IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

THE UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
THE CITY OF INDEPENDENCE,	)	**Civil Action No.** 4:09-cv-00240-DGK
	)	
MISSOURI,	)	
	)	
Defendant.	)	
	)	
THE STATE OF MISSOURI,	)	
	)	
Non-aligned Party Joined pursuant to 33 U.S.C. § 1319(e)	)	

CONSENT DECREE

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WHEREAS, Plaintiff, the United States of America ("United States"), by the authority of the Attorney General of the United States and through its undersigned counsel, acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a Complaint concurrently with this Consent Decree alleging that Defendant, the City of Independence, Missouri ("Independence," "City," or "Defendant") has violated and continues to violate the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1251 et seq., and the conditions and limitations of its National Pollutant Discharge Elimination System ("NPDES") Permit Number MO - 0089681.

WHEREAS, the Defendant is a municipality organized and existing under the laws and constitution of the State of Missouri.

WHEREAS, the Defendant owns and operates a Publicly Owned Treatment Works ("POTW") that includes the Rock Creek Wastewater Treatment Plant ("WWTP") and associated Wastewater Collection and Transmission System ("WCTS") in Independence, Missouri. The WWTP serves approximately one-half of the residences and businesses of Independence Missouri, a small area of the City of Kansas City, Missouri, and a majority of the Town of Sugar Creek, Missouri. Approximately half of the City's collection system delivers wastewater to the Little Blue Valley Sewer District and that part of the collection system and that wastewater is not subject to this Consent Decree. A small portion of wastewater from Independence residences and businesses is delivered to Kansas City, Missouri for treatment and that portion of the collection system and that wastewater is not subject to this Consent Decree. A map of the portions of the City's collection system that are subject to this Consent Decree is attached hereto as Appendix A.

WHEREAS, the State of Missouri ("State") has been joined in this action pursuant to the requirements of Section 309(e) of the Clean Water Act, 33 U.S.C. § 1319(e). No allegation is made in the complaint that the laws of Missouri prevent Defendant Independence from raising revenues needed to comply with such judgment.

WHEREAS, the United States alleges that Defendant has violated and continues to violate Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1342, by discharging untreated sewage from its WCTS, including but not limited to Sanitary Sewer Overflows, as defined in Section V of this Consent Decree, into the Missouri River, Mill Creek, Rock Creek, and their tributaries, hereinafter "receiving streams" as defined in Section V of this *Consent Decree*.

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

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

I. JURISDICTION

This Court has jurisdiction over the subject matter of this action and over the parties to this action pursuant to Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b); and 28 U.S.C. §§ 1331, 1345, and 1355. The Complaint states a claim upon which relief may be granted against the City under Section 309 of the Clean Water Act, 33 U.S.C. § 1319, for injunctive relief and civil penalties. The City waives any and all objections that it may have to the Court's jurisdiction to enter and enforce this Decree. Authority to bring this action is vested in the United States Department of Justice ("DOJ") pursuant to Section 506 of the Clean Water Act, 33 U.S.C. § 1366, and 28 U.S.C. §§ 516 and 519.

II. VENUE

Venue is proper in this Court pursuant to Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and 1395(a), because the violations alleged in the Complaint are alleged to have occurred in this judicial district. For purposes of this Consent Decree, the City consents to venue in this judicial district.

III. BINDING EFFECT

A. The provisions of this Consent Decree shall apply to and be binding on the City, as defined in Section V below, and its officers, directors, employees, agents, servants, successors and assigns, and all persons, firms and corporations under contract with the City to perform obligations of this Consent Decree and upon the United States and its agencies, departments, representatives, employees, consultants, agents, successors, and assigns.

B. Effective from the Date of Lodging of this Consent Decree until its termination, the City shall provide a copy of this Consent Decree to any person or entity to whom the City transfers ownership or operation of any portion of the POTW that is subject to the requirements of this Consent Decree. The City shall notify EPA and the United States Department of Justice in writing of any successor in interest at least thirty (30) days prior to any such transfer. Any sale or transfer of the City's interests in or operating role with respect to the WWTP or WCTS shall not in any manner relieve the City of its responsibilities in meeting the terms and conditions of this Consent Decree.

C. The City shall provide a copy of this Consent Decree to each engineering, consulting and contracting firm retained to perform the work or any portion thereof required by this Consent Decree upon execution of any contract relating to such work, and shall provide a copy to each engineering, consulting and contracting firm already retained to perform the work or any portion thereof required by this Consent Decree no later than thirty (30) days after the date of lodging of this Consent Decree.

D. Any action taken by any contractor or consultant retained by the City to implement the City's obligations under this Consent Decree shall be considered an action of the City for purposes of determining compliance with this Consent Decree. In an action to enforce this Consent Decree, the City shall not assert as a defense any act or failure to act by any of its officers, directors, employees, agents, servants, consultants, engineering firms,

contractors, successors and assigns. However, the City retains any rights it may have against such officers, directors, employees, agents, servants, consultants, engineering firms, contractors, successors and assigns.

IV. OBJECTIVES

The express purpose of the Parties entering into this Consent Decree is for the City to take all measures necessary to fulfill the requirements of the Clean Water Act and to achieve full compliance with the Act, the regulations promulgated thereunder, and the City's NPDES Permit, with the goal of eliminating all Sanitary Sewer Overflows ("SSOs") from the WCTS and Prohibited Bypasses at the WWTP. All plans, reports, construction, remedial maintenance, and other obligations in this Consent Decree or resulting from the activities required by this Consent Decree shall have the objective of compliance with the Clean Water Act, all applicable federal regulations, and the terms and conditions of the City's NPDES Permit.

