

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE**

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Act. No. 1:17-cv-34
	)	
	)	
EMD MILLIPORE CORPORATION	)	
	)	
Defendant.	)	

**CONSENT DECREE**

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WHEREAS, the plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a complaint simultaneously with this Consent Decree alleging that Defendant EMD Millipore Corporation (“Defendant”) violated Section 307 of the Clean Water Act (“CWA”), 33 U.S.C. § 1317.

WHEREAS, the United States and Defendant (collectively, the “Parties”), agree, without admission of facts or law except as expressly stated herein, that settlement of this matter is in the public interest and that entry of this Consent Decree without further litigation is an appropriate resolution of the dispute, and the Parties consent to the entry of this Consent Decree; and

WHEREAS, settlement and entry of this Consent Decree does not constitute an admission of liability by Defendant;

NOW, THEREFORE, it is hereby ordered, adjudged, and decreed as follows:

**I. STATEMENT OF CLAIM**

1. The Complaint states claims upon which relief can be granted against Defendant pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

**II. 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. This Court has personal jurisdiction over the Parties to this Consent Decree. Venue properly lies in this district pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), 28 U.S.C. §§ 1391(b) and (c), and 28 U.S.C. § 1395. Defendant waives all objections it might have raised to such jurisdiction or venue.

### III. APPLICABILITY

3. The provisions of this Consent Decree shall apply to and be binding upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

4. Defendant hereby agrees that it shall be bound to perform duties scheduled to occur by this Consent Decree prior to the Effective Date. In the event the United States withdraws or withholds consent to this Consent Decree before entry, or the Court declines to enter this Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall terminate.

5. No transfer of ownership or operation of the Facility, whether in compliance with this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Decree are implemented. Any transfer involving ownership or operation of the Facility, or any portion thereof, to any other person or entity must be conditioned upon the transferee's agreement to be added as a party to the Consent Decree and to be jointly and severally liable with Defendant to undertake the obligations required by all provisions of the Consent Decree relating to the portion transferred. At least thirty (30) Days prior to such transfer, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the above-referenced proposed written agreement, to EPA and the United States Department of Justice in accordance with Section XIV (Form of Notice). Any noncompliance with this Paragraph constitutes a violation of this Consent Decree.

6. Defendant shall provide a copy of this Consent Decree to all officers and agents whose duties might reasonably include compliance with any provisions of this Consent Decree. Defendant shall also provide a copy of this Consent Decree to all contractors and

consultants retained to perform any obligation required by this Consent Decree on behalf of Defendant, and condition any such contract upon performance of the work in conformity with the terms of this Consent Decree. Defendant shall require that such contractors and consultants provide a copy of this Consent Decree to their subcontractors to the extent the subcontractors are performing work subject to this Consent Decree. Such contractors, consultants and subcontractors shall be deemed agents of Defendant for the purposes of this Consent Decree. In an action to enforce this Consent Decree, Defendant shall not assert as a defense against an action by EPA the failure by any of its officers, directors, employees, agents, servants, consultants, engineering firms, contractors, successors, and assigns to take actions necessary to comply with this Consent Decree.

#### IV. DEFINITIONS

7. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in the CWA or in regulations promulgated under the CWA shall have the meaning ascribed to them in the CWA or in the regulations promulgated thereunder. Whenever the terms listed below are used in this Consent Decree, the following definitions shall apply.

- a. "Act" or "CWA" shall mean the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act), as amended, 33 U.S.C. §§ 1251-1387.
- b. "Approval by EPA" or "Approved by EPA" shall mean the issuance of a written approval document from EPA approving or approving with conditions a submission in accordance with Section IX (Review and Approval).
- c. "Complaint" shall mean the complaint filed by the United States in this action.

d. “Compliance Standards” shall mean the General Pretreatment Regulations for Existing and New Sources of Pollution (the “General Pretreatment Regulations”) at 40 C.F.R. Part 403, including the requirement to not cause Pass Through and/or Interference at the POTW, the requirements of the IDP, local limits incorporated in a future or modified IDP, and the Town’s sewer use ordinance.

e. “Consent Decree” or “Decree” shall mean this Decree and all appendices attached hereto (listed in Section XXVII).

f. “Date of Lodging” shall mean the Day this Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the District of New Hampshire.

g. “Day” shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or New Hampshire holiday, the period shall run until the close of business of the next business day.

h. “Discharge Limit Violation” shall mean (i) any exceedance of Discharge Limitations set forth in the IDP, (ii) any violation of the Specific Prohibitions described in Part 1.D. of the IDP, other than Pass Through or Interference, as determined by sampling required by the IDP or sampling conducted by the Town’s POTW, or (iii) any exceedance of local limits incorporated in a future or modified IDP, as determined by an IDP Sample.

i. “Defendant” shall mean EMD Millipore Corporation.

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

k. “Effective Date” shall have the definition provided in Section XVII (Effective Date).

l. “Facility” shall mean Defendant’s Facility located at 11 Prescott Road, Jaffrey, New Hampshire.

m. “Facility Treatment System Modifications” shall mean the wastewater treatment system(s) modifications, wastewater collection and conveyance system(s) modifications, and other necessary measures, which may include changes to the Facility’s operational processes, implemented at the Facility pursuant to the EPA Approved Treatment Plan under Paragraph 18.c of this Decree.

n. “Industrial Wastewater Discharge Permit” or “IDP” shall mean the applicable Industrial Wastewater Discharge Permit issued by the Town of Jaffrey, New Hampshire for the Facility, including Industrial Wastewater Discharge Permit No. 2010-02, 2012-02, 2015-02 and any applicable future or modified IDP issued for the Facility.

o. “IDP Sample” shall mean a sample required to be taken under the IDP or any sample that is taken in accordance with approved test procedures under 40 C.F.R. Part 136.

p. “Interference” shall mean “a discharge which, alone or in conjunction with a discharge or discharges from other sources, both: (1) inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and (2) therefore is a cause of a violation of any requirement of the POTW’s NPDES permit (including an increase in the magnitude or duration of a violation).” 40 C.F.R. § 403.3(k).

q. “Interim Treatment System Modifications” shall mean any interim operational and/or wastewater treatment system(s), wastewater collection and conveyance system(s) modifications implemented at the Facility pursuant to the EPA-Approved Treatment Plan under Paragraph 18.d of this Decree.

