-water monitoring and berm maintenance are required. Total cost - \$18 million; Points -- 120/200.

Alternative 3: Off-site disposal. This option includes land acquisition of adjacent residential parcels, site preparation, installing lagoon water surface controls, raising the perimeter berm with fill, stabilizing the north portion of the perimeter berm with temporary sheeting, dredging the sludge and water and pumping the water to an adjacent dewatering system, treating the water at the wastewater treatment plant, stabilizing/solidifying the dewatered sludge, off-site removal to a chemical waste landfill, site grading and fencing and annual ground-water monitoring. Total cost -- \$108 million; Points -- 97/200.

Alternative 4: On-site disposal (confined disposal facility at or near the wastewater treatment plant). This alternative includes land acquisition of adjacent residential and commercial parcels, site preparation, stabilizing the north portion of the perimeter berm with temporary sheeting, dredging the sludge and pumping to an adjacent dewatering system, treating the separated water at the wastewater treatment plant, stabilizing/solidifying the dewatered sludge, construction of a 6-acre confined disposal facility on-site, placing the dewatered sludge

into the confined disposal facility and capping it, and site grading and fencing. Deed restrictions and signage would also be included along with annual ground-water monitoring and cap maintenance. Cost -- \$67 million; Points -- 114/200.

Alternative 5: In-place solidification/stabilization with in-place vegetation/soil cover. This alternative includes land acquisition of adjacent residential parcels, site preparation, installing lagoon water surface controls, raising the perimeter berm with fill for 100-year flood protection, stabilizing the north portion of the perimeter berm with permanent sheeting, installing a soil-bentonite slurry wall, dewatering the interior of the lagoon, bulking up the sludge with fill material, solidifying/stabilizing the bulked sludge in-place to reduce the mobility of PCBs, covering the lagoon with an impermeable cap, site grading and fencing, deed restrictions, signage, and ground-water monitoring and berm maintenance. Cost - \$79.3 million; Points -- 134/200.

Alternative 6: On-site dry cell containment. This alternative includes land acquisition of adjacent residential parcels, site preparation, raising the perimeter berm with fill for 100-year flood protection, installing a cement-bentonite barrier wall, dredging the sludge and pumping the mixture to an adjacent dewatering area. The sludge would be dewatered in geotubes followed by treating the water and the dewatered sludge at the wastewater treatment plant. The option also includes solidifying the dewatered sludge, preparing the lagoon bottom, including installing cross-berms, installing underdrains and dewatering to maintain a dry working area, consolidation of treated sludge into a dry cell, capping the dry cell with an impermeable cap, and site grading and fencing, deed restrictions, signage, annual ground-water monitoring, berm maintenance and ground-water treatment. Cost -- \$66.2 million; Points -- 117/200.

Alternative 7: Compression cap. This alternative includes land acquisition of adjacent residential parcels, site preparation, raising the perimeter berm with fill for 100-year flood protection, installing a cement-bentonite barrier wall, dewatering the surface water and treating the water at the wastewater treatment plant, construction of a compression cap, treatment of water separated from the sludge, loading the cap with imported fill for a period of up to four years, construction of an impermeable cap, and site grading and fencing, deed restriction, signage, management of the imported fill for four years, annual ground-water monitoring and cap maintenance. Cost -- \$43.7 million; Points -- 112/200.

Alternative 8: Filling the lagoon (this is EPA's preferred alternative). This option includes land acquisition of adjacent residential parcels, site preparation, raising the perimeter berm with fill for 100-year flood protection, stabilizing the north portion of the perimeter berm with permanent sheeting, installing a soil-bentonite slurry wall, pumping out lagoon water and treating it at the wastewater treatment plant, importing dry fill material and bulking up the material with the sludge in the lagoon, installing cross-berms, mixing the bulking material with the sludge, capping the bulked material with an nonpenetrating cap, and site grading and fencing. Deed restrictions and signage would also be included. Annual ground-water monitoring and berm maintenance would be added. Cost -- \$66.5 million; Points -- 152/200.

Alternative 9: Deferring Final Decision Until Further Design and Pilot Studies are Completed. Recently, GSD submitted additional information which recommended that EPA defer a final decision on selection of an alternative until pilot testing could be completed for both Alternatives 7, compression cap and 8, filling the lagoon. This recognized that there were certain common elements to both Alternatives 7 and 8 and those could proceed concurrently with the pilot testing for the sludge remedy. After pilot testing, the results would be evaluated and the stabilization method for the sludge selected. Cost -- \$43.7 to \$66.5 million; No points assigned.

