

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS**

UNITED STATES OF AMERICA)
and STATE OF TEXAS,)
)
 Plaintiffs,)
)
 v.)
)
CITY OF DALLAS)
)
 Defendant.)
_____)

Civil Action No.

CONSENT DECREE

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INTRODUCTION

Plaintiff United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), and Plaintiff the State of Texas, on behalf of the Texas Commission on Environmental Quality ("TCEQ"), have filed a Complaint concurrently with the lodging of this Consent Decree.

The United States and the State's Complaint alleges that Defendant City of Dallas (the "City") violated the Federal Water Pollution Control Act, also known as the Clean Water Act, 33 U.S.C. §§ 1251-1387 ("Clean Water Act"), the Solid Waste Disposal Act, also known as the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-6992k ("RCRA"), and Chapter 26 of the Texas Water Code.

The State of Texas is a plaintiff in this action and is joined as a party under Section 309(e) of the Act, 33 U.S.C. § 1319(e). Whenever a municipality is a party to a civil action brought by the United States under Section 309, the Act requires the State in which the municipality is located to be joined as a party.

On March 28, 1997, EPA issued the City National Pollutant Discharge Elimination System ("NPDES") Permit No. TXS000701, with an effective date of May 1, 1997.

On February 6, 2004, EPA issued an order titled "Findings of Violation and Order for Compliance" (the "Compliance Order") (attached to this Decree as Appendix I) for alleged violations of the Clean Water Act and RCRA.

On April 13, 2004, in response to the Compliance Order, the City submitted its "Response to Findings of Violation and Order for Compliance."

On February 22, 2006, the Texas Commission on Environmental Quality

("TCEQ") issued the City Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0004396000, which is a renewal of NPDES Permit No. TXS000701.

The City understands that, separate and apart from the requirements of this Consent Decree, EPA plans to audit and/or otherwise review the City's storm water management program in the future.

The City does not admit any liability to the United States or the State arising out of the transactions or occurrences alleged in the Complaints.

The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony at trial, without the adjudication or admission of any issues of fact or law except as provided in Section I below, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367; Sections 309(b), 311(b)(3), and 311(b)(7)(E) of the Clean Water Act, 33 U.S.C. §§ 1319(b), 1321(b)(3) and 1321(b)(7)(E); Section 3008(a) of RCRA, 42 U.S.C. § 6928(a); and over the Parties. Venue lies in this District pursuant to Sections 309(b) and 311(b)(7)(E) of the Clean Water Act, 33 U.S.C. §§ 1319(b) and 1321(b)(7)(E); Section 3008(a) of RCRA, 42 U.S.C. § 6928(a); and pursuant to 28 U.S.C. § 1391(b) and (c) and 28 U.S.C. § 1395; because the City is, and, at the time the action was commenced, was, located in,

residing in, and doing business in this judicial district, and because the violations and releases that are the subject of this action, and a substantial part of the events or omissions giving rise to the claims, occurred in this judicial district. For purposes of this Decree or any action to enforce this Decree, the City consents to the Court's jurisdiction over this Decree or such action and over the City, and consents to venue in this judicial district.

2. Notice of commencement of this action has been given to the State of Texas pursuant to Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b), and Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States, the State, and the City and any successor or other entities or persons otherwise bound by law.

4. The City shall provide a written, hard-copy notice that a copy of this Consent Decree is posted on the City's intranet to appropriate officers, employees, and agents whose duties include compliance with any provision of this Decree, including, without limitation, the Mayor and City Council members, the City Manager's Office, the Directors and Assistant Directors associated with the Environmental Management System ("EMS") required by this Consent Decree, the Director and non-clerical personnel of the Office of Environmental Quality, the non-clerical members of the Storm Water Management Section, and the Environmental Management Representatives and the EMS Core teams performing work on the EMS under this Consent Decree. The City shall provide a copy of this Consent Decree to any contractor retained to perform work required under this Consent Decree. The City shall condition any contract to

perform such work upon performance of the work in conformity with the terms of this Consent Decree.

5. In any action to enforce this Consent Decree, the City shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree (without waiving the City's rights against any such person). The City has the rights provided by Section IX (Force Majeure) of this Consent Decree.

6. Absent the written agreement of the United States, no transfer of ownership or operation of any of the facilities governed by this Decree, whether in compliance with this Section or otherwise, shall relieve the City of its obligation to ensure that the terms of the Decree are implemented.

7. If the City proposes to sell or transfer part or all of its ownership or operation of any facilities governed by this Decree, it shall advise the purchaser or transferee ("purchaser/transferee") in writing of the existence of this Consent Decree and provide a copy of the Consent Decree prior to such sale or transfer. The City shall send a copy of such written notification to the United States and the State pursuant to Section XIV of this Decree (Notices) by certified mail, return receipt requested, at least 45 days (or a shorter period if the United States and the City so agree in writing) before such sale or transfer.

III. DEFINITIONS

8. Unless otherwise provided in this Decree, terms used in this Consent Decree that are defined in the Clean Water Act and RCRA, or in regulations promulgated pursuant to those acts, shall have the meanings assigned to them in the Clean Water Act and RCRA, or such

regulations. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

“City” shall mean the City of Dallas, a municipal corporation duly chartered under the laws of the State of Texas.

“Clean Water Act” shall mean the Clean Water Act, formally entitled the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251-1387.

“Complaint” shall mean the United States’ and the State’s Complaint.

“Consent Decree” or “Decree” shall mean this Decree and all its attachments.

“Day” (whether or not capitalized) shall mean a calendar day unless expressly stated to be a working day. In computing due dates 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.

“Effective Date” is defined in Section XV of this Decree.

“Eligible Project Costs” include the costs of planning and implementing a SEP, but do not include overhead, administrative expenses, legal fees, or oversight by City staff of contractors.

“Environmental Management System” or “EMS” shall mean a system of management practices and procedures that promote compliance with environmental legal requirements and improve environmental performance.

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

“Industrial Facility” shall mean any facility located within the city limits of the

City from which there is a “storm water discharge associated with industrial activity” as defined in 40 C.F.R. § 122.26(b)(14) excluding § 122.26(b)(14)(x).

“Inspection” shall mean a visit to a facility or site, including direct observations of facility operations and/or conditions, that is adequate in scope and thoroughness to determine whether the facility or site is in compliance with relevant obligations. “Inspect” shall mean to carry out an Inspection.

“Maintain,” when used in connection with the staffing requirements set forth in this Consent Decree, shall mean that the City shall have the specified kinds and number of staff on the City payroll or under contract serving in the capacity specified by this Decree. If an employee or contractor leaves a position (whether as a result of retirement, resignation, or otherwise) that this Consent Decree requires the City to staff, the City shall return to the minimum staffing level set by this Consent Decree (meaning the employee or contractor has reported for duty) within 90 days of the date of the departing employee’s or contractor’s departure.

“NPDES” shall mean National Pollutant Discharge Elimination System, as established by 33 U.S.C. § 1342.

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

“Parties” shall mean the parties to this Consent Decree: the United States, the State, and the City.

“Reporting Year.” A Reporting Year shall be each 365-day period commencing on the month and day of the Effective Date of this Decree.

“Reporting Year Covered by this Consent Decree.” A Reporting Year is covered

by this Consent Decree if any part of the Reporting Year falls after the Effective Date of, and before the termination of, this Decree.

“Satisfactory Completion” means that the City shall complete the required work on supplemental environmental projects (“SEPs”) in accordance with the SEP descriptions and specifications set forth in Appendices A and B and subsequently approved statements of work or work plans for the SEPs, and that the City shall spend not less than the amounts set forth in Paragraph [24](#).

“SARA-313 Facilities” shall mean facilities that must submit chemical release forms pursuant to 42 U.S.C. § 11023.

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

“State” shall mean the State of Texas.

“Storm Water Management Program” and “SWMP” shall mean the City’s program to manage storm water approved by EPA on April 4, 1995, as amended thereafter. The SWMP as approved on April 4, 1995 and a list of subsequent amendments are attached to this Decree as Appendix H. Part III.G.2 of TPDES Permit No. WQ0004396000 provides a process by which the City’s storm water management plan can be amended (as did Permit No. TXS000701). For the purposes of this Decree, no change to the SWMP as defined herein shall be made unless the United States agrees to the change and the Decree is modified pursuant to Section XVII (Modification). (Nothing in this Decree, however, shall limit the rights of the Parties with respect to changes proposed to the storm water management plan in effect pursuant to TPDES Permit No. WQ0004396000.)

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

EPA.

IV. CIVIL PENALTY

9. Within 60 days after the Effective Date of this Consent Decree, the City shall pay a civil penalty of \$800,000 to the United States. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with instructions to be provided to the City following lodging of the Consent Decree by the Financial Litigation Unit of the U.S. Attorney's Office for the Northern District of Texas.

10. At the time of payment required by this Section, the City shall simultaneously send written notice of payment and a copy of any transmittal documentation to the United States in accordance with Section XIV of this Decree (Notices). The notices shall reference the civil action number of the United States' case and DOJ Case Number 90-5-1-1-08359.

V. COMPLIANCE REQUIREMENTS

A. Public Participation and Governmental Coordination

11. The City shall Maintain a staff of at least seven technical staff in the Storm Water Management Section of the Public Works and Transportation Department to carry out the City's Public Participation and Governmental Coordination Program under the SWMP. The Public Participation and Governmental Coordination Program is Section 4.1 of the City's SWMP. Staff counted towards the staffing requirements set forth in Subsections V.B, V.D, V.E, and V.G of this Decree shall not count towards the staffing requirement of this Subsection V.A.

B. Illicit Discharges

12. The City shall Maintain a staff of at least two Environmental Specialists in the Storm Water Management Section of the Public Works and Transportation Department to carry

out the City's Illicit Discharge Program under the SWMP. The Illicit Discharge Program is Section 4.9 of the City's SWMP. Staff counted towards the staffing requirements set forth in Subsections V.A, V.D, V.E, and V.G of this Decree shall not count towards the staffing requirement of this Subsection V.B.

13. The City shall Inspect at least 500 outfalls each Reporting Year Covered by this Consent Decree.

C. Used Oil Program

14. The City shall Inspect at least once each Reporting Year Covered by this Consent Decree all of the City's general services fueling and vehicle maintenance operations. The Used Oil Program is Section 4.13 of the City's SWMP.