V. DEFINITIONS

A. Unless otherwise defined herein, terms used in this Consent Decree shall have the meanings given to those terms in the Clean Water Act, 33 U.S.C. §§ 1251 et seq. and the regulations promulgated under the Act.

B. The following terms used in this Consent Decree shall be defined as follows:

1. "Building/Private Property Backup" shall mean a wastewater release or backup into a building or private property that is caused by blockages, flow conditions, or other malfunctions in the WCTS. A wastewater backup or release that is caused by blockages, flow conditions, or other malfunctions of a Private Service Connection Lateral is not a Building/Private Property Backup.

2. "Bypass" as that term is defined in 40 C.F.R. § 122.41(m) means the intentional diversion of waste streams from any portion of a POTW.

3. "Capacity-related unpermitted overflow" or "Capacity-related SSO" shall mean any discharge, release or overflow from any part of the POTW that is the result of the inability of that portion of the POTW or portions of the POTW to convey or treat peak flows, and where that inability is not primarily maintenance related (i.e., as a result of a temporary blockage or a maintenance related defect).

4. "City" or "Independence" shall mean the City of Independence, Missouri.

5. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto.

6. "Cross Connection" shall mean any physical connection of the storm sewers and sanitary sewers within the WCTS that allows stormwater or other waters (except sanitary sewage, and industrial wastewaters and stormwater accepted under the City's existing Unilever and BP Products North America, Inc. industrial storm water connections) to flow into the WCTS.

7. "Current Permit" shall mean the City's NPDES Permit No. MO-0089681, effective October 1, 1996, and any such permit which succeeds Permit No. MO-0089681, issued to the City, and which is in effect at a particular time in question, and any future federally approved, extended, modified or reissued permit.

8. "Date of Lodging" shall mean the date this Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the Western District of Missouri.

9. The terms "day" or "days" as used herein shall mean a calendar day or calendar days. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, federal or state holiday, the period shall run until the close of the next business day.

10. "Defendant" shall mean the City of Independence, Missouri.

11. "Design" shall include the completion of detailed plans and specifications as needed to begin construction.

12. "Discharge Monitoring Report" or "DMR" is defined as the monitoring report which the City submits to the Missouri Department of Natural Resources on a monthly basis pursuant to Section A of the City's NPDES Permit No. MO-0089681 and any similar provision in any of the City's Current Permits.

13. "Effective Date" shall mean the date upon which this Consent Decree is approved and signed by the Court.

14. "EPA" shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.

15. "Excessive Inflow / Infiltration" or "Excessive I/I" shall have the meaning provided in 40 C.F.R. § 133.103(d) and 40 C.F.R. § 35.2005(b)(16).

16. "Force Main" shall mean any pipe that receives and conveys, under pressure, wastewater from the discharge side of a pump. A Force Main is intended to convey wastewater under pressure.

17. "Gravity Sewer Line" shall mean a pipe that receives, contains and conveys wastewater not normally under pressure, but is intended to flow unassisted under the influence of gravity.

18. "Infiltration" as defined by 40 C.F.R. § 35.2005(b)(20) shall mean water other than wastewater that enters the WCTS (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes.

19. "Inflow" as defined by 40 C.F.R. § 35.2005(b)(21) shall mean water other than wastewater that enters the WCTS (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm water, surface runoff, street wash waters, or drainage.

20. "I/I" shall mean the total quantity of water from inflow, infiltration, and rainfall induced infiltration without distinguishing the source.

21. "Major Gravity Line" shall mean any of the following:

    a. all gravity sewer lines that are ten (10) inches in diameter or larger;

    b. all gravity sewer lines that convey wastewater from one pumping station service area to another pumping station service area; and

    c. all gravity sewer lines that that have caused or contributed, or that the City knows will likely cause or contribute to capacity-related unpermitted overflows

22. "NPDES" shall mean the National Pollutant Discharge Elimination System authorized under Section 402 of the Clean Water Act, 33 U.S.C. § 1342.

23. "Paragraph" shall mean a portion of this Consent Decree identified by Arabic numerals.

24. "Parties" shall mean the United States and Defendant.

25. "Permit No. MO-0089681" or "NPDES Permit" shall mean NPDES permit number MO-0089681 issued to the City pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342, for the Wastewater Treatment Plant and any future extended, modified or reissued permit.

26. "Plaintiff" shall mean the United States of America, on behalf of U.S. EPA.

27. *"Private Service Connection Lateral" shall mean any portion of the WCTS, not* owned or operated by the City, used to convey wastewater from a building or buildings to that portion of the WCTS owned by the City.

28. "Prohibited Bypass" shall mean a Bypass within the meaning of 40 C.F.R. § 122.41(m) that has not been approved under 40 C.F.R. § 122.41(m)(4)(ii).

29. "Publicly Owned Treatment Works" or "POTW" shall mean a publicly owned treatment works or POTW as defined in 40 C.F.R. § 403.3(q), and includes the WCTS and WWTP as defined in this Consent Decree.

30. "Pumping Station" shall mean facilities comprised of pumps which lift wastewater to a higher hydraulic elevation, including all related electrical, mechanical, and structural systems necessary to the operation of that pumping station.

31. "Receiving Stream" or "receiving water" or "receiving water body" shall mean water bodies that receive discharge from the WWTP and/or the WCTS, including but not limited to the Missouri River, Mill Creek, Rock Creek, Sugar Creek and their tributaries.