Discussion of alternatives

The various options were evaluated against the seven criteria listed on Page 2, and EPA selected its preferred alternative for presentation to the public, after consultation with IDEM.

Alternative 1 (no action) was not selected as it does not meet the cleanup goals or the terms of the consent decree because it does not protect human health and the environment.

Alternative 2 (on-site containment) also fails to meet cleanup goals or terms of the legal agreement.

Alternative 3 (off-site disposal) does meet goals and legal terms but was not selected because among other problems it would require transporting 8,000 truckloads of hazardous materials more than 235 miles, and its \$103 million price tag is not cost-effective.

Alternative 4 (on-site disposal) meets the goals but requires building a new waste disposal facility, which could complicate operations at the nearby Gary/Chicago International Airport. Additional land acquisition would also be required, and the lagoon containing residuals would still remain.

Text continued on Page 7

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fold

Rafael P. Gonzalez
EPA Environmental Specialist
Land and Chemicals Division, L-8J
EPA Region 5
77 W. Jackson Blvd.
Chicago, Il 60604-3590

Place
First
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Comparison of Cleanup Alternatives

Evaluation Criteria	1	2	3	4	5	6	7	8*
Effectiveness	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Overall protection of public health & the environment	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Long-term effectiveness and permanence	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Technical Feasibility	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Administrative Feasibility	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Availability of Services & Materials	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Costs, millions	\$0.3	\$18	\$108	\$67	\$79.3	\$66.2	\$43.7	\$66.5

- Meet Criteria
 - Partially Meets Criteria
 - Does Not Meet Criteria

* EPA's Preferred Alternative

Alternative 5 (in-place solidification/stabilization with vegetation cover) meets the goals but was not selected due to cost and other considerations. Alternative 6 (on-site dry cell containment) meets the goals but was not selected because among other reasons all dredged and dewatered material would have to be stored next to the lagoon for up to two years while the dry cell is prepared, and this option may contain unforeseen costs. Alternative 7 (compression cap) meets the goals but was not recommended because while it reduces the risk, it is less effective than other alternatives considered because this is a new technology untested on a similar site, and takes several years longer to construct than other alternatives. Alternative 9 (defer decision until after pilot testing) was not selected for the same reasons Alternative 7 was not selected. Alternative 8 (filling the lagoon) is EPA's selected alternative for the following reasons: The sludge does not need to be transported, dredged or dewatered in order for this alternative to be implemented; the alternative is effective, protects human health and the environment; it reduces risk by limiting movement of the contaminants; it is reliable over the long term and is technically and administratively feasible; it is a proven technology which can be implemented at a cost-effective price.

Even though EPA is selecting Alternative 8, EPA is leaving GSD the option to conduct the design and pilot studies with regard to Alternative 9 as well. If the studies show that Alternative 7 is technically feasible and cost-effective, GSD can request at that time that EPA modify the selected plan, after further public notice.

Next steps

EPA will review comments received during the public comment period before making a decision on the cleanup plan. Based on new information in the public comments, EPA may change its proposed option and select another alternative presented in this plan.

EPA will respond to comments in a document called a "responsiveness summary" and announce its decision to the public in the local newspaper with copies placed in the administrative record.

After the decision, the Gary Sanitary District will submit a design work plan to EPA that identifies the detailed studies that will be needed to implement the selected plan. After approval by EPA, the detailed design and construction needed to implement the plan will occur over a period of years. The consent decree requires the selected plan be implemented within five years after EPA's decision.

**EPA Picks Recommended
Cleanup Option for
Ralston Street Lagoon
Gary, Indiana**

Fill and Cover Alternative Preferred

(details inside)

RALSTON STREET LAGOON: EPA Proposes Cleanup Plan

United States
Environmental Protection
Agency
Region 5
Office of Public Affairs (P-19J)
77 W. Jackson Blvd.
Chicago, IL 60604-3590



Attachment 4
Ralston Street Lagoon EPA-Approved Remediation Schedule

Remedy: Filling the Lagoon

A. General Items

1. The Defendants shall submit a Design Work Plan to the Plaintiffs by March 9, 2009 (submitted).
2. The Defendants shall acquire all necessary adjacent land to implement the project by December 31, 2009.
3. The Defendants shall apply for all necessary permits for each remedial action phase (berm stabilization, containment wall, sludge remedy) within 3 months of construction start-up; the Contractor will also be required to acquire certain permits prior to construction.
4. The Defendants shall prepare the site for construction by September 30, 2010.