D. Industrial Inspections and Monitoring

15. The City shall Maintain a staff of at least five Environmental Specialists in the Storm Water Management Section of the Public Works and Transportation Department to carry out the City's Industrial Inspection and Control Program and the City's Monitoring Program for Industrial Facilities under the SWMP. The Industrial Inspection and Control Program and the Monitoring Program for Industrial Facilities are Sections 4.16 and 4.17, respectively, of the City's SWMP. Staff counted towards the staffing requirements set forth in Subsections V.A, V.B, V.E, and V.G of this Decree shall not count towards the staffing requirement of this Subsection V.D.

16. During each Reporting Year Covered by this Decree, the City shall Inspect at least 500 Industrial Facilities that hold, or are required to hold, NPDES storm water permits. Industrial Facilities Inspected in the immediately preceding Reporting Year shall not be counted

in determining whether 500 Industrial Facilities were Inspected in a Reporting Year.

17. During each Reporting Year Covered by this Decree, the City shall Inspect all SARA-313 Facilities located within the City limits, or 600 SARA-313 Facilities located within the City limits, whichever is fewer.

E. Construction Site Inspections

18. The City shall Maintain at least five Environmental Specialists in the Storm Water Management Section of the Public Works and Transportation Department to carry out the City's Construction Inspection Program under the SWMP. The Construction Inspection Program is Section 4.20 of the City's SWMP. Staff counted towards the staffing requirements set forth in Subsections V.A, V.B, V.D, and V.G of this Decree shall not count towards the staffing requirement of this Subsection V.E.

19. The City shall Inspect, at least once every two weeks, construction activities that result in the disturbance of (a) five (5) acres or more of total land area or (b) are located in the "escarpment zone" or in "geologically similar areas" as those terms are defined at Section 51A-5.201 of the Dallas City Code. "Construction activities that result in the disturbance of (a) five (5) acres or more of total land area" shall include a disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more.

20. The City shall Inspect once within the first six (6) weeks after the start of construction and within four (4) days after receiving a complaint about the activity those construction activities not located in the "escarpment zone" or in "geologically similar areas" (as those terms are defined at Section 51A-5.201 of the Dallas City Code) that result in the

disturbance of one or more acres but less than five acres of total land area and for which a copy of a construction site notification has been submitted to the City or for which a grading or tree permit has been issued by the City. “Construction activities that result in the disturbance of one or more acres but less than five acres of total land area” shall include a disturbance of less than an acre of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb greater than one and less than five acres.

F. Overall Staffing: Public Works and Transportation Department

21. The City shall Maintain in the Storm Water Management Section of the Public Works and Transportation Department at least six (6) supervisors; a total of three (3) GIS Analysts, GIS Technicians, and/or Graphic Artists; four (4) Coordinators; two (2) Office Assistants; and a total of 21 Environmental Specialists and Engineers.

G. Environmental Management System

22. The City shall develop and commence implementation of an Environmental Management System in accordance with the provisions of Appendices C through G of this Consent Decree.

23. The City shall Maintain a staff of at least five (5) people in or reporting to the Office of Environmental Quality, not including clerical, administrative, or support staff, to carry out, in accordance with the provisions of Appendices C through G of this Consent Decree, the requirements of this Decree regarding the Environmental Management System. Staff counted towards the staffing requirements set forth in Subsections V.A, V.B, V.D, and V.E of this Decree shall not count towards the staffing requirement of this Subsection V.G.

VI. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

24. The City shall implement the following supplemental environmental projects (“SEPs”) listed in this Paragraph in accordance with the schedules and other provisions of Attachments A and B to this Consent Decree, which are part of this Decree. In implementing the SEPs, the City shall spend not less than the following in Eligible Project Costs:

<u>Project</u>	<u>Min. Expenditures</u>
Pavaho Storm Water Wetland SEP	\$ 675,000
Zoo Storm Water Wetland SEP	\$ 525,000

25. The City is responsible for the Satisfactory Completion of the SEPs in accordance with the requirements of this Decree.

26. With regard to the SEPs, the City certifies the truth and accuracy of each of the following:

a. That all cost information provided to EPA in connection with EPA’s approval of the SEPs is complete and accurate and represents a fair estimate of the cost necessary to implement the SEPs;

b. That, as of the date of executing this Decree, the City is not required to perform or develop the SEPs by any federal, state, or local law or regulation, nor is the City required to perform or develop any of the SEPs by agreement or grant or as injunctive relief awarded in any other action in any forum;

c. That the SEPs are not projects that the City planned or intended to fund, construct, perform, or implement other than in settlement of the claims resolved in this Decree;

d. That the City has not received, and is not negotiating to receive, credit for the SEPs in any other enforcement action; and

e. That the City will not receive any reimbursement for any portion of the SEPs from any other person.

27. SEP Completion Reports

a. Within 90 days after the completion of each SEP, the City shall submit a SEP Completion Report to the United States in accordance with Section XIV of this Consent Decree (Notices). The SEP Completion Reports shall contain the following information:

- i. A detailed description of the SEP as implemented;
- ii. A description of any problems encountered in completing the SEP and the solutions thereto;
- iii. An itemized list of all Eligible SEP Costs;
- iv. Certification that the SEP has been fully implemented pursuant to the provisions of this Decree; and
- v. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

b. Progress reports on the SEPs are required pursuant to Paragraph [33.b](#).

28. EPA may, in its discretion, require information in addition to that described in the preceding Paragraph in order to determine the adequacy of SEP completion or eligibility of SEP costs.

29. After receiving each SEP Completion Report, the United States shall notify the City whether or not the City has Satisfactorily Completed the SEP. If the SEP has not been Satisfactorily Completed, Stipulated Penalties may be assessed under Section VIII of this

Consent Decree.

30. Disputes concerning the satisfactory performance and/or Satisfactory Completion of SEPs (including disputes about whether stipulated penalties are due) and the amount of Eligible SEP Costs may be resolved under Section X of this Decree (Dispute Resolution). No other disputes arising under this Section shall be subject to Dispute Resolution.

31. Each submission required under this Section shall be signed by a City official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 35, below.

32. Any public statement, oral or written, in print, film, or other media, made by the City that publicizes the SEPs under this Decree shall include the following language: “This project was undertaken in connection with the settlement of an enforcement action under the Clean Water Act and other statutes, United States v. City of Dallas, brought on behalf of the U.S. Environmental Protection Agency.”

VII. REPORTING REQUIREMENTS AND APPROVAL OF SUBMITTALS

33. Reports. The City shall submit the following notices and reports:

a. Violations of the Consent Decree. If the City violates any requirement of this Consent Decree or has reason to believe that it is likely to violate any requirement of this Consent Decree in the future, the City shall notify the United States and the State of such violation and its likely duration in writing within twenty working days of the day the City first becomes aware of such violation or likely violation, with an explanation of the violation’s likely cause and of the remedial steps taken, and/or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, the City shall include a statement to that effect in the report. The City 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 City becomes aware of the cause of the violation.

b. Semiannual Reports. After lodging of this Consent Decree and until termination of this Decree pursuant to Section XVIII (Termination), the City shall submit to the United States and the State periodic semiannual reports by email and by either U.S. Mail or an overnight delivery service. The semiannual report addressing the first six months of a Reporting Year shall be submitted no later than 30 days after the conclusion of the first six months of the Reporting Year. The semiannual report addressing the second six months of a Reporting Year shall be submitted no later than 45 days after the end of a Reporting Year. The semiannual reports shall state:

i. Whether the City was in compliance during the most-recently-ended six-month period with the provisions of Section V of this Decree (Compliance Requirements), including, without limitation, whether the City Maintained the required staffing, met required deadlines, and completed required Inspections. In addition, the report on the second half of the Reporting Year shall also report on whether the City was in compliance with annual requirements during the most-recently-ended Reporting Year;

ii. For each Paragraph in Section V of this Decree (Compliance Requirements) that requires staffing be Maintained at a specific level, the number and titles of the staff in the relevant Department, Program, Section, Office or other City governmental unit during the most-recently-ended six-month period;

iii. For each Paragraph in Section V of this Decree (Compliance

Requirements) that requires a minimum number of Inspections to be performed, how many Inspections were performed in each month of the six-month period covered by the report (and for the report on the second half of the Reporting Year, how many Inspections were performed during the Reporting Year as a whole);

iv. A discussion of the City's progress in satisfying its obligations in connection with the SEPs under Section VI of this Decree (Supplemental Environmental Projects) including, at a minimum, a narrative description of activities undertaken, a summary of costs incurred since the previous report, and a report on the City's compliance or noncompliance with the SEP descriptions, specifications, schedules set forth in Appendices A and B to this Decree and subsequent work plans or statements of work for the SEPs;

v. A description of any delays encountered or anticipated that may affect the future schedule for implementation of the requirements of this Consent Decree and a description of efforts made to mitigate those delays or anticipated delays.

c. The City shall submit semiannual progress reports regarding the EMS pursuant to Paragraph 10 of Appendix C, which sets a different schedule than that set by Subparagraph b of this Paragraph.

34. All reports submitted pursuant to Paragraph 33 shall be submitted to the recipients designated above in accordance with Section XIV of this Consent Decree (Notices).

35. Each written report submitted by the City under this Section shall be signed by an Assistant City Manager, or higher-level City official, and 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 gather and present 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 knowingly and willfully submitting a materially false statement.

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

36. Nothing in this Section VII relieves the City of the obligation to provide the requisite notice for purposes of Section IX (Force Majeure) of this Consent Decree.

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

38. Approval of Deliverables. After review of any modification of the SWMP, plan, workplan, statement of work, report, or other item that is required to be submitted pursuant to this Consent Decree (other than the Initial Audit Response and Action Plan submitted pursuant to Paragraph 22 of Appendix C (Environmental Management System)) and portions of Development Plans submitted pursuant to Paragraph 7 of Appendix C (Environmental Management System), which are submitted for review and comment), EPA shall in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission. If EPA fails to respond to a submittal within 60 days of receipt of the submittal, then the City may

contact the Chief of the Water Enforcement Branch of EPA Region 6 to discuss means of expediting EPA's response.

39. If the submission is approved pursuant to Paragraph 38, subpart (a), the City shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part, pursuant to Paragraph 38, subparts (b) or (c), the City shall, upon written direction of EPA take all actions required by the approved plan, report, or other item that EPA determines are technically severable from any disapproved portions, subject to the City's right to dispute under Section X of this Decree (Dispute Resolution), the specified conditions.

40. If the submission is disapproved in whole or in part pursuant to Paragraph 38, subparts (c) or (d), then, subject to the City's right to dispute the disapproval under Section X of this Consent Decree (Dispute Resolution), the City shall, within 60 days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs.