32. "Sanitary Sewer Overflow" or "SSO" shall mean an overflow, spill, diversion, or release of wastewater from or caused by the City's WCTS, including but not limited to overflows from the Dickinson, Kentucky I, Kentucky II, Rock Creek, and Sugar Creek Pump Stations. This term shall include: (i) discharges to waters of the United States from the City's WCTS, and (ii) any release of wastewater from the City's WCTS to public or private property that does not reach waters of the United States; provided, however, that releases or wastewater backups into private properties that are caused by blockages or other malfunctions within a private property that is not owned or operationally controlled by the City are not SSOs for the purposes of this Consent Decree.

33. "Section" shall mean a portion of this Consent Decree identified by Roman numerals.

34. "Sewershed" shall mean a section of the City's WCTS that is a distinct drainage or wastewater collection area and designated as such by the City.

35. "Specified Rain Parameters" shall mean at least two or more non-consecutive days (i.e., independent events) where rainfall produces flow at the point being monitored which is at least two times the average dry weather flow that occurs at that monitoring point and one day where rainfall produces flow at the point being monitored which is is at least four times the average dry weather flow that occurs at that monitoring point. The average dry weather flow shall be determined by a minimum of three months of data.

36. "State" shall mean the State of Missouri.

37. "Subparagraph" shall mean a portion of a paragraph identified by lower case letters.

38. "Subsection" shall mean a portion of this Consent Decree identified by capital letters.

39. "Wastewater Collection and Transmission System" or "WCTS" shall mean the municipal wastewater collection and transmission system, including all pipes, Force Mains, Gravity Sewer Lines, lift stations, Pumping Stations, manholes and appurtenances thereto, which are owned or operated by the City and service the Mill Creek, Rock Creek and Sugar Creek Sewersheds and which flow to the

WWTP. These Sewersheds are depicted generally on the map attached as Appendix A.

40. "Wastewater Treatment Plant" or "WWTP" shall mean the sewage treatment plant operated by the City and located at 9600 Norledge in Independence, Missouri, and all components of such sewage treatment plant.

41. "United States" shall mean the United States of America, on behalf of EPA.

VI. SUBMISSIONS REQUIRING EPA APPROVAL

A. **EPA Review**: After review of any plan, report or other item that the City is required to submit for approval to EPA pursuant to this Consent Decree, EPA shall notify the City in writing that EPA: (a) approves the submission, in whole or in part; (b) approves the submission upon specified conditions; (c) disapproves, in whole or in part, the submission, directing the City to modify the submission; or (d) any combination of the above. If EPA disapproves the submission, in whole or in part, EPA shall notify the City in writing of those portions of the submission that EPA disapproves. Except where specifically provided otherwise, the City shall provide the State of Missouri with copies of all submittals to EPA, so that the State can review and provide comments to EPA.

B. **The City's Obligations Upon EPA Approval**: In the event of approval, or approval upon conditions by EPA, the City shall proceed to take any action required by the plan, report or other item as approved by EPA.

C. **The City's Obligations upon EPA Disapproval**: In the event of disapproval, in whole or in part, any Party may request a meeting within seven (7) days of the City's receipt of notice of the disapproval. The meeting will occur within seven (7) days of a Party's request, to the extent practicable, and may be held telephonically. If the Parties do not reach agreement within ten (10) days of the date that the meeting is held, then any Party may initiate the informal dispute resolution provisions of this Consent Decree. Notwithstanding a party's request for a meeting, the City shall within thirty (30) days of receipt of notice of the disapproval, if no other time frame is agreed upon, correct the deficiencies in the plan, report or other item and resubmit the plan, report or other item for approval. Notwithstanding the receipt of a disapproval notice pursuant to Subsection VI(A) above, the City shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Any stipulated penalties applicable to the initial submission, as provided in Section XIV of this Consent Decree, shall accrue during the 30-day 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 initial submission was so deficient as to constitute a material breach of the City's obligations under this Consent Decree, the stipulated penalties applicable to the initial submission shall be due and payable notwithstanding any subsequent resubmission.

D. **Procedures for Resubmitted Plans**: In the event that EPA disapproves a resubmitted plan, report or other item, or portion thereof, EPA may again require the City to correct the deficiencies and resubmit the plan within thirty (30) days of receipt of the

disapproval, if no other time frame is specified in the notice, and/or EPA may modify the submittal. The City within ten (10) days shall proceed with any action required pursuant to the modification by EPA or an approved resubmitted plan, or the decision of EPA or shall initiate the dispute resolution provisions of this Consent Decree, starting with petitioning the Court pursuant to Section XVI (Dispute Resolution). If the Court upholds EPA's modification or disapproval, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required.

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

F. EPA shall make good faith efforts to review and approve, approve with modifications, or disapprove all submittals required by the Consent Decree within ninety (90) days of EPA's receipt of same. In the event that EPA's review of any submittal exceeds ninety (90) days, then the City shall provide written notice to EPA of all actions under this Consent Decree that will be delayed or otherwise affected by EPA's extended review. Upon providing such notice, the due date for all affected actions will be extended by the number of days beyond ninety (90) that EPA requires to provide its approval, modification and approval, or disapproval to the City, unless EPA notifies the City that an extension of a due date is not warranted. If EPA denies the extension of a due date, the City may initiate dispute resolution pursuant to Section XVI of this Consent Decree.