- r. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral.
- s. "Parties" shall mean the United States and the Defendant.
- t. "Pass Through" shall mean "a discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation)." 40 C.F.R. § 403.3(p).
- u. "POTW" shall mean the Town of Jaffrey, New Hampshire's Publicly Owned Treatment Works.
- v. "Section" shall mean a portion of this Consent Decree identified by a roman numeral.
- w. "Town" shall mean the Town of Jaffrey, New Hampshire.
- x. "United States" shall mean the United States of America.

**V. CIVIL PENALTY**

8. Defendant shall pay a civil penalty in the amount of \$385,000 ("Civil Penalty"), together with interest accruing from the Date of Lodging, at the rate specified in 28 U.S.C. § 1961, to the United States in satisfaction of the claims for civil penalties alleged in the Complaint through the Date of Lodging. Payment of the civil penalty shall be made within 30 Days after the Effective Date of the Consent Decree.

9. Defendant shall make payment of the civil penalty by FedWire Electronic Funds Transfer ("EFT") to the United States Department of Justice in accordance with written instructions to be provided to Defendant, following lodging of the Consent Decree, by the United



States Attorney's Office for the District of New Hampshire, Financial Litigation Unit, Concord, New Hampshire. The costs of such electronic funds transfer shall be the responsibility of Defendant. At the time of payment, Defendant shall send a copy of the EFT authorization form, the EFT transaction record, and a transmittal letter, which shall state that the payment is for the Civil Penalty owed pursuant to the Consent Decree in United States v. EMD Millipore Corporation and shall reference the civil action number and DOJ case number 90-5-1-1-11441, to the EPA and the United States Department of Justice as specified in Section XIV (Form of Notice), by email to [acctsreceivable.CINWD@epa.gov](mailto:acctsreceivable.CINWD@epa.gov), and by mail to:

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, Ohio 45268.

If Defendant fails to tender payment within 30 Days after the Effective Date of this Consent Decree, then interest shall accrue on the debt to the United States, from the Effective Date of this Consent Decree, at the rate provided for in 28 U.S.C. § 1961.

10. Defendant shall not deduct any penalties paid under this Decree pursuant to this Section or Section IX (Stipulated Penalties) in calculating its federal income tax.

#### **VI. GENERAL COMPLIANCE REQUIREMENTS**

11. This Consent Decree in no way affects or relieves Defendant of its responsibility to comply with applicable federal, state, and local laws, regulations, and permits, including the IDP.

12. At all times, Defendant shall operate the Facility to achieve compliance with all applicable federal and state environmental laws, including, without limitation, the Compliance Standards and other applicable permits, approvals, regulations or requirements.

13. Defendant shall perform the work required by this Consent Decree in compliance with the requirements of all applicable federal, state, and local laws, regulations, and permits. This Consent Decree is not a permit issued pursuant to any federal, state, or local statute or regulation.

14. Permits. Where any compliance obligation under this Section or Section VII (Remedial Measures) requires Defendant to obtain a federal, state, or local permit or approval, Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendant may seek relief under the provisions of Section XI (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendant has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

15. Consultants. Third-party consultants selected by Defendant to perform the duties set forth in Section VII (Remedial Measures) of this Consent Decree shall have no direct financial stake in the outcome of any audits, inspections, or evaluations conducted under the terms of this Consent Decree.

16. Contractors Protocol. Within 30 Days of the Date of Lodging, Defendant shall provide a copy of the Consent Decree to all contractors with responsibilities under this Decree. Within 45 Days of the Date of Lodging, Defendant shall make changes to all existing contractor protocols to ensure that all contractors with responsibilities under this Decree comply with the terms of this Decree.

## VII. REMEDIAL MEASURES

### Facility Wastewater Management Conditions and Waste Streams that Shall Not Be Introduced into the POTW

17. On the Effective Date of the Consent Decree, and continuing until Defendant has completed implementation of the EPA-Approved Treatment Plan, Defendant shall comply with the requirements described in Appendix 1 of this Consent Decree for Facility waste streams that shall not be introduced into the POTW, and also the Facility wastewater treatment and management conditions described in Appendix 2 of this Consent Decree. Nothing in this Consent Decree, including, without limitation, Appendix 1 or Appendix 2, shall limit Defendant's authority to revise or update in the usual course of business its wastewater treatment plant written operating procedures.

### Changes to Facility Wastewater Treatment System(s) or Other Processes to Meet Local Limits

18. Within 60 Days of the Town's incorporation of local limits in a future or modified IDP, Defendant shall submit to EPA for review and comment a proposed Treatment Plan to modify, upgrade and/or replace the Facility's wastewater treatment system(s), wastewater collection and conveyance system(s), and/or implement other necessary measures, which may include changes to the Facility's operational processes, to achieve compliance with the Compliance Standards. The proposed Treatment Plan shall include:

a. Screening Evaluation of Treatment Technologies. A screening evaluation for wastewater treatment technologies to treat pollutant loadings, specifically BOD and solids, from the Facility to the POTW. The screening evaluation shall review:

(i) existing and future Facility pollutant loading contributions to the POTW; and

(ii) potential treatment alternatives necessary to ensure that the Facility will comply with the Compliance Standards. The screening evaluation shall consider potential treatment technologies for untreated wastewaters originating from the Device Plant, and/or redirecting all or portions of wastewaters from the Device Plant to the Facility's existing wastewater treatment system, and sludge processing operation from the Facility's sequential batch reactors and/or other processes that accumulate solids.

b. Examination of Wastewater Sources. A comprehensive examination of all Facility manufacturing and industrial wastewater sources, which includes the Facility's wastewater treatment system(s) (i.e., back flushing wastewaters from sand filters and sludge wastewater generation and wasting), containing high strength organic wastewaters and suspended solids that are introduced into the POTW. The examination shall characterize volumetric flow rates, high strength organic wastewaters and suspended solids from each source, and percent contributions for these parameters from each source. The screening evaluation shall include a mass balance and loadings analysis for wastewaters introduced into the POTW from the Facility's Device Plant (Outfall 001A), Membrane Plant (Outfall 001C), and total contribution measured at the POTW (Outfall "JM 1").