41. Any Stipulated Penalties applicable to the original submission, as provided in Section VIII of this Decree, shall accrue during the 60-day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of the City's obligations under this Decree, the Stipulated Penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

42. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in

whole or in part, EPA may again require the City to correct any deficiencies, in accordance with the preceding Paragraphs, or may itself correct any deficiencies, subject to the City's right to invoke Dispute Resolution and the right of EPA to seek Stipulated Penalties as provided in the preceding Paragraphs.

VIII. STIPULATED PENALTIES

43. If the City fails to pay the civil penalties required to be paid under Section IV (Civil Penalty), Paragraph 9, of this Decree when due, the City shall pay the United States a stipulated penalty of \$1,000 per day for each day that the payment is late. Late payment of the civil penalty shall be made in accordance with Section IV, above. Stipulated Penalties shall be paid in accordance with Section VIII, Paragraph 51, below. All transmittal correspondence shall state that any such payment is for late payment of the civil penalty due under this Decree, or for Stipulated Penalties for late payment, as applicable, and shall include the identifying information set forth in Paragraph 10, above.

44. The City shall be liable for Stipulated Penalties to the United States for violations of obligations of this Consent Decree unless excused under Section IX (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any statement of work or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

45. Compliance Measures. The following Stipulated Penalties shall accrue for each violation identified below:

- a. For each day that the City fails to Maintain the minimum number or

required kind of staff in a Department, Program, Section, Office or other City governmental unit as required by a Paragraph in Section V (Compliance Requirements) of this Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$750 per day	1st through 14th day
\$1,000 per day	15th through 30th day
\$1,250 per day	31st day and beyond

b. For each Reporting Year Covered by this Consent Decree during which the City fails to Inspect at least 500 outfalls as required by Paragraph [13](#), fails to Inspect all of the City’s general services fueling and vehicle maintenance operations as required by Paragraph [14](#), fails to Inspect 500 Industrial Facilities as required by Paragraph [16](#), :

<u>Penalty Per Missed Inspection</u>	<u>No. of Inspections Below Minimum</u>
\$ 400 per inspection	1st through 25th inspections
\$1,000 per inspection	26th through 50th inspections
\$2,000 per inspection	50th and subsequent

c. For each Reporting Year Covered by this Consent Decree during which the City fails to Inspect the minimum number of SARA-313 Facilities as required by Paragraph [17](#):

<u>Penalty Per Missed Inspection</u>	<u>No. of Inspections Below Minimum</u>
\$ 400 per inspection	1st through 25th inspections
\$1,000 per inspection	26th through 50th inspections
\$2,000 per inspection	50th and subsequent

d. For each failure to conduct an Inspection of a construction site as required by Paragraph [19](#):

<u>Penalty Per Missed Inspection</u>	<u>Number of Violations</u>
\$ 150	1st through 25th violations
\$ 500	26th through 50th violations
\$1,500	51st and subsequent violations

For the purposes of this Subparagraph, one Inspection is missed during every 14-

day period in which an inspection should have been, but was not, performed. The first 14-day period begins on the day that construction activity commenced. (For example, if construction begins on February 1, 2007 and ends on March 9, 2007, and no Inspections are performed, three (3) Inspections were missed.)

e. For each failure to conduct an Inspection of a construction site as required by Paragraph [20](#):

<u>Penalty Per Missed Inspection</u>	<u>Number of Violations</u>
\$ 150	1st through 25th violations
\$ 500	26th through 50th violations
\$1,500	51st and subsequent violations

46. Submission, Reporting and Notice Requirements. The following Stipulated Penalties shall accrue per violation per day for each violation of the submission, reporting, or notice requirements of Section VII (Reporting Requirements) and Appendix C (Environmental Management System) of this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th day
\$1,000	15th through 30th day
\$1,250	31st day and beyond

47. SEP Compliance

a. If for any SEP, the City has spent less than the amount set forth for that SEP in Paragraph [24](#), above, the City shall pay a stipulated penalty equal to the difference between the amount of total Eligible Project Costs incurred by the City for the SEP and the amount set forth for the SEP in Paragraph [24](#).

b. If the City has completed a SEP, but the SEP has not been Satisfactorily Completed, the City shall pay, in addition to any penalty required under Subparagraph a, above:

For the Pavaho Storm Water Wetland SEP:	\$100,000
For the Zoo Storm Water Wetland SEP:	\$80,000

Stipulated penalties under this Subparagraph b shall accrue as follows: If, the first time the City certifies that a SEP has been fully implemented pursuant to Paragraph [27.a](#), the SEP has not been Satisfactorily Completed, but the City's performance of the SEP substantially complied with the City's obligations under this Decree, then no stipulated penalty shall accrue while the City carries out the work necessary to Satisfactorily Complete the SEP. If the City certifies a second time that the SEP has been fully implemented, but the SEP has not been Satisfactorily Completed, the stipulated penalty shall accrue as of the date of the second certification. If, the first time the City certifies that a SEP has been fully implemented, the SEP has not been Satisfactorily Completed and the City's performance of the SEP did not substantially comply with the City's obligations under this Decree, then the stipulated penalty shall accrue as of the date of the first certification.

c. If the City abandons work on any SEP, the City shall pay:

For the Pavaho Storm Water Wetland SEP:	\$150,000
For the Zoo Storm Water Wetland SEP:	\$120,000

in addition to any penalty required under Subparagraph a, above, and any penalties owing under Subparagraph d, below, for milestones missed up to the time that the penalty under this Subparagraph accrues. The penalty under this Subparagraph shall accrue as of the date specified for completing the Project or the date performance ceases, whichever is earlier.

d. If the City fails to comply with the schedules in Section VI of this Consent Decree or in Appendices A and B to this Consent Decree (including the preparation of the SEP Completion Reports), for each failure to meet an applicable milestone the City shall pay

Stipulated Penalties of \$4,000 per month. Such penalties shall accrue from the date the City was required to meet each such milestone, until compliance with the milestone is achieved.

48. Subject to the provisions of Subparagraphs a, b, and c of the immediately preceding Paragraph, Stipulated Penalties under this Section shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is Satisfactorily Completed or until the violation ceases. Stipulated Penalties shall accrue simultaneously for separate violations of this Consent Decree. The City shall pay any Stipulated Penalty within 30 days of receiving the United States' written demand, unless the Parties enter into Dispute Resolution, in which case the provisions of Paragraph 50 apply.

49. The United States may, in the unreviewable exercise of its discretion, reduce or waive any Stipulated Penalties otherwise due under this Consent Decree.

50. Stipulated Penalties shall continue to accrue as provided in Paragraph 48, above, during any Dispute Resolution, but need not be paid until the following:

- a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, the City shall pay accrued penalties agreed or determined to be owing to the United States within 60 days of the effective date of the agreement or the receipt of EPA's decision or order;
- b. If the dispute is appealed to the Court, the City shall pay all accrued penalties determined by the Court to be owing within 60 days of receiving the Court's decision or order, except as provided in Subparagraph c, below;
- c. If the United States or the City appeals the District Court's decision, the City shall

pay all accrued penalties determined to be owing within 60 days of receiving the final appellate court decision.

51. The City shall, as directed by the United States, pay Stipulated Penalties owing to the United States by EFT in accordance with Section IV, Paragraph 9, above, or by certified or cashier's check in the amount due payable to the "U.S. Department of Justice," referencing DOJ No. 90-5-1-1-008359 and the civil action number of this case, delivered to the office of the United States Attorney, Northern District of Texas, 1100 Commerce Street, Suite 300, Dallas, Texas 75242.

52. At the time of payments of stipulated penalties required by this Section, the City shall simultaneously send written notice of payment and a copy of any transmittal documentation to the United States in accordance with Section XIV of this Decree (Notices). The notices shall reference the civil action number of this case and DOJ case Number 90-5-1-1-008359.

53. If the City fails to pay Stipulated Penalties according to the terms of this Consent Decree, the City shall be liable for interest on such penalties, as provided for in 28 U.S.C. §1961, accruing as of the date payment became due.

54. Subject to the provisions of Section XII of this Consent Decree (Effect of Settlement/Reservation of Rights), the Stipulated Penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for the City's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the Clean Water Act, the City shall be allowed a credit, for any Stipulated Penalties paid, against any statutory penalties imposed for such violation.

IX. FORCE MAJEURE

55. A “force majeure event” is any event beyond the control of the City, its contractors, or any entity controlled by the City that delays the performance of any obligation under this Consent Decree despite the City’s best efforts to fulfill the obligation. “Best efforts” includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. “Force Majeure” does not include the City’s financial inability to perform any obligation under this Consent Decree.

56. The City shall provide notice to EPA orally or by electronic or facsimile transmission as soon as possible, but not later than seven (7) days after the time the City first knew of, or by the exercise of due diligence, should have known of, a claimed force majeure event. The City shall also provide written notice to the United States as provided in Section XIV of this Consent Decree (Notices), within seven days of the time the City first knew of, or by the exercise of due diligence, should have known of, the event. The notice shall state the anticipated duration of any delay, its cause(s), the City’s past and proposed actions to prevent or minimize any delay, a schedule for carrying out those actions, and the City’s rationale for attributing any delay to a force majeure event. Failure to provide oral and written notice as required by this Paragraph shall preclude the City from asserting any claim of force majeure.

57. If the United States agrees that a force majeure event has occurred, the United States may agree to extend the time for the City to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other

obligation. Where the United States agrees to a material extension of time, the appropriate modification shall be made pursuant to Section XVII of this Consent Decree (Modification).

58. If the United States does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by the City, the United States' position shall be binding, unless the City invokes Dispute Resolution under Section X of this Consent Decree. In any such dispute, the City bears the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event, that the City gave the notice required by Paragraph 56, that the force majeure event caused any delay that the City claims was attributable to that event, and that the City exercised best efforts to prevent or minimize any delay caused by the event.

X. DISPUTE RESOLUTION

59. 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. However, the procedures of this Section shall not apply to actions by the United States to enforce obligations of the City that have not been disputed in accordance with this Section.

60. 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 the City sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 30 days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations,

then the position advanced by the United States shall be considered binding unless, within 20 days after the conclusion of the informal negotiation period, the City invokes formal dispute resolution procedures as set forth below.

61. Formal Dispute Resolution. The City shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting the City's position and any supporting documentation relied upon by the City.

62. The United States shall serve its Statement of Position within 30 days of receipt of the City's Statement of Position. The United States' Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. If within five (5) days of receiving the United States' Statement of Position, the City requests to confer with the United States about the United States' Statement of Position, the United States will confer (in person and/or by telephone) with the City, but such a conference shall be concluded no later than 21 days after the issuance of the United States' Statement of Position. The United States will reaffirm its Statement of Position or, if the United States decides to amend its Statement of Position, the United States will amend its Statement of Position, within 14 days after the conclusion of the conference. If the United States fails to reaffirm or amend its Statement of Position, the Statement of Position shall be deemed reaffirmed. The United States' Statement of Position shall be binding on the City unless the City files a motion for judicial review of the dispute in accordance with the following Paragraph.