B. Berm Stabilization and Barrier Wall

1. Within 15 months of EPA approval of the Pre-Design Investigation Work Plan, the Defendants shall provide to the Plaintiffs a Detailed Design of the Berm Stabilization and Barrier Wall construction.
2. Within 10 months of EPA approval of the Detailed Design, the Defendants shall complete Berm Stabilization.
3. Within 18 months of EPA approval of the Detailed Design, the Defendants shall complete Barrier Wall Construction.

C. Sludge Dewatering, Bulking/Solidifying, and Capping

1. Within 10 months of EPA approval of the Remedial Design Work Plan, the Defendants shall provide to Plaintiffs a Preliminary Design Report (for the entire site) and a Pilot Test Work Plan.
2. Within 19 months of EPA approval of the Remedial Design Work Plan, the Defendants shall conduct Field-scale Pilot Testing at the Ralston Street Lagoon and submit to the Plaintiffs the Preliminary Design (for the sludge remedy).
3. Within 28 months of EPA approval of the Remedial Design Work Plan, the Defendants shall submit to the Plaintiffs a Detailed Design of the Sludge Dewatering, Bulking/Solidifying, and Capping.
4. Within 6 months of EPA approval of the Detailed Design, the Defendants shall initiate construction of the final remedy for Sludge Dewatering, Bulking/Solidifying, and Capping.
5. Within 42 months of EPA approval of the Detailed Design, the Defendants shall complete Sludge Dewatering and Bulking/Solidifying.
6. Within 54 months of EPA approval of the Detailed Design, the Defendants shall complete the Capping which shall complete construction of the remedy.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 27 2010

REPLY TO THE ATTENTION OF:

L-8J

Via Certified Mail 7001 0320 0006 0192 5381
Return Receipt Requested

Mr. Rinzer Williams III
Director, Gary Sanitary District
3600 West 3rd Avenue
Gary, Indiana 46406

RE: EPA Approval of GSD Request dated June 21, 2010 for Revised Schedule
Modified Consent Decree and Judgment – 2002
Ralston Street Lagoon Project

Dear Mr. Williams:

The purpose of this letter is to approve Gary Sanitary District's request for a revision of the project schedule dated June 21, 2010. The schedule dates, as reflected in EPA's Final Decision for the Ralston Street Lagoon site dated April 7, 2009, are revised as proposed in Exhibit A to your letter, a copy of which is enclosed.

We appreciate your continuing cooperation in moving the project forward to construction. If you have any questions, please contact me, or have your staff contact Michael Mikulka of my staff, at 312-886-6760.

Sincerely,

Bruce F. Sypniewski
Acting Director
Land and Chemicals Division

Enclosure

cc: Richard Comer, President
Gary Sanitary District Board of Commissioners
3600 West 3rd Avenue
Gary, IN 46402

Daniel F. Vicari, P.E., Project Manager
Camp Dresser & McKee, Inc.
536 South Lake Street
Gary, IN 46403

James Smith, Ph.D.
Indiana Department of Environmental Management
Office of Legal Counsel/NRD Program
100 N. Senate Avenue
Indianapolis, IN 46204-2251

Exhibit A

**Proposed Updates to RSL Remedial Design Milestones
June 18, 2010**

Milestone (EPA Final Decision Attachment 4 item (1), Remedial Design Work Plan Figure 5-1 ID (2), Proposed Schedule ID (bold), task name)	Date based on Final Decision /Remedial Design Work Plan	EPA Approved Revised Deadline (3)	Proposed Date
A.1., ID 20, 20 - Submit Remedial Design Work Plan	3/9/09	Complete	Complete
A.2., ID 63, 63 - Property Acquisition	12/31/09	12/31/09	1/5/11
A.3., ID 65, 65 - Apply for necessary permits	3 months prior to construction for each remedial action phase	3 months prior to construction for each remedial action phase	3 months prior to construction for each remedial action phase
A.4., ID 64, 64 - Site Preparation	9/30/10	9/30/10	8/17/11
ID 66 - GSD Financing Secured for Berm and Barrier Wall Construction and Sludge Remedy Pilot Test	N/A	N/A	8/11/11
B.1., ID 50, 50 - Submit detailed design of Berm/Barrier Wall construction	7/4/10	7/4/10	7/6/10
B.2., ID 68, 69 - Complete Berm Stabilization	7/7/11	7/7/11	12/23/11
B.3., ID 69, 70 - Complete Barrier Wall construction	3/3/12	3/3/12	11/17/12
C.1., ID 35, 35 - Submit Preliminary Design Report for RSL	9/11/09	9/11/09	Complete