c. Implementation Schedule. An Implementation Schedule that includes interim and final action items and deadline dates for implementing the modifications to the Facility's wastewater treatment system(s), wastewater collection and conveyance system(s), and/or other necessary measures, which may include (or have already included) changes to the Facility's operational processes (the "Facility Treatment System Modifications"). The Implementation Schedule shall contain interim and final deadline dates for implementing the Interim Treatment System Modifications required by Paragraphs 18.d. In no case shall the

Implementation Schedule for any action item or modification that requires installation of new treatment equipment be greater than three (3) years in duration from EPA's Approval of the Treatment Plan. An example of new treatment equipment is the installation of treatment equipment for wastewater streams without existing treatment (i.e., Outfall 001A), or addition of sludge processing equipment not currently in place.

d. Interim Treatment System Modifications. Any interim operational and/or wastewater treatment system(s) and wastewater collection and conveyance system(s) modifications (the "Interim Treatment System Modifications") that the Facility will implement (or has implemented within the past five (5) years) to achieve the Compliance Standards prior to the final Facility Treatment System Modifications being implemented. The Interim Treatment System Modifications may include, but need not be limited to: (i) automatic wastewater shut off mechanisms, alarm systems, or wastewater flow restrictors that activate if wastewaters are above certain pollutant measurement/indicator levels such as flow rate and pH, or (ii) containment and transportation of certain wastewaters or sludges to alternative off-site POTWs or locations for disposal, provided such disposal is in compliance with all applicable federal, state and local laws or regulations.

e. Slug Discharge Control Plan. An accidental and slug discharge control plan (the "Slug Discharge Control Plan") that describes the Facility procedures for any discharge of a non-routine, episodic nature, including, but not limited to, an accidental spill or a non-customary batch discharge, which has reasonable potential to cause Interference and/or Pass Through, or in any other way violate the Compliance Standards. The Slug Discharge Control Plan may be the plan submitted by the Defendant to EPA and dated June 8, 2015, and amended pursuant to Paragraph 18.b, provided such plan is amended to comply with the terms of this

Consent Decree. The Slug Discharge Control Plan shall describe the Facility alarms that are used to prevent, control and mitigate accidental and slug discharges to the POTW that could cause problems to the POTW, and shall describe the response procedures the Facility will take in the event that an alarm activates. Defendant shall refer to the EPA's Control of Slug Loadings to POTW Guidance Manual, February 1991, for guidance when amending the June 8, 2015 Plan.

19. Within sixty (60) Days following receipt of any comments by EPA on the proposed Treatment Plan, Defendant shall submit to EPA for review and Approval a final Treatment Plan that complies with the requirements of Paragraph 18 and responds to and addresses any such comments.

20. Upon Defendant's receipt of EPA's Approval of the final Treatment Plan, Defendant shall immediately commence implementation of the final Treatment Plan in accordance with the Implementation Schedule contained in the Plan, including immediately commencing implementation of all Interim Pretreatment System Modifications.

21. If Defendant disputes the Interim Pretreatment System Modifications or the Facility Pretreatment System Modifications to be implemented in accordance with the Approved Treatment Plan, the Parties agree to resolve the disputed modifications through the Dispute Resolution process in Section XII (Dispute Resolution). Defendant shall implement and complete all undisputed modifications in the Approved Treatment Plan consistent with the schedule contained in the Approved Treatment Plan, as applicable, unless an extension of time is requested by Defendant at least 60 Days before the completion date and such extension is granted by EPA.

22. Revisions to the Treatment Plan. Any revisions to the Approved Treatment Plan, including changes to the Implementation Schedule, shall be submitted to EPA for review.

Revisions that are determined by EPA to be material must be Approved by EPA. EPA will notify Defendant following its receipt of the proposed revisions whether the proposed revisions are material, and therefore Approval of those revisions will be required.

23. At Defendant's own expense, Defendant shall provide all documents, including any electronic communications, related to the development or implementation of the Treatment Plan to EPA, upon request. Such documents include, without limitation, those in the possession of any party retained by Defendant in connection with this matter. Defendant may assert that certain documents, records or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law.

#### **Training**

24. Defendant shall provide annual training for all individuals with responsibilities at the Facility that include CWA compliance. For the purposes of this Paragraph, CWA compliance includes compliance with the IDP and the obligations in this Consent Decree, which include, but are not limited to, the communication process for Facility employees to recognize certain manufacturing or treatment unit operation discharges for potential introduction of high strength organic wastewater and/or accidental slug discharges to the POTW.

25. Defendant shall provide and require annual training for all contractors and laboratory personnel with responsibilities under this Consent Decree on applicable requirements under the Decree.

26. All training under Paragraphs 24 and 25 shall be documented with the date of training, signatures of attendees, which may be provided electronically, a summary of training topics, and copies of training materials. Such documentation shall be submitted to EPA within 30 Days of the training.

**VIII. SAMPLING & REPORTING REQUIREMENTS**

27. Defendant shall perform sampling and analyses for the parameters specified in this Paragraph at the frequencies specified herein:

a. for wastewaters introduced into the POTW, Defendant shall perform sampling at Outfall JM 1 for Biochemical Oxygen Demand (“BOD<sub>5</sub>”), Carbonaceous Biochemical Oxygen Demand (“cBOD<sub>5</sub>”), and Total Suspended Solids (“TSS”); for daily volumetric flow, Defendant shall perform sampling at Outfall 002; for wastewaters from the Device Plant, Defendant shall perform sampling at Outfall 001A for BOD<sub>5</sub> and daily volumetric flow; and for wastewaters from the Casting Plant, Defendant shall perform sampling at Outfall 001C for BOD<sub>5</sub>, TSS, and volumetric flow at the following frequencies:

(i) beginning on the date of lodging of this Consent Decree and continuing until six (6) months after Defendant has completed implementation of the EPA-Approved Treatment Plan, Defendant shall perform the sampling and analyses required by this Paragraph seven (7) days per week at Outfall JM 1 and once per week for Outfalls 001A and 001C, except when analysis for BOD<sub>5</sub> and cBOD is not possible due to the Defendant’s contract laboratory being closed for scheduled holidays;