63. The City may seek judicial review of the dispute by filing with the Court and serving on the United States in accordance with Section XIV of this Consent Decree (Notices) a motion requesting judicial resolution of the dispute. If no conference was requested pursuant to the previous Paragraph, the City's motion must be filed within 14 days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. If a conference was requested pursuant to the previous Paragraph, the City's motion must be filed within 14 days of receipt of the United States' reaffirmation of its original Statement of Position or issuance of an amended Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of the City'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.

64. The United States shall respond to the City's motion within the time period allowed by the Local Rules of this Court. The City may file a reply memorandum, to the extent permitted by the Local Rules.

65. In any dispute under this Section, the City shall bear the burden of demonstrating that its position clearly complies with this Consent Decree and the Clean Water Act. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law, and the City reserves the right to oppose any such argument.

66. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of the City under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated Penalties shall be

assessed and paid as provided in Section VIII (Stipulated Penalties).

XI. INFORMATION COLLECTION AND RETENTION

67. The United States, the State, and their representatives, including attorneys, contractors, and consultants, shall have the right to enter City facilities at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States or the State in accordance with the terms of this Consent Decree;
- c. obtain samples;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess the City's compliance with this Consent Decree.

68. Until three years after the termination of this Consent Decree with respect to Sections IV and V, and VI, respectively, the City shall retain, and shall instruct its respective contractors and agents to preserve, all non-identical copies of all records and documents (including records or documents 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 demonstrate or document the City's compliance or noncompliance with the obligations of this Consent Decree. This record retention requirement shall apply regardless of any corporate or institutional document-retention policy to the contrary. At any time during this record-retention period, the United States or the State may request copies of any documents or records required to be maintained under this Paragraph.

69. Before destroying any documents or records subject to the requirements of the

preceding Paragraph, the City shall notify the United States and the State at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States or the State, the City shall deliver any such records or documents to EPA or the State. The City 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 the City asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted.

70. 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 or the State pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of the City to maintain records or information imposed by applicable federal or state laws, regulations, permits, or orders.

XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

71. This Consent Decree resolves (i) the civil claims of the United States and the State for the violations alleged in the Complaint through the date of lodging, and (ii) the violations alleged in the Compliance Order through the date of lodging.

72. The United States and the State reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated herein. This Consent Decree shall not be construed to prevent or limit the rights of the United States or the State to obtain penalties or injunctive relief under the Clean Water Act or its implementing regulations,

or under other federal or state laws, regulations, or permit conditions, except as expressly specified in the preceding Paragraph. The United States and the State 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, the City of Dallas, whether related to the violations addressed in this Consent Decree or otherwise.

73. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. The City is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits. The United States and the State do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that the City's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Clean Water Act or with any other provisions of federal, state, or local laws, regulations, or permits.

74. This Consent Decree does not limit or affect the rights of the City or of the United States or the State against any third parties, not party to this Consent Decree. The effect of this Consent Decree on the rights of third parties, not party to this Consent Decree, against the City shall be as provided by law.

75. 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.

XIII. COSTS

76. The Parties shall bear their own costs of this action, including attorneys fees, except that the United States 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 the City.

XIV. NOTICES

77. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-1-1-08359

&

Thea Lomax
Municipal and Industrial Section (6EN-WM)
Environmental Protection Agency, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733
Ph: 214-665-8098
Fax: 214-665-2168
Lomax.Thea@epa.gov

& Scott McDonald
Office of Regional Counsel (6RC-EW)
Environmental Protection Agency, Reg. 6
1445 Ross Avenue
Dallas, TX 75202-2733
Ph: 214-665-2718
Fax: 214-665-3177
Mcdonald.Scott@epa.gov

To EPA only, as opposed to the United States:

Thea Lomax
Municipal and Industrial Section (6EN-WM)
Environmental Protection Agency, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733
Ph: 214-665-8098
Fax: 214-665-2168
Lomax.Thea@epa.gov

& Scott McDonald
Office of Regional Counsel (6RC-EW)
Environmental Protection Agency, Reg. 6
1445 Ross Avenue
Dallas, TX 75202-2733
Ph: 214-665-2718
Fax: 214-665-3177
Mcdonald.Scott@epa.gov

To the State:

Texas Commission on Environmental Quality & Texas Commission on Environmental
Enforcement Division Quality
PO Box 13087 Water Program Manager
Austin, Texas 78711-3087 2309 Gravel Drive
Fort Worth, Texas 76118-6951

To the City:

For Notices Re: the EMS:

Laura Fiffick
Director, Office of Environmental Quality
City of Dallas
1500 Marilla, Room L2F South
Dallas, Texas 75201
214.670.1200
Fax: 214.670.0134
Laura.fiffick@dallascityhall.com

& David Howe
Assistant City Attorney
Office of City Attorney
City of Dallas
1500 Marilla, Room 7C
Dallas, Texas 75201
214.670.3519
Fax: 214.670.0622
David.howe@dallascityhall.com

For Notices Re: All Other Matters:

Errick Thompson
Assistant Director
Public Works & Transportation Department
City of Dallas
320 E. Jefferson, Room 108
Dallas, Texas 75203
214.948.4022
Fax: 214.948.4076
Errick.thompson@dallascityhall.com

& David Howe
Assistant City Attorney
Office of City Attorney
City of Dallas
1500 Marilla, Room 7C
Dallas, Texas 75201
214.670.3519
Fax: 214.670.0622
David.howe@dallascityhall.com

78. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address.

79. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XV. EFFECTIVE DATE

80. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

XVI. RETENTION OF JURISDICTION

81. The Court shall retain jurisdiction over the case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections X (Dispute Resolution) and XVII (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XVII. MODIFICATION

82. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by the United States and the City or by further order of the Court. Where a modification agreed-upon by the United States and the City constitutes a material change to any term of this Decree, it shall be effective only upon approval by the Court.

XVIII. TERMINATION

83. This Consent Decree may be terminated in two phases.

a. Termination With Respect to Sections IV and V – Civil Penalty and Compliance Requirements. Three years after the Effective Date of this Decree the City may invoke the following procedures regarding termination: Any time after the City submits the semiannual report on the third Reporting Year Covered by this Consent Decree, if (i) the City has completed all of the requirements of Subsection V.G (Environmental Management System), (ii) the City is in compliance with the requirements of Section V (Compliance Requirements), (iii) for the twelve-month period preceding the City’s request for termination, the City Maintained

compliance with the staffing requirements of Section V of this Decree and complied with the Inspection requirements of Paragraphs 13, 14, 16, and 17 of this Decree, and (iv) the City has paid the civil penalty and any accrued Stipulated Penalties as required by this Consent Decree, the City may serve upon the United States a Notice of Intent to Terminate the Consent Decree with respect to Sections IV and V of this Decree, including obligations that flow from the obligations of Sections IV and V, such as the obligations to pay stipulated penalties for violations of, and the duty to submit reports regarding, the obligations of Sections IV and V. The Notice of Intent to Terminate shall certify that the City has satisfied the requirements listed in the preceding sentence and include all necessary supporting documentation. For the purposes of this Paragraph, the City shall have “complied with the Inspection requirements of Paragraphs 13, 14, 16, and 17 of this Decree” for the twelve-month period preceding the City’s request for termination if, during that twelve-month period the City conducted the number of Inspections required by those Paragraphs during a Reporting Year Covered by this Consent Decree.

b. Termination With Respect to the Section VI – SEPs – And Final Termination. Anytime after EPA has notified the City whether or not both SEPs have been Satisfactorily Completed, any Dispute Resolution proceedings regarding the SEPs have been completed, and the City has paid any accrued Stipulated Penalties regarding the SEPs as required by this Consent Decree, the City may serve upon the United States a Notice of Intent to Terminate the Consent Decree with respect to Section VI of this Decree.

84. Following receipt by the United States of a Notice of Intent to Terminate, the United States and the City shall confer informally concerning the Notice and any disagreements as to whether the City has satisfactorily complied with the requirements for termination. The

period of informal discussions shall not exceed 21 days from the date of the Notice of Intent to Terminate, unless that period is modified by written agreement. If the United States agrees that the City has satisfied the applicable termination requirements, the United States and the City shall submit, for the Court's approval, a joint stipulation regarding termination.

85. If the United States does not agree that the City has satisfied the applicable termination requirements, the City may serve and file a motion seeking termination of the Consent Decree, provided, however, that the City shall not serve such a motion until 30 days after the conclusion of the period of informal consultation provided by the preceding Paragraph.

86. If the Court has previously terminated the Consent Decree with respect to Sections IV (Civil Penalty) and V (Compliance Requirements), termination of the Consent Decree with respect to Section VI (SEPs) shall constitute the final and complete termination of the Consent Decree. If the Court has previously terminated the Consent Decree with respect to Section VI (SEPs), termination of the Consent Decree with respect to Sections IV (Civil Penalty) and V (Compliance Requirements), shall constitute the final and complete termination of the Consent Decree.

XIX. PUBLIC PARTICIPATION

87. 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 and Texas Water Code § 7.110. The United States and the State of Texas each reserve the right to withdraw or withhold their consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. The City consents to entry of this Consent Decree without further notice. This Paragraph does not

create any rights exercisable by the City.

XX. SIGNATORIES/SERVICE

88. Each undersigned representatives of the City and the State and the Assistant Attorney General for the Environment and Natural Resources Division of the United States 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.

90. The City agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified the City in writing that it no longer supports entry of the Decree.

91. The City 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.

XXI. INTEGRATION

92. This Consent Decree and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersede all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than the Appendices, which are attached to and incorporated in this Decree, and submittals that are subsequently submitted and

approved 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.

XXII. FINAL JUDGMENT

93. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, the State, and the City. 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.

Dated and entered this _____ day of _____, 2006.