VII. COMMUNICATIONS

A. Except as specified otherwise, when the parties transmit written notification (including all reports) or communication required by or in conjunction with the terms of the Consent Decree with the EPA, the United States Department of Justice, the United States' Attorney, and the City, the notification shall be addressed as follows:

As to the United States Department of Justice:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Post Office Box 7611
Washington, D.C. 20044-7611
Reference Case No. 90-5-1-1-08702

As to the United States Attorney:

Assistant United States Attorney
Western District of Missouri
U.S. Department of Justice
Charles Evans Whittaker Courthouse

400 East Ninth Street, Room 5510
Kansas City, Missouri 64106

As to U.S. EPA :

Chief, Water Enforcement Branch
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency, Region 7
901 N. 5th Street
Kansas City, Kansas 66101

and

Elizabeth Huston
U.S. Environmental Protection Agency, Region 7
901 N. 5th Street
Kansas City, Kansas 66101

As to the State:

John K. McManus, or his successor
Chief Counsel
State of Missouri Office of Attorney General
P.O. Box 899
Jefferson City, Missouri 65102-0899

and

Kevin Mohammadi, Section Chief, Water Pollution Compliance and Enforcement
Missouri Department of Natural Resources
P.O. Box 176
1101 Riverside Drive
Jefferson City, Missouri 65101

and

Karl Fett, Director, Kansas City Regional Office
Missouri Department of Natural Resources
500 NE Colbern Road
Lee's Summit, Missouri 64086-4710

As to the City:

B. Allen Garner
City Counselor
City of Independence
111 E. Maple St.

P.O. Box 1019
Independence, Missouri 64501-0519

and

Parthenia B. Evans
Stinson Morrison Hecker LLP
1201 Walnut, Suite 2900
Kansas City, Missouri 64106

and

Dick Champion
Director of Water Pollution Control
9600 Norledge
Independence, Missouri 64053

B. Any party, upon written notification to the other parties, may change the addresses for communications with that party. All notifications or communications shall be deemed submitted on the date they are postmarked and sent by first class mail or certified mail, return receipt requested.

VIII. COMPREHENSIVE SSO REMEDIATION PROGRAM

The City shall, within the time frames provided herein, implement the projects identified herein to ensure that the POTW complies with the requirements of the Clean Water Act, the regulations promulgated thereunder, and the City's NPDES Permit No. MO-0089681 with the goal of eliminating all SSOs within the WCTS.

A. **Pumping Station Reliability, Capacity, and Equipment Condition**. The City shall revise the Phase I portion of its *Mill Creek / Sugar Creek Pump Stations Preliminary Engineering Study* ("PES") and construction bid for Dickinson and Kentucky #2 pump station improvements pursuant to comments related to the Dickinson and Kentucky #2 pump stations previously received from EPA, dated April 19, 2007, and submit the revised PES Phase I plan and schedule for review and approval pursuant to Section VI within one (1) calendar month of the Effective Date of this Consent Decree. Upon approval by EPA, the PES Phase I plan and schedule shall become an enforceable part of this Consent Decree.

B. **Plan for NPDES Permit No. MO-0089681, Outfalls 001 and 002**. In accordance with the plan submitted by Independence to EPA on October 1, 2008, Independence shall eliminate Outfall 002 by no later than April 20, 2015. EPA and the Missouri Department of Natural Resources ("the Department") recognize that Independence is unable to immediately eliminate Outfall 002, and may not achieve compliance with the effluent limits on Outfall 001 for Ammonia as Nitrogen and Bacteria (E. coli) within the timeframes required by the NPDES Permit anticipated to be reissued in April 2009.

Consequently, Independence shall address such potential noncompliance in accordance with the following schedule:

1. No later than five years following reissuance of the NPDES Permit, Independence shall achieve compliance with final effluent limits for Ammonia as Nitrogen Outfall 001.

2. No later than December 31, 2013, Independence shall achieve compliance with final effluent limits for Bacteria (E. Coli) at Outfall 001.

3. No later than April 20, 2015, Independence shall have completed and placed in service all remedial measures described in its Collection System and WWTP Remedial Measures Plans pursuant to paragraphs VIII.G.8 and 9 below, including construction of all upgrades necessary to comply with all final effluent limits for Outfall 001 and eliminated bypass discharges from the former Outfall 002. Independence shall satisfy this requirement by the submittal to EPA and the Department of a Statement of Work Complete and an application and request to the Department to issue the permit.

C. <u>Sewer System Evaluation Survey ("SSES")</u>

1. On September 1, 2008, the City submitted to EPA for review and approval in accordance with the requirements of Section VI, a Work Plan for conducting a Sewer System Evaluation Survey ("SSES"or the "Survey") which is based on flow measured during the Specified Rain Parameters. In order to establish that the Specified Rain Parameters have occurred, flow monitoring will be done at points prior to any equalization or storage facilities (basins or wet wells) that may be in the collection system and will be measured daily. The SSES shall:

    a. Identify Sewersheds organized by sub-basins with excessive I & I, such that these conditions are causing and/or contributing to SSOs, Building/Private Property Backups, overloading and/or Bypasses at the POTW;

    b. Identify and quantify sources of I/I within the Sewersheds determined to have Excessive I/I rates;

    c. Identify and quantify SSOs;

    d. Identify areas subject to Building/Private Property Backups;

    e. Identify cross connections and unauthorized connections;

    f. Identify physical degradation of the WCTS that causes or contributes to SSOs or Building/Private Property Backups;

    g. Prioritize sub-basins based on I/I contribution and wet weather peaking factors; and

h. Facilitate the development of the Capacity Assessment required pursuant to Subsection VIII(D).