Exhibit A (continued)

**Proposed Updates to RSL Remedial Design Milestones
June 18, 2010**

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C.1., ID 40, 40 - Submit Pilot Test work plan (draft)	9/11/09	9/11/09	Complete
ID 42, 42 - Submit Pilot Test work plan (revised)	11/6/09	2/26/10	Complete
C.2., IDs 44 & 45, 44&45 - Conduct Field-scale Pilot Test and Submit Preliminary Design for sludge remedy	11/23/09 - 11/6/10	4/7/11 - 12/14/11	9/22/11 - 5/30/12
C.3., ID 57, 57 - Submit detailed design of sludge remedy	8/3/11	10/5/12	3/22/13
C.4., ID 72, 73 - Initiate construction of Sludge dewatering, bulking / solidifying, and capping	4/9/12	3/14/13	8/30/13
C.5., ID 73, 74 - Complete sludge dewatering and bulking / solidifying	9/21/15	12/17/15	6/2/16
C.6., ID 74, 75 - Complete capping	9/15/16	12/11/16	5/28/17
ID 78, 79 - Project Completion	1/13/17	1/13/17	6/27/17

References:

- (1) Final Decision, Attachment 4 (EPA, April 7, 2009)
- (2) Remedial Design Work Plan, Figure 5-1 (CDM, April 2010)
- (3) EPA Approval Letter for Revised Schedule (EPA, March 11, 2010)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 27 2010

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June 18, 2010**

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ID 78, 79 - Project Completion	1/13/17	1/13/17	6/27/17

References:

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- (2) Remedial Design Work Plan, Figure 5-1 (CDM, April 2010)
- (3) EPA Approval Letter for Revised Schedule (EPA, March 11, 2010)

Supplemental Environmental Project

1. In accordance with Section X (Supplemental Environmental Project) of the Consent Decree, Defendants shall perform a Supplemental Environmental Project at the Pine Station Nature Preserve oxbow (the “Oxbow”), a roughly 19-acre area on the banks of the Grand Calumet River, by removing invasive plant species from the oxbow and preparing the area for native vegetation (the “SEP”). The oxbow area that will be addressed by the SEP is shown on the figure in Attachment 1 to this Appendix. Defendants shall spend no less than \$175,000 on the performance of the SEP.

2. The SEP shall begin in the growing season in spring/summer of 2017 and conclude in the dormant season of 2019.

3. In performing the SEP, Defendants shall coordinate with IDEM and the Indiana Department of Natural Resources, which owns the oxbow, on all implementation details and scheduling, including identification of dates in each calendar year that constitute the dormant and growing seasons and the appropriate work to be conducted during those timeframes.

4. Defendants may retain a contractor or contractors to perform or assist in performing the SEP tasks described herein.

5. Due to its location between U.S. Route 90 and the Grand Calumet River, access to the oxbow sufficient to transport equipment appropriate to perform invasive plant removal is currently limited to the cost-prohibitive alternatives of using a barge or constructing a temporary structure in the River. As part of the SEP, Gary Sanitary District shall provide access to the oxbow through another route, over its own treatment plant property and crossing a former railroad easement now owned by the City of Gary.