UNITED STATES DISTRICT JUDGE
Northern District of Texas

WE HEREBY CONSENT to the entry of this Consent Decree, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR PLAINTIFF UNITED STATES OF AMERICA:

SUE ELLEN WOOLDRIDGE
Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division
California Bar No. 131244

ROBERT R. KLOTZ
Senior Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
202-514-5516
202-514-8865 (fax)
California Bar No. 114991

RICHARD B. ROPER
United States Attorney
KATHERINE SAVERS MCGOVERN
Assistant United States Attorney
Texas Bar No. 13638020
1100 Commerce Street, Suite 300
Dallas, Texas 75242
214-659-8600
214-767-2916 (fax)

WE HEREBY CONSENT to the entry of this Consent Decree, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR PLAINTIFF UNITED STATES OF AMERICA (con't):

GRANTA Y. NAKAYAMA
Assistant Administrator
Office of Enforcement & Compliance Assurance
U.S. Environmental Protection Agency
Virginia Bar No. 37533

WE HEREBY CONSENT to the entry of this Consent Decree subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR PLAINTIFF UNITED STATES OF AMERICA (con't):

RICHARD E. GREENE
Regional Administrator
U.S. Environmental Protection Agency
Region VI

WE HEREBY CONSENT to the entry of this Consent Decree:

FOR PLAINTIFF STATE OF TEXAS:

GREG ABBOTT
Attorney General of Texas

BARRY R. McBEE
First Assistant Attorney General

EDWARD D. BURBACH
Deputy Attorney General for Litigation

KAREN W. KORNELL
Assistant Attorney General
Chief, Natural Resources Division

BURGESS JACKSON
Assistant Attorney General
Texas Bar No. 10486850
Natural Resources Division
P. O. Box 12548
Austin, Texas 78711-2548
Tel: (512) 463-2012
Fax: (512) 320-0052

WE HEREBY CONSENT to the entry of this Consent Decree:

FOR DEFENDANT CITY OF DALLAS:

JILL A. JORDAN
Assistant City Manager
City of Dallas

Approved as to form:

THOMAS P. PERKINS, JR.
City Attorney
City of Dallas

By:

DAVID E. HOWE
Assistant City Attorney
City of Dallas
Texas Bar No. 10089500

APPENDIX A

Pavaho Storm Water Wetland SEP

Introduction. The Pavaho pump station is located along the land side (as opposed to the river side) of the Dallas Floodway West Levee south of Sylvan Street. The sump at the Pavaho pump station collects rainfall runoff from a watershed located outside of (on the land side of) the West Levee. Runoff from approximately 1843 acres of land drains into the Pavaho sump, which has a maximum storage capacity of 386 acre-feet of water.

The Pavaho pump station periodically pumps storm water from the Pavaho sump to the Trinity River. At present, a pump with a 6,000-gallon-per-minute (gpm) capacity pumps storm water from the Pavaho sump through a pipe that carries the water up and over the West Levee to a channel that empties into the Trinity River.

The City shall construct the Pavaho Storm Water Wetland in accordance with the following objectives and requirements:

I. Location, Size, and Source of Water

The City shall construct the Pavaho Storm Water Wetland downstream of Sylvan Avenue along the west bank of the Trinity River within the Dallas Floodway. The wetland shall be at least 60 acres in size. At least some of the water supplied to the Pavaho Storm Water Wetland shall be supplied by diverting to the wetland some or all of the storm water that is pumped out of the Pavaho sump.

II. Objectives of the Project

One objective of the Pavaho Storm Water Wetland Project is to create habitat for wetland flora and fauna, including habitat that can be maintained during sustained dry periods. Another

objective of the Project is to improve the quality of the storm water runoff reaching the Trinity River by having the water flow through the wetland vegetation that absorbs nutrients and metals from the storm water.

III. Submissions, Schedule, Minimum Plant Survival

A. Pavaho Wetland Project Manager and Design Consultant. No later than one (1) month after the Effective Date of this Consent Decree, the City shall notify EPA in writing of the name and title of the City employee who shall be the City's Project Manager for the Pavaho Storm Water Wetland SEP. If the City changes the Project Manager, the City shall notify EPA in writing of the name and title of the new Project Manager, no later than the date that the Project Manager assumes his or her duties.

No later than two (2) months after the Effective Date of this Consent Decree, the City shall submit to EPA a list of contractors, including the qualifications of each contractor, that the City is considering retaining to be the Pavaho Wetland Design Consultant, which shall, among other things, prepare the Workplan required by this Appendix. EPA will issue a written notice stating whether it disapproves of any of the proposed contractors. If EPA disapproves all of the contractors proposed by the City, the City shall submit to EPA a new list of contractors, including the qualifications of each contractor within 30 days of receipt of EPA's disapproval of the contractors previously proposed. EPA will issue a written notice stating whether it disapproves of any of the proposed contractors.

No later than seven (7) months after the Effective Date of this Consent Decree, the City shall notify EPA in writing of the name of the contractor selected to be the Pavaho Wetland Design Consultant. If at any time thereafter the City proposes to change a Pavaho Wetland

Design Consultant, the City shall give such notice to EPA and must obtain an authorization to proceed from EPA, before the new Pavaho Wetland Design Consultant performs, directs, or supervises any work under this Appendix.

B. Workplan. No later than fourteen (14) months after the Effective Date of this Consent Decree, the City shall submit to EPA for approval a Workplan for the Pavaho Storm Water Wetland Project. The Workplan shall contain a detailed description of, and design for, the work to be performed. The Workplan shall include, without limitation: (a) a statement of the elevations, water depths, and location of the wetland to be constructed; (b) a description of plant species to be planted, the spacing of the plants, and the number of plants to be planted per acre; (c) the plan for supplying water to the wetland (pumping frequencies, rates, etc.); (d) a description of the means by which the wetland will be maintained during sustained dry periods, including an assessment of whether water from a source other than the Pavaho sump will be needed, and if so, an estimate of how much additional water will be needed and a plan for providing such water; (e) plans for vector (including mosquito) control; (f) an identification of the principal dry- and wet-season pollutants and pollutant concentrations in the water in the Pavaho sump and any other water sources to be used to supply water to the wetland; (g) an evaluation of whether some form of pre-treatment (e.g., oil and grit interceptors, sand filters, forebays, floating berms) should be employed to maximize the water pollution removal efficiencies of the wetland or to maximize the quality of the wetland as habitat, (h) an evaluation of whether steps need to be taken to control erosion where water from the wetland flows from the flood plain down to typical river levels; (i) an evaluation whether planting a transitional vegetative buffer zone around all or part of the wetland would significantly improve the habitat

created by the project; and (j) an evaluation of the extent to which the acreage selected for the Project was previously wetland, and if possible, the hydroperiod and hydrodynamic of the previous wetland. The Workplan shall also contain: (k) photos of the area taken before the start of any work; (l) aerial photos, maps, sketches, or drawings, as appropriate, of the work proposed to be performed; (m) a proposed monitoring plan to determine the water quality improvements that are due to the wetland; (n) a long-term maintenance plan for the wetland; (o) a budget for the project; and (p) a schedule consistent with the following deadlines:

City submits names of proposed Construction Contractors to EPA	2 months after EPA approval of a Workplan
Applications for all Permits submitted	3 months after EPA approval of a Workplan
Construction commences	12 months after EPA approval of a Workplan
Construction and initial planting completed	7 months after construction commences
Monitoring continues for at least	3 years after construction and initial planting are completed.

C. Construction Contractor. No later than two (2) months after EPA approval of the Workplan for the Pavaho Storm Water SEP, the City shall submit to EPA a list of contractors and/or City Departments, including the qualifications of each contractor and City Department, that the City is considering retaining or using to construct the Pavaho Storm Water Wetland. EPA will issue a written notice stating whether it disapproves of any of the proposed contractors or City Departments. If EPA disapproves all of the contractors and Departments proposed by the City, the City shall submit to EPA a new list of contractors and/or City Departments, including the qualifications of each, within 30 days of receipt of EPA's disapproval

of the contractors or City Department previously proposed. EPA will issue written notice stating whether it disapproves of any contractor(s) or City Departments.

No later than eight (8) months after EPA approval of the Workplan for the Pavaho Storm Water SEP, the City shall submit to EPA the name and title of the Construction Contractor or City Department that shall construct the Pavaho Storm Water SEP. If at any time thereafter the City proposes to change the Pavaho Wetland Construction Contractor or Department, the City shall give such notice to EPA and must obtain an authorization to proceed from EPA before the new Pavaho Wetland Construction Contractor or City Department performs, directs, or supervises any work under this Appendix.

D. As-Built Drawings. The City shall submit two as-built drawings of the wetland for EPA approval, the first within 30 days after excavation and grading is complete and the second after the initial planting is complete.

E. Minimum Plant Survival. The City shall achieve at least 50% ground cover after the first growing season. The City shall achieve at least 80% ground cover after the second growing season and thereafter maintain plant coverage over at least 80% of the wetland area. If the plant coverage after the first growing season is less than 50%, the City shall replant to achieve an 50% coverage rate. If the plant coverage after the second growing season is or falls below 80%, the City shall replant until the 80% coverage rate or a greater coverage rate is achieved, but the City shall not be required by this Consent Decree to continue replanting after the minimum three-year monitoring period prescribed above has passed.

F. Access for Scientific Studies. The City shall make the wetland available, on reasonable terms, to any academic or government scientist who wishes to study the wetland.

IV. Minimum Funding

The City shall spend not less than \$675,000 on the project described in this Appendix.

Appendix B

Dallas Zoo Storm Water Wetland SEP

Introduction. Runoff entering the storm sewer system from the Dallas Zoo comes primarily from rainwater and from wash water used to clean animal exhibits and animal holding areas.

To date, the City attests that it has addressed storm water compliance at the Dallas Zoo by, among other things:

- (i) employing a “best management practice” – the daily dry cleaning of animal wastes;
- (ii) constructing improvements to exhibits and holding areas to reduce erosion potential;
- (iii) collecting runoff from exhibits, animal holding areas, and non-animal areas;
- (iv) employing separators to separate out trash and other solids and diverters to allow the Zoo to divert flows either to the sanitary sewer or the storm water system;
- (v) routing most wash water from animal holding facilities directly to the City’s sanitary sewer system;
- (vi) diverting the first half inch of rain runoff from exhibits and animal holding areas into the sanitary sewer system; after this "first flush," rainwater is routed through the storm drainage system to Cedar Creek, which bisects the Zoo.

I. Location, Capacity, and General Requirements for the Project

The Dallas Zoo Storm Water Wetland SEP shall include collection infrastructure; a separator or separators to reduce the presence of floatable materials and reduce sediment load in the runoff; small biological-treatment facilities (also called “package treatment plants”), a wetland, and a means of returning water (after final treatment in the wetland) to the Zoo for use

in irrigation. The SEP shall be designed and constructed so that it can accept runoff from at least 15 acres of the Zoo's Wilds of Africa Exhibit, and a greater number of acres if possible. The SEP shall be designed and constructed to maximize the amount of treated water that can be diverted back to the Zoo for use in drip irrigation and minimize the amount of water discharged to Cedar Creek. The wetland component of the SEP shall be located adjacent to or near Cedar Creek, on the west side of E. Clarendon Drive. The wetland shall slowly filter and biologically treat storm water and any wash water entering the wetland, both to prepare the water for use in drip irrigation and to reduce the pollutant load in discharges of water from the Zoo to Cedar Creek.