The Work Plan shall include a summary of the work to date in addressing SSOs and a schedule for performing and completing the SSES that is as expeditious as possible, and in no event exceeds fourteen (14) calendar months from the date the Work Plan is submitted. The SSES shall address installation of sewer flow, WWTP flow, and rainfall monitoring equipment necessary to gather additional data for modeling and for development of the system evaluation. The schedule for preparation of the SSES shall include timeframes for completion of all monitoring activities; expeditious completion of all investigative activities; completion of the analysis of the data collected and submission of the SSES Report to EPA for review and approval.

2. Upon approval by EPA, the City shall implement the SSES activities in the approved Work Plan in accordance with the schedule contained therein. The approved schedule shall become an enforceable part of this Consent Decree.

3. The City shall perform the SSES in accordance with the guidance provided in the appropriate sections of the *Handbook: Sewer System Infrastructure Analysis and Rehabilitation*, EPA/625/6-91/030, 1991; *Existing Sewer Evaluation and Rehabilitation*, WEF MOP FD-6, 1994; and *A Guide to Short Term Flow Surveys of Sewer Systems*, WRC Engineering (Undated); and sound engineering practice.

4. The SSES shall include (and the SSES Work Plan shall describe) how the City's Sewer System Evaluation Survey will accomplish the following:

   a. Data Management: A description of the data management system that will organize, analyze, and report all existing data to be utilized and all of the data that the City will be collecting in accordance with this Subsection.

   b. Quality Control/Quality Assurance: A description of the quality assurance and quality control program the City will follow to ensure the accuracy and reliability of data collected in accordance with this Subsection.

   c. Data Review: A review of existing data concerning SSOs, sewage flows, WWTP, and WCTS attributes (e.g., pipe diameters, pipe segment lengths, diversion structure characteristics, catchment characteristics, invert elevations, pipe interior roughness coefficients, etc.), and rainfall levels; and an evaluation of the accuracy, completeness and adequacy of that data for purposes supporting the characterization of the WCTS condition and sources of extraneous wet weather flow. The data review will further identify all additional data needed to allow the SSES to satisfy the objectives stated herein.

   d. Rainfall and Flow Monitoring: As part of the SSES, the City shall carry out all additional dry and wet weather rainfall flow monitoring as needed to satisfy the requirements of this Paragraph. Where the review of existing

data is found to be adequate to satisfy the requirements of this Consent Decree, the City may use such data to complete both this SSES and the Capacity Assessment required by Subsection VIII(E) in lieu of the collection of new and additional data. Dry weather monitoring shall be carried out so as to allow the characterization of base flows and Infiltration rates. Wet weather monitoring shall be carried out following events of sufficient duration and intensity to cause significant I/I in the system to allow the collection of sufficient rainfall and flow monitoring data, to allow the prioritization of sub-basins, and to support the development of the Capacity Assessment required by Subsection VIII(E). The locations, types and rationale for placement of rain gauges, flow monitors, and any other equipment required by this Section shall be included in the SSES Work Plan.

e. Flow Monitoring: Flow data shall be collected using a system of permanent and temporary flow monitors placed at locations in the WCTS as is necessary to characterize the amount of flow from each Sewershed and sub-basin under dry and wet conditions, and to perform the Capacity Assessment of the WCTS required by Subsection VIII(E), and to characterize every known SSO. The SSES Work Plan shall describe the process to be used to identify areas with significant I/I flows.

D. Hydraulic Model Assessment

1. The City shall maintain a SewerCad™ computerized model of its WCTS (the "Model"). The City shall use the Model: 1) in the assessment of the hydraulic capacity of the WCTS and 2) in the identification of appropriate remedial measures to address all capacity limitations identified in its WCTS. The City shall use the Model to provide a detailed understanding of the response of its WCTS to wet weather events and an evaluation of the impacts of proposed remedial measures and removal of I/I flow.

2. The Model should contain adequate, accurate, and sufficiently current physical data to include invert and ground elevations, pipe diameters, slopes, pipe run lengths, Manning roughness factors, manhole sizes and configurations, and Pumping Station performance factors for its WCTS. The City shall sufficiently field verify physical data to allow calibration and verification of the Model.

3. The City shall calibrate and verify the current Model configuration using appropriate rainfall data, actual hydrographs and WCTS flow data. The City shall use at least three (3) separate data sets each for calibration and verification.

4. Model Report: On November 1, 2008, the City submitted a Model Report as described in this paragraph to EPA for review and approval pursuant to Section VI. The Model Report shall describe in detail the specific software used, model configuration, system characterization activities, and calibration and verification activities, including calibration and verification data. If flow monitoring data

collected prior to calendar year 2000 is used to calibrate or verify the model, the City shall provide its basis for assuming that the information is still valid. The report shall describe in detail data used in model configuration, calibration and verification activities and shall describe the degree to which the data used was field verified (versus assumed or interpolated). The report shall identify any deficiencies in the hydraulic model.

For any deficiencies identified, the Model Report shall develop a plan to address and correct the deficiencies. The plan shall include a schedule for implementation of the Deficiency Correction Plan. Upon approval by EPA, the Model Report shall become an enforceable part of this Consent Decree.