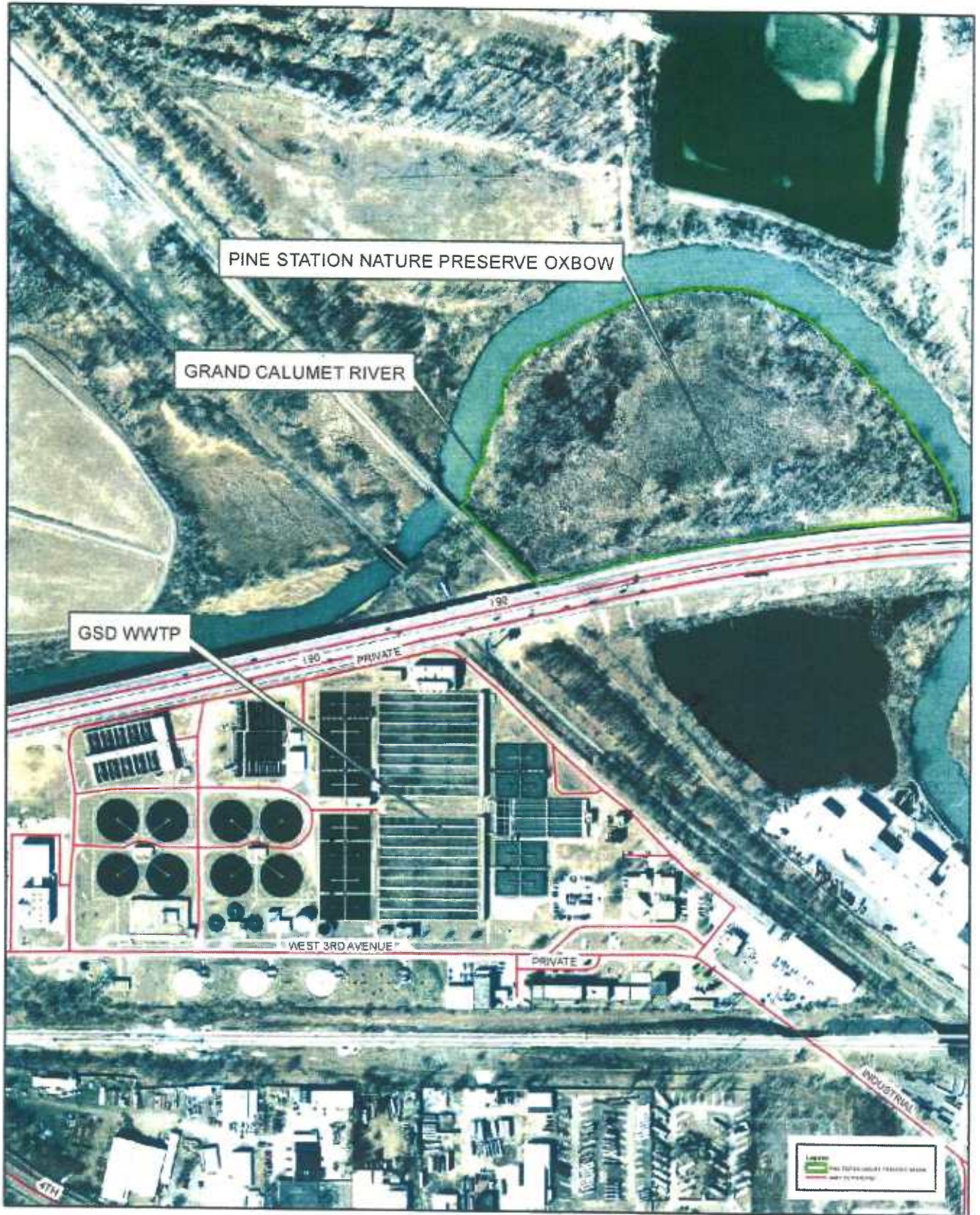
6. The SEP shall include at least two passes each growing season (*i.e.* in spring/summer of 2017 and 2018) for treatment of invasive herbaceous species, including but not limited to cattails, Phragmites, and purple loosestrife, using a broadcast application of herbicide in the first growing season and targeted applications of herbicide in the second growing season. Woody plant removal will be performed during the winter of 2017-2018, to allow for brush piles to be constructed and burned while clearing work is ongoing.

7. During the first dormant season (*i.e.*, winter of 2017-2018), the SEP shall include manual clearing and removal of woody invasive plants. Stems that are cut shall be treated with appropriate herbicide. At least two passes will be made during the following dormant season (2018-2019) to control re-sprouting and newly sprouting woody invasive plants.

8. During the first dormant season (*i.e.*, winter of 2017-2018), the SEP shall include burning for removal of dead aboveground biomass.

9. Any subsequent modification to this Appendix or to Attachment 1 to this Appendix hereto shall be deemed a non-material modification of the Consent Decree for purposes of Section XXIII (Modifications) of the Consent Decree.

ATTACHMENT 1 TO APPENDIX 5 OXBOW MAP



Digital Orthoimagery
2013 Indiana Statewide Imagery and LiDAR Program
Publication Date: 20130628
Edition: IN 2013 Statewide West TIF 6inch
Projection Reference: EPSG2986: NAD83 Indiana West (ftUS)