II. Objectives of the Project

The primary objective of the Project is to improve the quality and reduce the impact of discharges from the Zoo's storm water system to Cedar Creek. Additional objectives are to maximize the use of the treated water for drip irrigation (thereby reducing demand on the City's drinking water system), to create habitat for wetland flora and fauna, and, if possible, achieve treatment efficiencies that allow wash water and the first half inch of storm runoff to be treated in the SEP's treatment system and safely used as irrigation water in the Zoo or safely discharged to Cedar Creek.

III. Submissions, Schedule, Minimum Plant Survival

A. Zoo Wetland Project Manager and Design Consultant.

No later than one (1) month after the Effective Date of this Consent Decree, the City shall notify EPA in writing of the name and title of the City employee who shall be the City's Project Manager for the Zoo Wetland SEP. If the City changes the Project Manager, the City shall notify

EPA in writing of the name and title of the new Project Manager, no later than the date that the Project Manager assumes his or her duties.

No later than two (2) months after the Effective Date of this Consent Decree, the City shall notify EPA in writing of the name, title, and qualifications of any contractor proposed to be the Zoo Wetland Design Consultant, which shall, among other things, prepare the Workplan required by this Appendix.

No later than two (2) months after the Effective Date of this Consent Decree, the City shall submit to EPA a list of contractors, including the qualifications of each contractor, that the City is considering retaining to be the Zoo Wetland Design Consultant, which shall, among other things, prepare the Workplan required by this Appendix. EPA will issue a written notice stating whether it disapproves of any of the proposed contractors. If EPA disapproves all of the contractors proposed by the City, the City shall submit to EPA a new list of contractors, including the qualifications of each contractor within 30 days of receipt of EPA's disapproval of the contractors previously proposed. EPA will issue a written notice stating whether it disapproves of any of the proposed contractors.

No later than seven (7) months after the Effective Date of this Consent Decree, the City shall notify EPA in writing of the name of the contractor selected to be the Zoo Wetland Design Consultant. If at any time thereafter the City proposes to change a Zoo Wetland Design Consultant, the City shall give such notice to EPA and must obtain an authorization to proceed from EPA, before the new Zoo Wetland Design Consultant performs, directs, or supervises any work under this Appendix.

B. Workplan. No later than fifteen (15) months after The Effective Date of

this Consent Decree, the City shall submit to EPA for approval a Workplan for the Zoo Storm Water Wetland Project. The Workplan shall contain a detailed description of, and design for, the work to be performed, including, without limitation: (a) a delineation of the acreage, drainage basins, and flow quantities to be served by the wetland; (b) an identification of the character, volume, and frequencies of the runoff, including an identification of the principal pollutants and pollutant concentrations in the runoff to be treated in the wetland; (c) layout and design of the collection facilities; (d) layout and design of the separation and diversion devices; (e) layout and design of the small biological treatment facilities; (f) layout and design of inlet and outlet structures; (g) a statement of the elevations, water depths, and location of the wetland to be constructed; (h) a description of plant species to be planted, the spacing of the plants, the number of plants to be planted per acre; (i) a description of the means by which the wetland will be maintained during sustained dry periods; (j) plans for vector (including mosquito) control; (k) an evaluation of whether odor-control measures will be needed and, if so, an odor control plan; and (l) proposed numerical limits on the pollutants in the water emerging from the project's treatment process, including a statement of the federal, state, local, industry, and other regulations, codes, guidelines, and standards that are relevant or applicable to the discharge. The Workplan shall also contain (m) photos of the area taken before the start of any work; (n) aerial photos, maps, sketches, or drawings, as appropriate, of the work proposed to be performed; (o) a proposed monitoring plan to determine the water quality improvements that result from the wetland and other components of the project, which shall measure, without limitation, ammonia, biochemical oxygen demand, bacteria, and total suspended solids; (p) a long-term maintenance plan for the wetland; (q) a budget for the project; and (r) a schedule consistent with the following deadlines:

City submits names of proposed Construction Contractors to EPA	2 months after EPA approval of a Workplan
Applications for all permits submitted	3 months after EPA approval of a Workplan
Construction commences	12 months after EPA approval of a Workplan
Construction and initial planting completed & wetland operating	11 months after construction commences
Monitoring continues for at least:	3 years after construction and initial planting is completed.

C. Construction Contractor. No later than two (2) months after EPA approval of the Workplan for the Dallas Zoo Storm Water SEP, the City shall submit to EPA a list of contractors, including the qualifications of each contractor, that the City is considering retaining to construct the Dallas Zoo Storm Water Wetland SEP. EPA will issue a written notice stating whether it disapproves of any of the proposed contractors. If EPA disapproves all of the contractors proposed by the City, the City shall submit to EPA a new list of contractors, including the qualifications of each, within 30 days of receipt of EPA's disapproval of the contractors previously proposed. EPA will issue written notice stating whether it disapproves of any contractor(s). Nothing in this Section C prevents the City from using qualified City staff to conduct the surveying required by, or associated with, this SEP.

No later than eight (8) months after EPA approval of the Workplan for the Dallas Zoo Storm Water SEP, the City shall submit to EPA the name and title of the Construction Contractor that shall construct the Dallas Zoo Storm Water SEP. If at any time thereafter the City proposes to change the Dallas Zoo Storm Water Construction Contractor, the City shall give such notice to EPA and must obtain an authorization to proceed from EPA before the new Dallas Zoo

Construction Contractor performs, directs, or supervises any work under this Appendix.

D. As-Built Drawings. The City shall submit two as-built drawings of the wetland treatment system for EPA approval, the first within 30 days after excavation and grading is complete, and the second after the initial planting is complete.

E. Minimum Plant Survival. The City shall achieve at least 50% ground cover after the first growing season. The City shall achieve at least 80% ground cover after the second growing season and thereafter maintain plant coverage over at least 80% of the wetland area. If the plant coverage after the first growing season is less than 50%, the City shall replant to achieve an 50% coverage rate. If the plant coverage after the second growing season is or falls below 80%, the City shall replant until the 80% coverage rate or a greater coverage rate is achieved, but the City shall not be required by this Consent Decree to continue replanting after the minimum three-year monitoring period prescribed above has passed.

F. Access for Scientific Studies. The City shall make the wetland available, on reasonable terms, to any academic or government scientist who wishes to study the wetland.

IV. Minimum Funding

The City shall spend not less than \$525,000 on the project described in this Appendix.

APPENDIX C

ENVIRONMENTAL MANAGEMENT SYSTEM

1. The purpose of this Part of the Decree is to enhance the City's ("Respondent's") development and implementation of a comprehensive environmental management system (EMS) to promote compliance with all environmental legal requirements, improve environmental performance, achieve pollution prevention, and accomplish pollution reduction at the City Facilities listed in Appendix D (Facilities List). Respondent's EMS development, as more fully described in Paragraphs 2 through 9 below, shall be based on the ISO 14001:2004 standard as supplemented by the provisions in Appendix E (Supplementary Requirements for ISO 14001-2004 (second edition)), hereafter, collectively referred to as "the EMS Standard."

Environmental Management System Implementation

2. Respondent shall fully implement an EMS that conforms to the EMS Standard at all Facilities in accordance with the following provisions.
3. Implementation Plan. Respondent shall develop a general EMS Implementation Plan for all Facilities and submit the plan to EPA for review and approval within one (1) month after this Decree is entered by the Court. The plan shall contain an implementation approach, plan, and schedule with milestones for each Facility. The EMS Implementation Plan shall also describe the process by which the environmental performance metrics described in Paragraph 9 will be established for each Facility. Further, the plan shall identify individuals (by position or affiliation, if a consultant) who are responsible for EMS development and implementation at Assistant City Manager, Department, and Facility levels, as appropriate, and their respective

roles, responsibilities, and authorities.

Each Facility development and implementation team shall include an individual from the Dallas Office of Environmental Quality who meets the following qualifications: (a) has successfully completed an ISO 14001 EMS implementation course and an ISO 14001 lead auditor certification course; (b) has a working knowledge of federal and state environmental legal requirements affecting that Facility, and (c) has at least a bachelor's degree from an accredited institution.

At a minimum, the EMS Implementation Plan milestones shall include:

- a. Completion of an initial review and evaluation of the current EMS and/or environmental management practices at each Facility, as described in Paragraph 6 below.
 - b. Completion of initial plans and schedules for development of implementing documents and tasks (hereafter, Development Plan) for each Facility, as described in Paragraph 7 below.
 - c. Completion of the Environmental Performance Metrics Data Compilation Report, as described in Paragraph 10c., below.
4. EPA shall approve the EMS Implementation Plan if it adequately addresses the items identified in Paragraph 3, above. Subsequent to EPA's initial approval of the EMS Implementation Plan, Respondent may revise and/or update the EMS Implementation Plan. Substantial revisions or updates to the EMS Implementation Plan made by Respondent before the EMS Audit required by Paragraph 18 below shall be submitted to EPA for review and approval. Upon approval by EPA, the changes shall be incorporated into the EMS Implementation Plan.

5. Upon Respondent's receipt of EPA's approval, Respondent shall commence implementation of the EMS Implementation Plan in accordance with the implementation schedule contained therein.
6. Initial Review. In accordance with the schedule contained in the approved EMS Implementation Plan, Respondent shall conduct an initial review and evaluation of the current EMS and/or environmental management practices at each Facility to identify and assess the potential impacts of program gaps relative to the EMS Standard for the purpose of identifying and prioritizing development of implementing documents and other tasks.
7. Development Plan. In accordance with the schedule contained in the EMS Implementation Plan, Respondent shall complete an initial EMS Development Plan for each Facility. The Development Plans shall be based on the initial review and evaluation results and other information and shall: (a) identify an initial list of environmental performance metrics data to be collected and include a justification for any proposed substitutions to the list of metrics in Appendix F hereto – “Environmental Metrics”; (b) contain a schedule for identifying those additional metrics for which data will be collected; (c) contain a document-development schedule, and (d) contain a list of and schedule for other implementing tasks. Each specific document and task identified in the Development Plan shall be cross-referenced to the respective EMS Standard, where appropriate. The format for each Development Plan shall be the same and shall be based on the format presented in Appendix G hereto. Within thirty (30) days following internal City approval of each draft plan, but not later than three (3) months after the approval by EPA of the EMS Implementation Plan as described in Paragraph 4, above, Respondent shall submit each Development Plan to EPA. Any proposed substitutions to the list of metrics in

Appendix F must be approved by EPA. Other portions of the Development Plans shall be submitted to EPA for review and comment. EPA may submit any comments within sixty (60) days of the submission of the development plan by Respondent. The submittal shall be in both paper hard copy and a mutually agreeable electronic format. Any proposed substitutions to the list of metrics in Appendix F that have not been approved by EPA within sixty (60) days of the submission of the development plan by Respondent shall be deemed denied.