(ii) beginning on the Day six (6) months after Defendant has completed implementation of the EPA-Approved Treatment Plan and continuing until nine (9) months after Defendant has completed implementation of the EPA-Approved Treatment Plan, Defendant shall perform the sampling and analyses required by this Paragraph five (5) days per week at Outfall JM 1 and sampling and analysis shall be conducted once per week at Outfalls 001A and 001C, except when analysis for BOD<sub>5</sub> and cBOD is not possible due to the Defendant’s contract laboratory being closed for scheduled holidays; and



(iii) beginning on the Day nine (9) months after Defendant has completed implementation of the EPA-Approved Treatment Plan and continuing until twelve (12) months after Defendant has completed implementation of the EPA-Approved Treatment Plan, Defendant shall perform the sampling and analyses required by the IDP except when analysis for BOD<sub>5</sub> and cBOD is not possible due to the Defendant's contract laboratory being closed for scheduled holidays.

28. For BOD<sub>5</sub>, cBOD<sub>5</sub>, and TSS, Defendant shall collect samples as a 24-hour composite sample through flow-proportional composite sampling techniques.

29. Beginning on the date of lodging of this Consent Decree and continuing until one (1) year after Defendant has completed implementation of the EPA-Approved Treatment Plan, Defendant shall collect and analyze samples for hydrogen ion ("pH") instantaneously and on a continuous basis, and record such sample results on a daily wheel chart or equivalent electronic recording system. Sampling for pH shall be collected, at a minimum, at the location where the Facility's wastewaters are introduced into the POTW (i.e., at Outfall JM 1). For all pH results that are recorded below 5.0 Standard Units ("S.U.") or above 11.5 S.U., Defendant shall provide a summary table. The pH summary table shall list, on a daily basis, every instance when pH results drop below 5.0 S.U. or above 11.5 S.U. The table shall also show the duration (in minutes) for the event, and the lowest and highest pH value recorded during the event. If pH results are below 5.0 S.U. or above 11.5 S.U., include a statement that explains the potential or actual cause of the event. The table shall be submitted to EPA on a quarterly basis and as part of the Quarterly Monitoring Reports required by Paragraph 30.

30. On a quarterly basis, within 30 days after the end of each calendar-year quarter (i.e., by April 30, July 30, October 30, and January 30), Defendant shall submit

electronically to EPA an effluent monitoring report (“Quarterly Monitoring Report”) that includes the information collected pursuant to this Paragraph. The Quarterly Monitoring Reports shall describe:

- a. date and time period over which the samples are collected;
- b. location where samples are collected;
- c. method of sample collection;
- d. analytical sample method;
- e. total flow over the sample period;
- f. pH probe calibration information; and
- g. a certification statement as outlined at 40 C.F.R. § 403.6(a)(2)(ii) signed

by the appropriate signatory as defined at 40 C.F.R. § 403.12(l);

31. Defendant shall perform sampling and analysis required under this Section in accordance with EPA approved test methods as set forth in 40 C.F.R. Part 136. Sampling must be conducted during normal operating and production hours, and when the Facility is introducing wastewaters into the POTW.

32. After the Effective Date of this Consent Decree, within thirty (30) Days after the end of each calendar-year quarter (i.e., by April 30, July 30, October 31, and January 31), until termination of this Decree pursuant to Section XXI, Defendant shall submit a Quarterly Compliance Report for the preceding quarter that shall include a list of any violations of the IDP or Compliance Standards and status of compliance and implementation with the Approved Treatment Plan. For any reported noncompliance with the IDP or Compliance Standards, Defendant shall provide an explanation for the cause of the non-compliance, remedial

steps to be taken, and date for achieving compliance, and a list of stipulated penalties owed and documentation of payment.

33. The Quarterly Compliance Reports shall also include a description of any non-compliance with the requirements of this Consent Decree and an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If Defendant violates, or has reason to believe that it may violate, any requirement of this Consent Decree, Defendant shall notify the United States of such violation and its likely duration, in writing, within ten (10) Days of the Day Defendant first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to eliminate such violation. If the cause of a violation cannot be fully explained at the time the report is due, Defendant shall so state in the report. Defendant shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within thirty (30) Days of the Day Defendant becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Defendant of its obligation to provide the notice required by Section XI (Force Majeure) of this Consent Decree.

34. Whenever any violation of this Consent Decree or of any applicable permits or any other event affecting Defendant's performance under this Decree, or the performance of the Facility, may pose an immediate threat to the public health or welfare or the environment, Defendant shall notify EPA orally or by electronic transmission as soon as possible, but no later than twenty-four (24) hours after Defendant first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

35. Each report submitted by Defendant under this Section shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

36. This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

37. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by the CWA or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

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

#### **IX. REVIEW AND APPROVAL**

39. After review of any plan, schedule, report, or other item that is required to be submitted for Approval by EPA pursuant to this Consent Decree, EPA shall in writing:

- a. approve, in whole or in part, the submission;
- b. approve, in whole or in part, the submission upon specified conditions;
- c. disapprove, in whole or in part, the submission.

40. In the event of Approval pursuant to Paragraph 39.a, Defendant shall take all actions required to implement such plan, schedule, report or other item, as approved. In the event of Approval in part pursuant to Paragraph 39.a, or Approval upon specific conditions

pursuant to Paragraph 39.b, upon written direction by EPA, Defendant shall take all actions required by the approved plan or schedule, report or other item that EPA determines are technically severable from any disapproved portions, subject to Defendant's right to dispute only the specified conditions or non-approved portions pursuant to Section XII (Dispute Resolution).

41. Upon receipt of a written notice of disapproval pursuant to Paragraph 39.c., Defendant shall, within thirty (30) Days or such other time as Defendant and EPA agree in writing, correct the deficiencies and resubmit the plan, schedule, report, or other item, or portion thereof, for Approval. Any stipulated penalties applicable to the original submission shall accrue during the thirty (30) Day period or other specified period, but shall not be payable unless the resubmission is untimely and/or disapproved as provided in Paragraph 39; provided that, if the original submission was disapproved by EPA in whole, stipulated penalties applicable to the original submission shall be due and payable upon demand notwithstanding any subsequent resubmission.

42. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require Defendant to correct the deficiencies in accordance with the preceding Paragraphs.

43. If upon resubmission, a plan, report, or item, or portion thereof, is disapproved by EPA, Defendant shall be bound by EPA's decision unless Defendant invokes the dispute resolution procedures set forth in Section XII (Dispute Resolution) within twenty (20) Days of receipt of EPA's last written position. If EPA's disapproval is upheld after dispute resolution, stipulated penalties shall accrue for the violation from the date of the disapproval of the original submission.

44. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon Approval by EPA, be enforceable under this Consent Decree. In the event EPA approves a portion of a plan, report, or other item required to be submitted under this Consent Decree, the approved portion shall be enforceable under this Consent Decree.

45. In the event a dispute arises among the Parties regarding EPA's Approval upon specified conditions or disapproval in part or in whole of any plans, reports, and other items required to be submitted to EPA under this Consent Decree, the position of EPA shall govern unless Defendant invokes the dispute resolution procedures set forth in Section XII (Dispute Resolution).

#### **X. STIPULATED PENALTIES**

46. Defendant shall pay stipulated penalties to the United States for violations or noncompliance with the requirements of this Consent Decree, as specified below, unless excused under Section XI (Force Majeure). A violation or noncompliance includes failing to perform an obligation required by the terms of this Consent Decree, including any work plan or schedule approved under this Consent Decree, according to all applicable requirements of this Consent Decree and within the specified time schedules or by the date(s) established by or approved under this Consent Decree:

a. Late Payment of Civil Penalty. If Defendant fails to pay the civil penalty required to be paid under Section V of this Decree (Civil Penalty) when due, Defendant shall pay a stipulated penalty of \$1,500 per Day for each Day that the payment is late, in addition to interest on the portion of the civil penalty not paid.

b. Non-Compliance with Consent Decree. The following stipulated penalties shall accrue per violation per Day for each violation of any requirement of this Consent Decree, except for the violations identified in Paragraphs 46.c.-g., below:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 500 per Day or portion thereof	1st through 14th Day
\$ 1,500 per Day or portion thereof	15th through 30th Day
\$ 3,500 per Day or portion thereof	31st Day and beyond

c. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the Reporting Requirements of Section VIII of this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 250 per Day or portion thereof	1st through 14th Day
\$ 500 per Day or portion thereof	15th through 30th Day
\$ 750 per Day or portion thereof	31st Day and beyond

d. Pass Through or Interference Violations. The following stipulated penalties shall accrue for each incident that results in Pass Through or Interference under 40 C.F.R. § 403.5(a)(1) at the POTW caused by pollutants or wastewater introduced by the Facility to the POTW, either alone or in conjunction with a discharge or discharges from other sources, after the Effective Date of this Consent Decree:

<u>Per Violation</u>	<u>Category of Noncompliance</u>
\$ 15,000	Pass Through or Interference Violation

Additionally, the following stipulated penalties shall accrue for each day that pollutants introduced by the Facility to the POTW, which alone or in conjunction with a discharge or discharges from other sources, cause Pass Through or Interference at the POTW resulting in violations of the POTW's NPDES Permit (e.g., a violation of a monthly average concentration limit results in thirty (30) days of violation) after the Effective Date of this Consent Decree:

Penalty Per Violation Per Day  
 \$ 500

e. Facility Wastewater Management Conditions and Offsite Shipment

Requirements. The following stipulated penalties shall accrue for each violation of any requirement described in Appendices 1 – 2 of this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 500 per Day or portion thereof	1st through 14th Day
\$ 750 per Day or portion thereof	15th through 30th Day
\$ 1,000 per Day or portion thereof	31st Day and beyond

f. Discharge Limit Violations. The following stipulated penalties shall

accrue for (i) each exceedance of Discharge Limitations set forth in the IDP, (ii) each violation of the Specific Prohibitions, other than Pass Through or Interference, described in Part 1.D. of the IDP, and (iii) each exceedance of local limits incorporated in a future or modified IDP after the Facility has completed the Facility Treatment System Modifications in accordance with the approved Implementation Schedule in Paragraph 18.c of this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 500 per Day or portion thereof	1st through 14th Day
\$ 750 per Day or portion thereof	15th through 30th Day
\$ 1,000 per Day or portion thereof	31st Day and beyond

g. Non-Discharge Limit Violation of IDP. The following stipulated penalties

shall accrue for each Non-Discharge Limit Violation of the IDP requirements at the Facility after the Effective Date of this Consent Decree. Non-Discharge Limit Violations of the IDP only include: (1) failure to resample after a Discharge Limit Violation; (2) failure to submit monitoring reports; (3) failure to comply with monitoring requirements; and (4) failure to report, or to timely report, slug discharges or discharge limit violations to the POTW:

<u>Per Day of Violation</u>	<u>Period of Noncompliance</u>
\$ 500 per Day or portion thereof	1st through 14th Day
\$ 750 per Day or portion thereof	15th through 30th Day



\$ 1,000 per Day or portion thereof                      31st Day and beyond

47.            Stipulated penalties shall automatically begin to accrue on the Day after performance is due or on the Day a violation occurs and shall continue to accrue each Day until performance is satisfactorily completed or until the violation or noncompliance ceases.

Stipulated penalties shall accrue simultaneously for separate violations of or instances of noncompliance with this Consent Decree.

48.            Following the United States' determination that Defendant has failed to comply with a requirement of this Consent Decree, the United States may give Defendant written notification of the same and describe the noncompliance. The United States may send Defendant a written demand for the payment of the stipulated penalties. However, the stipulated penalties shall accrue as provided in the preceding Paragraph regardless of whether the United States has notified Defendant of a violation of or noncompliance with the requirements of this Consent Decree, or demanded payment of stipulated penalties.

49.            Defendant shall pay stipulated penalties as specified in this Section by delivering the payment to the United States within thirty (30) Days of the date of a demand for payment of stipulated penalties, in accordance with the instructions set forth below:

a.            Defendant shall pay stipulated penalties in the manner set forth and with the confirmation notices required by Paragraph 9, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) or noncompliance the penalties are being paid.

b.            In the event Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, such penalty (or portion thereof) shall be subject to interest at the statutory judgment rate set forth at 28 U.S.C. § 1961, accruing as of the date payment became

due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for failure of Defendant to pay any stipulated penalties.