E. Capacity Assessment

1. On November 1, 2008, the City submitted a Capacity Assessment Work Plan as described in this paragraph to EPA for review and approval pursuant to Section VI. The Work Plan shall describe how the City will assess the capacity of the WCTS and WWTP. The Work Plan shall address the Dickinson, Kentucky I, Kentucky II and Sugar Creek Pumping Stations, all Major Gravity Lines, all lines of eight (8) inches or more in diameter feeding the Kentucky I and Kentucky II pump stations, all Force Mains and siphons, all SSO points and areas with Building/Private Property Backups, and any other portions of the WCTS that must be assessed so as to allow a technically sound evaluation of the causes of all SSOs, including specifically identifying causes of Building/Private Property Backups, Bypasses and/or overloading at the WWTP. The Work Plan shall also include a schedule for completion of the assessment that is as expeditious as possible.

2. As part of this evaluation, the City shall use the information it is required to develop pursuant to this Subsection to assess existing and long term capacity of the WCTS and to assure the ability of the WCTS to transmit peak flows experienced by and predicted for the WCTS.

3. The City shall give priority in the evaluation of the long term capacity and peak flow management to the elimination of known SSOs.

F. SSES, Hydraulic Modeling, and Capacity Assessment Report

1. No later than February 1, 2011, and in accordance with the SSES Work Plan, the City shall submit an SSES Report presenting the information required in Subsections VIII(C),(D), and (E), and summarizing the results of the SSES, Hydraulic Model Assessment, and Capacity Assessment to EPA for review and comment pursuant to Section VI.

2. The City shall utilize the collected data from the SSES Report to develop the Collection System and WWTP Remedial Measures Plans required pursuant to Subsection VIII(G).

G. Collection System and Wastewater Treatment Plant Remedial Measures Plans

1. Within three (3) calendar months of submitting the SSES Report to EPA, the City shall develop and submit to EPA for review and approval in accordance with the requirements of Section VI, a Collection System Remedial Measures Plan and a WWTP Remedial Measures Plan that will identify measures sufficient to result in adequate Capacity in its WCTS and/or at its Wastewater Treatment Plant, such that SSOs, Bypasses and overloading at the WWTP, and WWTP NPDES permit noncompliance will be eliminated under current and future conditions.

2. The WWTP Remedial Measures Plan shall ensure that the peak flow capacity of the WWTP is sufficient to treat the peak flow transported by the collection system under the conditions proposed in the approved Capacity Assessment Work Plan. If the peak flow capacity of the WWTP is insufficient to treat the predicted flow then remedial measures to increase peak flow capacity at the WWTP shall be included in the remedial measures specified.

3. The Collection System Remedial Measures Plan shall assess the capacity of the Dickinson, Kentucky I, Kentucky II, Sugar Creek, and Rock Creek pumping stations.

4. The City may, but is not required to, provide peak flow storage at pumping stations, or in the WCTS as a means to provide adequate conveyance capacity.

5. If the Collection System and WWTP Remedial Measures Plans include new outfalls, in addition to those already permitted, effluent discharges from such newly-permitted outfalls must achieve secondary treatment limits specified at 40 CFR § 133.102, as well as any additional water quality based limits.

6. The Collection System and WWTP Remedial Measures Plans shall prioritize the WCTS remedial measures based upon factors including, but not limited to: (1) relative likely human health and environmental impact risks; (2) SSO frequencies of activation; and (3) total annual SSO volumes, and provide a description of the methodology used in that prioritization.

7. The Collection System and WWTP Remedial Measures Plans shall provide estimated capital, operation and maintenance (O&M), and present value costs for each identified remedial measure. Such costs shall be provided in consistent, year specific dollars.

8. The Collection System and WWTP Remedial Measures Plans shall include schedules that are as expeditious as possible for design, construction, and placement in service of all proposed measures, which shall be completed and placed in service no later than April 20, 2015. The schedules shall include the beginning design, complete design, complete permitting, pipe replacement, award contract, beginning construction, and complete construction dates for each measure proposed.

9. Upon approval by EPA, the City shall implement the remedial measures in the approved Collection System and WWTP Remedial Measures Plans in accordance with the schedules contained therein. Upon approval by EPA, the Collection System and WWTP Remedial Measures Plans shall become an enforceable part of this Consent Decree. Clarify that CO Deadlines Rule

10. The City shall provide notice to EPA when all capital improvements identified in the Collection System and WWTP Remedial Measures Plans have been completed.

H. Management, Operation and Maintenance (MOM)

1. Collection System Management, Operation and Maintenance (MOM) Program: Within three (3) calendar months of the Effective Date of the Consent Decree the City shall submit to EPA for review and approval in accordance with the requirements of Section VI, a comprehensive index of the documents that comprise the City's MOM Program. The comprehensive index shall include a general description of all documents, including Emergency Response plans for the POTW, that are part of the City's MOM Program and the location of the documents. All documents shall be housed in a central location, unless otherwise noted in the index.

2. Within six (6) calendar months of the Effective Date of the Consent Decree, the City shall evaluate the MOM to ascertain whether any additional components are required to complete the MOM Program and shall submit its decision in writing, which shall include a list of any components needed and the time frame for completion, to EPA for review and approval, in accordance with the requirements of Section VI. The MOM program shall be designed to:

    a. Minimize the possibility of SSOs from the City's collection system through adequate staffing, training and resources sufficient to minimize infiltration, inflow, and exfiltration from the system, and maximize conveyance of wastewater to the treatment plant;

    b. Implement an immediate response program to ensure quick mitigation of all SSOs, including Building / Private Property Backups (unless caused by blockage in the homeowner's lateral connection); and

    c. Continuously prioritize areas of the collection system that need to be addressed via short term and long term solutions based in part on consideration of the frequency of SSOs and problems identified in specific areas of the collection system as identified in Section VIII(F).