8. Within three (3) months after the submission of the Development Plan pursuant to Paragraph 7, Respondent shall initiate implementation of the Development Plans in accordance with the schedule of implementing tasks required by Paragraph 7, above.

Environmental Performance Metrics

9. As specified in the EMS Development Plan for each Facility and identified through the process described in the approved EMS Implementation Plan, Respondent shall collect data for the Environmental Performance Metrics listed in Appendix F (or EPA-approved substitutions thereto), and others, as determined necessary and appropriate by the City, for the purpose of measuring the impacts of implementation of the EMS. Metrics data collection, consequently, shall be initiated early in the process of EMS development and implementation.

Reporting on Environmental Management System Implementation

10. Respondent shall submit progress reports to EPA summarizing progress made in completing the activities required by Paragraphs 3 through 9, above. Semiannual reports, as described in subparagraph a below, shall be submitted to EPA within thirty (30) days after the

last day of June and December of each calendar year commencing in 2006 until all activities required by Paragraphs 3 through 8, above, are completed. (If the Decree has not been entered by June 30, 2006, the first progress report shall be due thirty (30) days after the last day of December, 2006.) An annual progress report presenting the results of the metrics shall be submitted in accordance with subparagraph b, below.

- a. Semiannual progress reports shall contain a summary of the EMS implementation required by Paragraphs 3 through 8, above, and include the following information:
 - (1) Progress in achieving pertinent milestones, including any obstacles encountered.
 - (2) Total number of procedures requiring documentation for the EMS (current total).
 - (3) Total number of procedures for which documentation has been completed.
 - (4) Total number of procedures for which documentation was completed during reporting period.
- b. The annual progress reports shall be due within thirty (30) days after the end of June and shall include the data collected during the previous calendar year for the Environmental Metrics, as required by Paragraph 9, above.
- c. Following submittal of the Certification of EMS Implementation, as described in Paragraph 25 (e), for the final Facility, the next annual progress report shall include an Environmental Performance Metrics Data Compilation Report that presents a compilation of all the metrics data collected for each Facility.

EMS Audit

11. EMS Audit Program Respondent shall develop and implement an EMS audit program to assess whether an effective Environmental Management System (EMS) has been implemented at the Facilities and whether it conforms to the EMS Standard. This program will commence on or before January 3, 2008, in accordance with the provisions of Paragraphs 11 through 21.

12. Auditor Selection. On or before January 3, 2008, Respondent shall propose in writing to EPA an independent auditor or group of independent auditors (the "Proposed EMS Auditor") who will implement the EMS Audit Program. Each Proposed EMS Auditor must be "qualified," meaning that he/she: (a) was not involved in the development of the EMS, (b) satisfies or meets the EMS Auditor qualification requirements of ISO 19011 (First edition, 2002-10-01), (c) has expertise and competence in regulatory programs under federal and state environmental laws, and (d) has at least a bachelor's degree from an accredited institution. Respondent's proposal shall include supporting documentation regarding the qualifications of each Proposed EMS Auditor. In addition, each Proposed EMS Auditor must be capable of exercising independent judgment and discipline in performing an EMS audit at each Facility, as described in Paragraphs 16 through 18. The EMS Auditor must have no direct financial stake in the outcome of the EMS audit conducted pursuant to this Consent Decree. If Respondent has or had any other contractual or financial relationship with any Proposed EMS Auditor, Respondent shall disclose to EPA such past or present contractual or financial relationship when the Proposed EMS Auditor is identified.

13. EPA shall notify Respondent whether the Proposed EMS Auditor meets the qualifications set forth in the previous Paragraph. If EPA disapproves Respondent's selection of such Proposed

EMS Auditor, then Respondent shall propose another Proposed EMS Auditor to EPA within thirty (30) days of Respondent's receipt of EPA's determination.

14. Within ninety (90) business days of the date that EPA notifies Respondent of the approval of the Proposed EMS Auditor, Respondent shall retain the Proposed EMS Auditor, thereafter designated the EMS Auditor, to perform an EMS Audit of all Facilities, as further described in Paragraphs 16 through 18, below. Respondent shall provide a copy of this Consent Decree to each EMS Auditor who is retained to conduct any of the EMS audits required by this Consent Decree.

15. If, at any time, Respondent wishes to replace the EMS Auditor for any reason, Respondent shall notify EPA in writing, provide an explanation for the change, and identify a substitute Proposed EMS Auditor. Respondent's proposal to substitute for the EMS Auditor must address the criteria specified in Paragraph 12 of this Appendix and shall be subject to the EPA review and approval process described in Paragraph 13.

16. Respondent shall require the EMS Auditor to submit, within two (2) months after EPA's notification that the EMS Auditor is qualified to conduct the EMS Audit program, a proposed schedule and plan for conducting the EMS Audits (the EMS Audit Plan) to Respondent, and EPA for review and approval. The audits shall be scheduled so that they are completed within 18 months after the EMS Audit Plan is approved. The audit criteria shall include the EMS Standard and any other EMS standards or criteria deemed appropriate by Respondent. The EMS Audit Plan shall provide for an evaluation of the adequacy of EMS implementation and conformance to the audit criteria, from senior management down, throughout each major organizational unit at all Facilities and the making of pertinent observations where there are opportunities for

improvement or areas of concern. The EMS Audit Plan shall provide that each audit will be conducted in a manner consistent with ISO 19011 (First edition, 2002-10-01) and shall specify that each audit team shall have at least two (2) qualified (as defined in Paragraph 12) EMS Auditors, one of which is designated and qualifies as a Lead Auditor.

17. EPA shall approve the EMS Audit Plan if it addresses the elements of Paragraph 16.

18. Within sixty (60) days after Respondent's receipt of EPA's approval of the EMS Audit Plan, Respondent shall require the EMS Auditor to initiate the EMS Audit Program in accordance with the approved EMS Audit Plan and the schedule contained therein. In the context of assessing Respondent's conformance with the criteria specified in Paragraph 16, above, the EMS Audit at each Facility shall address the following:

- a. Whether there is a defined system, subsystem, program, or planned task for the respective EMS element;
- b. To what extent the system, subsystem, program, or task has been implemented, and is being maintained;
- c. The adequacy of each operation's internal self-assessment procedures for programs and tasks composing the EMS;
- d. Whether Respondent is effectively communicating applicable environmental legal requirements to affected parts of the organization and those working on its behalf as contemplated by Appendix E hereto;
- e. Whether further improvements should be made to the EMS to conform to the EMS Standard;
- f. Whether there are observed deviations from Respondent's written

requirements or procedures; and

- g. Whether continual improvement is occurring.

19. Representatives from Respondent (other than those employed at the Facility being audited) and EPA may participate in the EMS Audit as observers, but may not interfere with the audit process or independent judgement of the EMS Auditor. Respondent shall notify EPA at least ten (10) days before the commencement of the on-site portion of each EMS Audit.

20. EMS Audit Report. Respondent shall direct the EMS Auditor to develop and submit simultaneously to Respondent and EPA an EMS Audit Report for the EMS Audit for each Facility within sixty (60) days following the completion of the final on-site portion of the EMS Audit at that Facility. The EMS Audit Report shall present the audit findings and shall contain the following information:

- a. The audit scope, including the period of time covered by the audit;
- b. The date(s) the on-site portions of the audit were conducted;
- c. The identification of audit team members for each Facility;
- d. The identification of Respondent representatives and regulatory agency personnel observing the audit;
- e. The distribution for the EMS Audit Report;
- f. A summary of the audit process, including any obstacles encountered;
- g. Detailed audit findings, including the basis for each finding and each area of concern identified;
- h. Identification of any audit findings corrected, or areas of concern addressed, during the audit and a description of the corrective measures

and when they were implemented; and,

- i. Certification by the EMS Auditor that the EMS Audit was conducted in accordance with the provisions of the approved EMS Audit Plan and Paragraphs 18 and 19 of this Decree.

21. If the EMS Auditor believes that additional time is needed to analyze available information or to gather additional information, then the EMS Auditor, or Respondent on behalf of the EMS Auditor, may request that EPA grant the EMS Auditor such additional time as needed to prepare and submit the EMS Audit Report.

22. Follow-Up Corrective Measures: Initial Audit Response and Action Plan. Upon receiving the EMS Audit Report, Respondent shall review and evaluate the identified audit findings, any need for conducting a root cause analysis, and shall investigate all observed areas of concern. Within sixty (60) days of receiving the EMS Audit Report, Respondent shall develop and submit to EPA, for review and comment, an initial response to the EMS Audit Report (the Initial Audit Response and Action Plan). The Initial Audit Response and Action Plan shall provide a response to the findings and areas of concern identified in the EMS Audit Report. To the extent that Respondent determines, based on its review of the EMS Audit Report, that appropriate actions or measures should be implemented to achieve conformance at the respective Facility with the EMS Standard and with any other EMS standards or criteria deemed appropriate by Respondent, then Respondent shall include an action plan in the Initial Audit Response and Action Plan for expeditiously implementing those appropriate actions or measures. The Initial Audit Response and Action Plan shall include the result of any root cause analysis, specific deliverables, responsibility assignments, and an implementation schedule for the identified

actions and measures, including those that may have already been completed.

23. Final Audit Response and Action Plan. EPA will provide its comments on the Initial Audit Response and Action Plan and Respondent shall, within thirty (30) days of receipt of EPA's comments on the Initial Audit Response and Action Plan, submit to EPA a Final Audit Response and Action Plan and implement the Final Audit Response and Action Plan in accordance with the schedule contained therein.

24. Following submittal and until completion of the actions or measures described in the Final Audit Response and Action Plan, Respondent shall include, within the semiannual status reports submitted pursuant to Paragraph 10 of this Appendix, a report of the status of Respondent's conduct of any actions or measures identified within the Final Audit Response and Action Plan, as well as the status of the Certification of EMS Implementation described in the following paragraph.

25. Certification of EMS Implementation

- a. Within 10 days after completion of an EMS Audit in which no instances of nonconformance with the EMS Standard are found at the respective audited Facility, Respondent shall submit a Request for Certification of EMS Implementation to the EMS Auditor. Within ten (10) days after the receiving the certification request, the EMS Auditor shall issue to Respondent a Certification of EMS Implementation for the respective Facility, indicating that the EMS has been fully implemented and conforms to the EMS Standard.
- b. Alternately, within 10 days after completion of actions or measures identified in the Final Audit Response and Action Plan, Respondent shall submit to the EMS

Auditor a Request for Certification of EMS Implementation.