50. Stipulated penalties shall continue to accrue as provided in Paragraph 47, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or a decision of the United States that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owed, together with interest accruing at the rate specified in 28 U.S.C. § 1961, to the United States within thirty (30) Days of the effective date of the agreement or the receipt of the United States' decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties, together with interest, within thirty (30) Days of receiving the Court's decision or order, except as provided in Subparagraph c below.

c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owed, together with interest, within fifteen (15) Days of receiving the final appellate court decision.

51. The stipulated penalties set forth above shall be in addition to any other remedies, sanctions, or penalties which may be available by reason of Defendant's failure to comply with the requirements of this Consent Decree. The United States expressly reserves any and all legal and equitable remedies, including contempt sanctions, which may be available to enforce the provisions of this Consent Decree.

**XI. FORCE MAJEURE**

52. “Force majeure,” for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of Defendant’s contractors that delays or prevents the timely performance of any obligation under this Consent Decree notwithstanding Defendant’s best efforts to fulfill the obligation. The requirement that Defendant exercise “best efforts” 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 Defendant’s financial inability to perform any obligation under this Consent Decree. Stipulated Penalties shall not be due for the number of Days of noncompliance caused by a Force Majeure event as defined in this Section, provided that Defendant complies with the terms of this Section.

53. If any event occurs that may delay or prevent the performance of any obligation under this Consent Decree, whether or not caused by a Force Majeure event, Defendant shall notify EPA within seventy-two (72) hours after Defendant first knew or should have known that the event might cause a delay. Within ten (10) Days thereafter, Defendant shall submit to EPA, at the addresses specified in Section XIV (Form of Notice), a written explanation of the cause(s) of any actual or expected delay or noncompliance, the anticipated duration of any delay, the measure(s) taken and to be taken by Defendant to prevent or minimize the delay, a proposed schedule for the implementation of such measures, Defendant’s rationale for attributing such delay to a Force Majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Defendant shall include with any notice all available

documentation supporting the claim that the delay was attributable to a Force Majeure.

Defendant shall be deemed to know of any circumstances of which Defendant, any entity controlled by Defendant, or Defendant's contractors knew or should have known. Failure to provide timely and complete notice in accordance with this Paragraph shall constitute a waiver of any claim of Force Majeure with respect to the event in question.

54. If EPA agrees that the delay or anticipated delay is attributable to Force Majeure, the time for performance of the obligations under this Consent Decree that are affected by the Force Majeure event shall be extended by EPA for a period of time as may be necessary to allow performance of such obligations. EPA will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure event.

55. If EPA does not agree the delay or anticipated delay is attributable to Force Majeure, or on the number of Days of noncompliance caused by such event, EPA will notify Defendant in writing of its decision. Defendant may then elect to initiate the dispute resolution process set forth in Section XII (Dispute Resolution). In any dispute resolution proceeding, Defendant 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 Defendant complied with the requirements of Paragraphs 52 and 53, above. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation(s) of this Consent Decree identified to EPA and the Court.

56. Delay in performance of any obligation under this Consent Decree shall not automatically justify or excuse delay in complying with any subsequent obligation or requirement of this Consent Decree.

## **XII. DISPUTE RESOLUTION**

57. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures set forth in this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendant's failure to seek resolution of a dispute under this Section shall preclude Defendant from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendant arising under this Decree. The procedures set forth in this Section shall not apply to actions by the United States to enforce obligations that Defendant has not disputed in accordance with this Section.

58. Informal Dispute Resolution. Any dispute subject to dispute resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute, and shall be accompanied by a Statement of Position that shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by Defendant. The period of informal negotiations shall not exceed thirty (30) Days from the date the dispute arises, unless that period is modified by written agreement between the Parties. EPA shall maintain an administrative record of the dispute, which shall contain all statements of the Parties, including supporting documentation, submitted pursuant to this Section.

59. In the event that Defendant elects to invoke dispute resolution according to this Section, Defendant shall do so by giving the United States written notice of the existence of

the dispute within twenty (20) Days after receipt of a notice of disapproval, Approval with conditions or modification, a Force Majeure determination by EPA, or a written demand for payment of stipulated penalties. If Defendant fails to give such notice, it shall be deemed to have waived any right to invoke dispute resolution regarding such dispute, and the position advanced by the United States shall be considered binding.

60. If Defendant cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within thirty (30) Days after the conclusion of the informal negotiation period, Defendant seeks judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIV (Form of Notice), a motion requesting judicial resolution of the dispute. Any such motion shall contain a written statement of Defendant's 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 Consent Decree.

61. The United States shall respond to Defendant's motion within the time period allowed by the Federal Rules of Civil Procedure and the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Federal Rules of Civil Procedure and the Local Rules.

62. Standard of Review.

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

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

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under this Section, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree, furthers the objectives of this Consent Decree more positively than the position advanced by the United States, and that Defendant is entitled to relief under applicable principles of law.

63. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent 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 50. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section X (Stipulated Penalties).

### **XIII. RIGHT OF ENTRY AND DOCUMENT RETENTION**

64. EPA and its contractors, consultants, and attorneys shall have authority to enter the Facility at all reasonable times, upon proper identification, for the purposes of:

(a) monitoring the progress of any activity required by this Consent Decree; (b) verifying any data or information submitted to EPA under this Consent Decree; (c) assessing Defendant's compliance with this Consent Decree; (d) obtaining samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants; and (e) obtaining

documentary evidence, including photographs and similar data. Upon request, EPA shall provide Defendant splits of any samples taken by EPA.

65. Until five (5) years after the termination of this Consent Decree, Defendant shall retain all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) generated by Defendant, and all data collected and all reports generated by Defendant's contractors (including data and reports in electronic form), that relate in any manner to Defendant's performance of its obligations under this Consent 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, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

66. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States at least ninety (90) Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Defendant shall deliver any such documents, records, or other information to EPA. Defendant may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it 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 Defendant.