3. Collection System Management, Operation, and Maintenance Program Implementation: The City shall add any additional components to the MOM Program within two (2) calendar months of approval by EPA and continue to

implement the MOM Program.

I. Grease Control Program

1. The City shall continue to implement the Grease Control Program in accordance with the plans submitted to EPA on August 22, 2007.

2. The City shall provide written notification to the EPA of any changes in the Program which may make the Program less stringent within one (1) calendar month of implementing the change.

J. Certification of Legal Authority

1. The City hereby certifies that as to the POTW it has sufficient legal authority to:

    a. Regulate volumes of wastewater from satellite municipalities and private sources;

    b. Require that sewers and connections be properly designed and constructed;

    c. Ensure that there is proper installation, testing and inspection of new and rehabilitated sewers;

    d. Allow and require implementation of the general and specific prohibitions of the pretreatment program as defined in 40 CFR §403.5; and

    e. Prohibit Inflow and provide mechanisms for requiring its removal.

2. The legal authority may be in the form of sewer use ordinances, service agreements, contracts or other legally binding mechanisms. The legal authority shall be sufficient to control the introduction of food, oil, and grease from commercial institutions and establishments.

K. Removal of Cross Connections and Inflow Sources on Public Property

1. The City shall prohibit discharge to the WCTS of storm water associated with industrial activity as that term is defined at 40 C.F.R. § 122.26(b)(14).

2. Within three (3) calendar months of the Effective Date of the Consent Decree, the City shall submit to EPA a report stating that it has conducted a thorough inspection of all known cross connections between sanitary and storm sewers and has required, pursuant to City Code Section 706.001 et seq., that all such connections be permanently closed or eliminated, with the exception of the existing Unilever and BP Products North America, Inc. industrial storm water connections.

IX. DEMONSTRATION OF ELIMINATION OF SSOS

A. The City shall complete all remedial measures required by Section VIII no later than April 20, 2015.

B. Following completion of the remedial measures required by Subsection VIII(G) in accordance with the approved schedules, the City shall demonstrate for one year that Capacity Related SSOs and Prohibited Bypasses have been eliminated. Any SSOs or Prohibited Bypasses caused by severe natural conditions (such as hurricanes, widespread flooding, an event triggering a declaration of disaster, and other similar natural conditions) shall be excluded from the foregoing requirement.

C. If following completion of the measures required by Subsection VIII(G), the City experiences Capacity Related SSOs or Prohibited Bypasses, then the City shall, no later than three (3) calendar months after the date of the SSO or Prohibited Bypass, submit a revised Capacity Assurance Plan to EPA for approval that shall eliminate all Prohibited Bypasses and Capacity Related SSOs. The revised plan shall include a schedule for completing the additional measures proposed therein that is as expeditious as possible. After completion of the remedial projects in the revised plan, the demonstration provisions of this Section VIII shall again apply for the full period of one year, subject to the above exclusion for any SSOs or Prohibited Bypasses caused by severe natural conditions.

D. If following completion of the measures required by Subsection VIII(H), the City experiences O&M related SSOs, then the City shall, no later than three (3) calendar months after the date of the SSO, correct the O&M deficiency that lead to the SSO and submit a report to EPA, as required in Subsection X(A) of this Consent Decree, and the demonstration provisions of this Section shall again apply for the full period of one year.

X. REPORTING

A. The City shall document and report all SSOs and Prohibited Bypasses as required by its Current NPDES Permit and shall report all SSOs and Prohibited Bypasses to EPA on a monthly basis. For each SSO or Prohibited Bypass, the City shall report to EPA the following information:

a. Identification of Pumping Station or Manhole with location;

b. Actual, if known, or estimated start date and stop date;

c. Actual, if known, or estimated start time and stop time;

d. Actual, if known, or estimated duration of the overflow;

e. Estimated volume;

f. If applicable, the waterbody into which the wastewater was released;

g. The suspected cause(s);

h. A summary of any and all measures taken by the City to minimize the duration and/or impacts;

i. A summary of any specific measures taken to eliminate the event; and

j. A summary of any specific measures the City intends to use to prevent recurrence.

If the City's submittals to the State required by its Current NPDES Permit and any applicable regulations include the information identified in (a) - (j) above, the City may satisfy this requirement by providing a copy to EPA of the written reports submitted to the State.

B. Beginning six (6) months after the Effective Date of this Consent Decree, and every six (6) months thereafter until termination of the Consent Decree, the City shall submit in writing to EPA a semiannual status report on the fourteenth day of the second month following the end of each six (6) month reporting period. The semiannual status report shall contain a summary of the status and progress of all projects and programs required by Sections VIII, IX and XIII of this Consent Decree, including but not limited to:

1. The Discharge Monitoring Report for the Rock Creek Wastewater Treatment Plant for each month during the reporting period.

2. A status report on the progress of the SSES, including the identification and removal status of Inflow sources, a list of all confirmed Inflow and Infiltration sources, month of removal (if removed) and expected removal month (if not yet removed).

3. A report on the status of development and implementation of all plans required by Section VIII, including a statement as to whether specific scheduled milestone dates in the schedules included in each approved implementation plan were met. Upon completion of specific projects in the approved plans, the City shall submit a certification as provided in Section XX that the specified work has been completed, including the following documentation of the completed work to EPA:

    a. For work performed by a private contractor: an inspection report by City utilities personnel of the completed project and certification by the City Engineer that the specified work has been completed.

    b. For work performed by City personnel: a copy of the work order for the project verified by the City Engineer as having been completed.