- c. As soon as practicable, but in no event later than 30 days after it has received the certification request pursuant to Subparagraph b of this Paragraph, the EMS Auditor shall, as necessary, reinspect the respective Facility (i.e., conduct a “Certification Review”) and submit to Respondent a written statement identifying those instances of nonconformance that have been addressed and any that have not, including an explanation describing the failure to address or correct, as appropriate, any instances of nonconformance. Respondent shall use its best efforts to address in a timely manner any outstanding instances of nonconformance identified during the Certification Review.
- d. When the EMS Auditor concludes that all instances of nonconformance have been addressed at the respective Facility, the EMS Auditor shall issue to Respondent a Certification of EMS Implementation for the respective Facility, indicating that the EMS is fully implemented and conforms to the EMS Standard.
- e. Within ten (10) days of receipt, Respondent shall submit a copy of each Certification of EMS Implementation to EPA.

APPENDIX D

List of Facilities

Facility Name	Facility Address	Included Operations
Salvage Yard	Building 25, 8200 West Jefferson Boulevard, Dallas, Texas	All associated with operation of the salvage yard at this location.
Northwest Service Center Note: This facility will be dropped when operations are moved to new Northwest Service Center on Harry Hines Blvd.	2828 Shorecrest Drive, Dallas, Texas 75235	Equipment & Building Services (“EBS”) Fleet Operations
		Sanitation – District 3
		Streets - District 3
		Parks and Recreation
Northeast Service Center	8915-8919 Adlora Street, Dallas, Texas 75238	EBS Fleet Operations
		Sanitation – District 4
		Streets – District 4
		Dallas Water Utilities – Collections
		Parks and Recreation

Southeast Service Center	2700-2900 Municipal Street, Dallas, Texas 75215	EBS Fleet Operations
		EBS Heavy Equipment Shop
		Police Department
		Sanitation – District 1
		Dallas Water Utilities – Material Services
		Dallas Water Utilities – Pipeline
		Dallas Water Utilities – Distribution
		Dallas Water Utilities – Meters Repair
		Code Compliance – Mow Clean
		Streets – Administration, The Company, District 1 & Inspection
		PWT/SWM Storage (This facility will ultimately be moved to Building 27, 8200 West Jefferson Boulevard, Dallas, Texas.)
Southwest Service Center	2423-2545 Valleria Street and 4130-4230 W. Illinois, Dallas, Texas 75211	EBS Fleet Operations
		Dallas Water Utilities – Distribution
		Streets – District 2
		Parks and Recreation
		Code Compliance
		Sanitation – District 2
		Police Department

Central Service Center	3112-3212 Canton Street, Dallas, Texas 75226	EBS Warehouse
		EBS Building Services
		EBS Roofing Section
		EBS Administration
		EBS Fleet Operations
		PWT – Sign Shop
		Police Department
		Fire Prevention
		Sanitation Administration – District
		CIS – Radio Shop and Administration
		Code Compliance
		Dallas City Marshal
		Parking Enforcement
		PWT Transportation Striping Operation (moving from 2912 Bryan Street during 2 nd qtr FY2006)

<p>New Northwest Service Center</p> <p>Note: This facility ultimately will replace the Northwest Service Center above. Currently, this new facility is only partially operational.</p>	<p>9801 Harry Hines Boulevard, Dallas, Texas 75220</p>	Dallas Water Utilities
		Police Department
		Development Services – Building Inspection
<p>I.C. Harris Maintenance Facility</p>	<p>5620 Parkdale, Dallas, Texas 75227</p>	<p>All operations at this location.</p>
<p>Dallas Fire and Rescue Training Center</p>	<p>5000 Dolphin Road, Dallas, Texas 75207</p>	<p>This facility is clearly divided into 2 uses: (i) fire and rescue training, and (ii) heavy vehicle maintenance (similar to the service centers). Vehicle maintenance is a secondary, but significant use at the site. Use (i) does not involve any maintenance activities and the City proposes that the EMS specifically cover only the maintenance activities and maintenance portion of the facility.</p>

EBS Make Ready Shop	Building 25, 8200 West Jefferson Boulevard, Dallas, Texas	All operations at this location. The Salvage Yard offices are associated with the offices of this shop.
Dallas Zoo	650 S. R L Thornton Freeway, Dallas, Texas	All operations at this location.
PARD Ewing Maintenance Center	1021 S. Ewing, Dallas, TX	All operations at this location. This includes the manure staging/disposal operations associated with the Dallas Zoo.

APPENDIX E

Supplementary Requirements for ISO 14001-2004 (second edition)

4.3.1 Environmental Aspects

Add new second paragraph after “b” as follows:

Consistent with 4.5.3, the aspects/impacts assessment carried out pursuant to this section 4.3.1 shall specifically include, but not be limited to, identifying activities, products, or services where equipment malfunctions and deterioration, operator errors or deliberate malfeasance are causing, or have the potential to cause: (1) unplanned or unauthorized releases of hazardous contaminants to the environment, (2) a threat to human health or the environment, or (3) noncompliance with legal requirements.

4.3.2 Legal and Other Requirements

Add new subsections as follows:

c) Information about applicable legal requirements shall be used to plan, develop, and implement ongoing routine evaluation of compliance, consistent with 4.5.2, to ensure that the organization’s activities conform to those requirements.

d) for prospectively identifying and obtaining information about changes and proposed changes in legal requirements, and incorporating those changes into the EMS (i.e., regulatory “change management”).

e) for communicating with regulatory agencies regarding legal requirements and regulatory compliance.

4.3.3 Objectives, targets, and programme(s)

To end of second paragraph add

Targets and objectives shall include, where appropriate, actions which reduce the risk of noncompliance with legal requirements and minimize the potential for unplanned or unauthorized releases.

4.4.1 Resources, roles, responsibility and authority

Add to end of first paragraph as follows:

Management shall integrate environmental planning into organizational decision-making, including plans and decisions on capital improvements, product and process design, training programs and maintenance activities.

4.4.2 Competence, training, awareness

Add to end of first paragraph

This requirement shall also extend to any person within the organization or acting on its behalf whose activity has the potential to cause environmental regulatory noncompliance.

Add new subsections as follows:

(e) the applicable environmental legal requirements (without dictating the specific details or specific methods of compliance).

(f) the process for communicating environmental concerns and information to the organization.

4.4.3 Communication

Replace opening paragraph and subsection (a) as follows:

With regard to its environmental aspects, the need to comply with legal requirements and environmental management system, the organization shall establish and maintain procedures for:

a) an ongoing means of internal communication regarding environmental issues and information among the various levels and functions of the organization, to include all organization personnel and a means for receiving, documenting, and responding to relevant communication from those individuals;

Add new subsection as follows:

c) as appropriate, implementing and maintaining security measures to prevent unauthorized disclosure of environmental management system information (including audits and reviews) and documentation, which shall include protocols for responding to inquiries and requests for release of information.

4.4.6 Operational control

Add new subsections as follows:

d) conducting and documenting routine, objective, self-inspections by supervisors and trained staff to check for malfunctions, deterioration, worker noncompliance with operating criteria, unusual situations and unplanned or unauthorized releases.

e) developing, implementing and maintaining a “management of change” procedure to incorporate identification and consideration of legal requirements and environmental aspects

during the planning and design of new and/or changes to buildings, operations, processes, equipment, maintenance activities and products.

4.4.7 Emergency response and preparedness

Add to end of first paragraph

The procedures shall address internal and external reporting of environmental incidents and noncompliance with legal requirements.

4.5.2.1 Evaluation of compliance

Add new paragraphs following the first paragraph as follows:

The compliance evaluations shall include:

a) a compliance audit conducted at least annually, by an auditor(s) independent of the facility being audited. Evaluation results are reported to senior management and nonconformities (i.e., instances of noncompliance) are addressed through the process developed pursuant to element 4.5.3, below. The organization's annual compliance audit workplan, including any schedule, shall be based on the legal requirements applicable to the evaluated facility, and the results of previous audits.

b) conducting and documenting routine, objective, internal self-inspections by supervisors and trained staff.

APPENDIX F

Environmental Metrics

I. Spills and Accidental Releases – Number, content, and volume or mass of documented chemical (including petroleum) spills and accidental releases, and which, if any, exceeded a state or federal reportable quantity. Indicate approximate mass released to each media (i.e., ground, surface water, air, etc.) and normalize to an annually adjusted variable.

II. Permit Exceedances – Number of instances when actual compliance monitoring data results exceed reporting limits established in applicable local, state, or federal permits or standards.

III. Hazardous and Non-hazardous Waste Generation – The respective masses of hazardous and non-hazardous wastes generated will be reported and normalized to an annually adjusted variable so that results from year to year may be compared.

IV. Recycling – Utilizing pertinent records, recycling rates will be determined, recorded, and normalized to an annually-adjusted variable so that results from year to year may be compared. Recycling information will be reported for at least the following materials: oil, batteries, scrap metal, tires, gasoline, and antifreeze.

V. Energy Usage – Consumption of electricity and thermal energy (e.g., natural gas, petroleum, etc.), normalized to an annually-adjusted variable so that results from year to year may be compared.

APPENDIX G

EMS Development Plan Template

[Facility Name] EMS Development Plan

Section 1 - Facility Background Description - name, location, tenants (maybe include/ID members of Implementation team)

Section 2 - Results of Gap Analysis (synopsis)

Section 3 - Performance Metrics - initial list and proposed substitutions, if any, to Appendix F list and a schedule, as needed, for identifying additional metrics

Section 4 - Implementing Task and Document Table (see below - may be expanded, as needed)

EMS Element	EMS Standard Reference	Implementation Task/Document	Target Completion Date	Procedure Name	Procedure Effective Date	Person(s) Responsible
Policy	4.2					
Environmental Aspects	4.3.1					
Legal and Other Requirements	4.3.2					
Objectives and Targets	4.3.3					

Environmental Management Program (EMP)	4.3.3					
Monitoring and Measurement	4.5.1					
Operational Controls	4.4.6					
Training	4.4.2					
Internal/External Communication	4.4.3					
Documentation and Document Control	4.4.4, 4.4.5, and 4.5.4					
Emergency Response	4.4.7					
Structure and Responsibility	4.4.1					
Compliance Audits	4.5.2					
EMS Audits	4.5.5					
Corrective Action	4.5.3					
Senior Management Review	4.6					