However, no documents, records, data, reports or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

67. Defendant may also assert that information required to be provided under this Consent Decree is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

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

#### **XIV. FORM OF NOTICE**

69. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be in writing and addressed to the following respective addressees, unless written notice is given that another individual has been designated to receive the documents. Any submission required by this Consent Decree must be received by EPA upon the due date stated in or required under this Consent Decree. Notifications, submissions, or communications shall be made electronically and may, in addition, be made by certified mail with return receipt or by any reliable commercial delivery service that provides written verification of delivery. If a submission or notice cannot be provided via electronic mail due to its size, an electronic copy shall be provided by CD-ROM or other similar digital format.

As to the Department of Justice:

EES Case Management Unit  
Environment and Natural Resources Division  
United States Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044  
eescasemanagement.enrd@usdoj.gov  
Re: DOJ Case No. 90-5-1-1-11441

Jerry MacLaughlin  
Environmental Enforcement Section  
Environment & Natural Resources Division  
United States Department of Justice  
P.O. Box 7611  
Washington, DC 20044  
(202) 616-7162  
Jerry.MacLaughlin@usdoj.gov

As to EPA:

Joseph Canzano, P.E.  
U.S. EPA Region 1  
Office of Environmental Stewardship  
5 Post Office Square, Suite 100  
Mailcode: OES04-4  
Boston, MA 02109-3912  
617-918-1763  
Canzano.Joseph@epa.gov

Kevin Pechulis, Enforcement Counsel  
U.S. EPA Region 1  
Office of Environmental Stewardship  
5 Post Office Square, Suite 100  
Mailcode: OES04-3  
Boston, MA 02109-3912  
617-918-1612  
Pechulis.Kevin@epa.gov

As to Defendant:

Plant Manager

MilliporeSigma  
11 Prescott Road  
Jaffrey, NH 03452

**With copies to:**

General Counsel  
Legal Department  
MilliporeSigma  
290 Concord Road  
Billerica, MA 01821,

and

Head of Environmental Health and Safety  
MilliporeSigma  
11 Prescott Road  
Jaffrey, NH 03452

and

Seth D. Jaffe  
Foley Hoag LLP  
Seaport West  
155 Seaport Blvd.  
Boston, MA 02210-260

70. All written notices, reports and all other submissions required by this

Consent Decree shall contain the following certification by a duly authorized representative of Defendant:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

**XV. EFFECT OF SETTLEMENT**

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

72. This Consent Decree is neither a permit nor a modification of any existing permit under any federal, State, or local law or regulation. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws and regulations, and permits, and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CWA or with any other provisions of federal, State, or local laws, regulations or permits. This Consent Decree shall not be construed to constitute EPA approval of any equipment or technology installed by Defendant under the terms of this Consent Decree.

73. This Consent Decree does not limit any rights or remedies available to the United States for any violation by Defendant of the CWA and associated regulations or permit conditions other than those claims alleged in the Complaint through the Date of Lodging. This Consent Decree does not limit any rights or remedies available to the United States for any criminal violations. The United States expressly reserves all rights and remedies, legal and equitable, available to the United States for all violations of the CWA or other applicable law where such violations are not alleged in the Complaint, and reserves all rights and remedies, legal and equitable, available to enforce the provisions of this Consent Decree. Nothing herein shall be construed to limit the power of the United States, consistent with its authorities, to undertake any action against any person, in response to conditions which may present an imminent and substantial endangerment to the public's health or welfare, or the environment.

74. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, or other appropriate relief relating to the Defendant's Facility, or Defendant's violations of federal law, Defendant 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 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 71 of this Section.

75. This Consent Decree does not limit or affect the rights of Defendant or the United States 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 Defendant, except as otherwise provided by law.

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

#### **XVI. COSTS**

77. Each Party shall bear its own expenses, costs and attorney's fees in this action. Defendant shall be responsible for all documented expenses, costs and attorney's fees incurred by the United States in collecting any penalties due and payable under Section V (Penalty for Past Violations) and Section X (Stipulated Penalties) of this Consent Decree. In no event shall the United States be responsible for any expenses, costs or attorney's fees incurred by Defendant.

**XVII. EFFECTIVE DATE**

78. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket; provided, however, that Defendant hereby agrees that it shall be bound to perform duties scheduled to occur prior to the Effective Date. In the event the United States withdraws or withholds consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall terminate.

**XVIII. RETENTION OF JURISDICTION**

79. The Court shall retain jurisdiction to modify and enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Consent Decree and to assess any stipulated penalties that may have accrued during the term of the Consent Decree.

**XIX. MODIFICATION**

80. The terms of this Consent Decree, including modifications to any schedule specified in or approved under the Consent Decree, may be modified only by a subsequent written agreement signed by both of the Parties. Where the modification constitutes a material change to the Consent Decree, it shall be effective only upon approval by the Court. Any disputes concerning modification of this Consent Decree shall be resolved pursuant to Section XII (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 62, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

**XX. SEVERABILITY PROVISION**

81. The provisions of this Consent Decree shall be severable, and should any provisions be declared by a court of competent jurisdiction to be unenforceable, the remaining provisions shall remain in full force and effect.

**XXI. TERMINATION**

82. After Defendant has paid all outstanding penalties, has completed all remedial measures and reports required under Sections VI (Remedial Measures) and VIII (Sampling and Reporting), has thereafter maintained continuous satisfactory compliance with this Consent Decree and the IDP for a period of one (1) year, Defendant may serve upon the United States a Request for Termination, stating that Defendant has satisfied those requirements, together with all applicable supporting documentation.

83. Following receipt by the United States of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfied the requirements for termination of this Consent Decree. If the United States agrees that this Consent Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Consent Decree.

84. If the United States does not agree that Defendant has paid all outstanding penalties and completed all remedial measures and reporting, required under Sections VII and VIII and therefore, that this Consent Decree may be terminated, Defendant may invoke dispute resolution under Section XII (Dispute Resolution). However, Defendant shall not seek dispute resolution of any dispute regarding termination until sixty (60) Days after service of its Request for Termination.

**XXII. FINAL JUDGMENT**

85. Entry of this Consent Decree constitutes Final Judgment under Rule 54 of the Federal Rules of Civil Procedure.

**XXIII. WAIVER OF SERVICE**

86. Defendant hereby agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

**XXIV. PUBLIC COMMENTS**

87. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments received disclose facts or considerations that indicate that this Consent Decree is inappropriate, improper, or inadequate. Defendant consents to the entry of this Consent Decree without further notice and agrees not to withdraw from this Consent Decree or oppose entry of this Consent Decree by the Court or to challenge any provision of this Decree, unless the United States has notified Defendant in writing that it no longer supports entry of this Decree.

**XXV. SIGNATORIES**

88. Each undersigned representative of Defendant 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 Consent Decree and to execute and legally bind the Party he or she represents to this document.



89. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

**XXVI. INTEGRATION**

90. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understanding, whether oral or written, concerning the settlement embodied herein. Other than submissions that are subsequently submitted and Approved by EPA pursuant to 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.

**XXVII. APPENDICES**

91. The following Appendices are attached to and part of this Consent Decree:

Appendix 1 – Facility waste streams that shall not be introduced into the POTW until Defendant completes implementation of the EPA-Approved Treatment Plan

Appendix 2 – Facility wastewater treatment monitoring and management conditions that Defendant shall implement until Defendant completes implementation of the EPA-Approved Treatment Plan

Judgment is hereby entered in accordance with the foregoing Consent Decree this \_\_\_\_\_

day of \_\_\_\_\_.

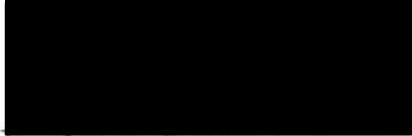
\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. EMD Millipore Corporation:

FOR Plaintiff UNITED STATES OF AMERICA:

Date:

1/30/17



Ellen M. Mahan  
Deputy Chief  
Environmental Enforcement Section  
Environment & Natural Resources Division  
United States Department of Justice

Date:

1/30/17



Jerome W. MacLaughlin  
Senior Counsel  
Environmental Enforcement Section  
Environment & Natural Resources Division  
United States Department of Justice  
P.O. Box 7611  
Washington, DC 20044  
(202) 616-7162  
jerry.maclaughlin@usdoj.gov

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. EMD Millipore Corporation:

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: 11/17/2016



Mark Pollins  
Director  
Water Enforcement Division  
Office of Civil Enforcement  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Date: 11/14/2016

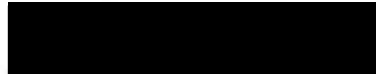


Robert D. Fentress  
Attorney-Advisor  
Water Enforcement Division  
Office of Civil Enforcement  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. EMD Millipore Corporation:

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: 11/06/2016



Susan Studlien,  
Director  
Office of Environmental Stewardship  
United States Environmental Protection Agency,  
Region 1  
5 Post Office Square  
Boston, MA 02109-3912

Date: 11/2/16



Kevin Pechulis,  
Enforcement Counsel  
Office of Environmental Stewardship  
United States Environmental Protection Agency,  
Region 1  
5 Post Office Square  
Boston, MA 02109-3912

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. EMD Millipore Corporation:

FOR DEFENDANT EMD MILLIPORE CORPORATION:

Date: 10-24-16



Christos Ross  
Executive Vice President, Operations  
EMD Millipore Corporation  
290 Concord Road  
Billerica, MA 01821

**Appendix 1 – Facility waste streams that shall not be introduced into the POTW until Defendant completes implementation of the EPA-Approved Treatment Plan**

On the Effective Date of the Consent Decree, and continuing until Defendant has completed implementation of the EPA-Approved Treatment Plan, Defendant shall contain and ship offsite for treatment and/or disposal the waste streams described below under the circumstances described therein:

Facility source waste streams that shall be shipped off-site	Dimethyl Sulfoxide (DMSO) Containing Wastewater	Untreated Wastewater from WWTP Equalization (EQ) Tank	WWTP Sludge	WWTP Frac Tank Wastewater	Sewer Force Main Cleaning Wastewater
Circumstances when facility waste stream shall be shipped offsite	DMSO-containing wastewater shall not be discharged to the POTW in concentrations and/or amounts that would cause a nuisance odor issue at the POTW. DMSO-containing wastewater shall be shipped offsite in accordance with the Facility's written operating procedures that pertain to DMSO-containing wastewater.	Untreated wastewater generated by membrane manufacturing and stored in the WWTP EQ tank shall be shipped offsite in accordance with the Facility's written operating procedures that pertain to such wastewater when the EMD Millipore WWTP cannot effectively treat such wastewater in compliance with the requirements of the IDP.	Sludge wasted from the Facility sequencing batch reactors shall be collected, stored and shipped offsite for treatment in accordance with the Facility's written operating procedures that pertain to such sludge.	Two storage tanks located adjacent to the WWTP are used for temporary storage of wastewater. Wastewater shall be diverted to these tanks for retreatment or offsite treatment in accordance with the Facility's written operating procedures that pertain to such wastewater when the EMD Millipore WWTP cannot effectively treat such wastewater in compliance with the requirements of the IDP.	All wastewater generated from periodic force main cleaning activities shall be collected and shipped offsite for treatment. EMD Millipore shall clean the sections of the force main over which it has an easement at least twice each calendar year.

## **Appendix 2 – Facility Wastewater Treatment and Management Conditions**

On the Effective Date of the Consent Decree, and continuing until Defendant has completed implementation of the EPA-Approved Treatment Plan, Defendant shall (1) manage its wastewater treatment operations and wastewater discharge to the POTW in accordance with Defendant's wastewater treatment plant written operating procedures, and (2) comply with the following requirements:

- 1) During normal operations, continue to operate the WWTP where only one sequencing batch reactor (SBR) is fed wastewater at a time, preventing simultaneous or back-to-back decants of the two SBRs.
- 2) Continue to manage WWTP loading via the use of the existing influent equalization tank.
- 3) Continue to automatically control stable effluent flow rates via variable frequency discharge pumps.
- 4) Staff the WWTP seven (7) days per week to perform operational and compliance testing under the oversight of a licensed treatment plant operator.
- 5) Ship wastewaters per requirements within Appendix 1.
- 6) Continue automated practice of introducing settling chemistry at the conclusion of the react cycle.
- 7) Continue practice of monitoring and optimization of settling chemistry through periodic jar testing.
- 8) Continue to operate automated pH adjust system at Outfall 002.