4. A report on the status of all direct discharges and cross connections in the City's WCTS, including information regarding direct discharges or cross connections discovered or eliminated during the preceding six (6) months, and the location of any new cross connections or direct discharges discovered during the reporting period, together with a description of what was done to eliminate them.

5. All information required to be submitted under the City's current NPDES Permit in accordance with the requirements of the permit.

6. The Sewer System Emergency Overflow Response Plan activities, including, but not limited to, the number of responses to SSOs and Prohibited Bypasses, the response times for each event, and actions taken to clean up and disinfect the site after the event.

7. The preventative maintenance activities listed in the MOM Program Report. This shall include the number of miles, general area and percent of pipe segments which were inspected, cleaned, repaired or replaced; number and location of manhole inspections; a summary of all Force Main preventive maintenance activities; and any other non SSES or non capacity assurance related activity. The City will submit the information indicating proactive planning so that lines will be reassessed in a proactive manner. The summary shall include a certification that the City is complying with the EPA approved MOM.

8. A report on the City's progress in satisfying its obligations in connection with the SEP under Section XIII of this Consent Decree including, at a minimum, a narrative description of activities undertaken; status of any construction or compliance measures, including the completion of any milestones set forth in the SEP Work Plan, and a summary of costs incurred since the previous report.

C. All reports required to be submitted in this Section shall contain a certification signed by a responsible official of the City, in accordance with Section XX.

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

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

F. The City shall maintain a copy of any written reports prepared pursuant to this Section in accordance with Section XVIII (Information Collection and Retention), below.

XI. FUNDING

The City's duty to comply with the terms of this Consent Decree is not contingent on the receipt of federal or state grant funds or the City's financial capabilities. Failure to comply is not

excused by the lack of federal or state grant funds, or by the processing of any applications for the same, or by the City's financial capabilities.

XII. CIVIL PENALTY

A. No later than twenty-eight (28) days after the Effective Date of this Consent Decree, the City shall pay a civil penalty of $255,000, together with interest, accruing on the day the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging, to the United States.

B. The United States shall be deemed a judgment creditor for purposes of collection of this civil penalty.

C. The City shall pay $255,000 as set forth in Subsection A, together with any accrued interest, by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing DOJ Case Number 90-5-1-1-08702. Payment shall be made in accordance with instructions provided to the Defendant by the Financial Litigation Unit of the United States Attorney's Office for the Western District of Missouri following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

D. At the time of payment, Defendant shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in this case, and shall reference the civil action number and DOJ Number 90-5-1-1-08702, by mail to the United States Department of Justice and EPA in accordance with Subsection VII(A), by email to acctsreceivable.CINWD@epa.gov, and by mail to:

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

E. If the City fails to tender any portion of the payment as set forth in Subsection A of this Section, interest shall accrue in accordance with the provisions of 31 U.S.C. § 3717.

XIII. SUPPLEMENTAL ENVIRONMENTAL PROJECT

A. Independence shall implement a Supplemental Environmental Project ("SEP"), which has the objective of securing significant environmental or public health protection and improvements. The SEP shall consist of detention basin and stream bank stabilization projects. The purpose of the SEP is to improve water quality within the Missouri River watershed by replacing fescue grass with native species and installing soil and bank stabilization to reduce pollutant loadings in the watershed.

B. **SEP Work Plan.** Within thirty (30) days of the Effective Date of the Consent Decree, the City shall submit a SEP Work Plan to EPA for review and approval. The SEP Work Plan shall include a proposed schedule for completion of the SEP. In any event, the SEP

shall be completed not later than sixteen (16) months from the Effective Date of the Consent Decree. The City shall satisfactorily complete the SEP in accordance with the schedule and requirements in the approved SEP Work Plan.

C. Independence is responsible for satisfactory completion of the SEP in accordance with the requirements of this Consent Decree. The City may use contractors or consultants in planning and implementing the SEP.

D. With regard to the SEP, Independence certifies the truth and accuracy of each of the following:

1. that all cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate and that the City in good faith estimates that the cost to implement the SEP is $450,000;

2. that, as of the date of executing this Decree, the City is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

3. that the SEP is not a project that the City was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;

4. that the City has not received and will not receive credit for the SEP in any other enforcement action; and

5. that the City will not receive any reimbursement for any portion of the SEP from any other person.

E. **SEP Completion Report.** Within thirty (30) days after completion of the SEP, Independence shall submit a SEP Completion Report to the United States, in accordance with Section VII of this Consent Decree (Communications). The SEP Completion Report shall contain the following information:

1. a detailed description of the SEP as implemented;

2. a description of any problems encountered in completing the SEP and solutions thereto;

3. an itemized list of all eligible SEP costs expended;

4. certification that the SEP has been fully implemented pursuant to the provisions of this Consent Decree; and

5. a description of the environmental and public health benefits resulting from

implementation of the SEP.

F. EPA may, in its sole discretion, require information in addition to that described in the preceding Paragraph, in order to evaluate Defendant's SEP Completion Report.

G. After receiving the SEP Completion Report, the United States shall notify Defendant whether or not Defendant has satisfactorily completed the SEP. Independence will be deemed to have satisfactorily completed the SEP when (1) EPA determines that Independence made good faith efforts to spend the entire $450,000 estimated SEP cost; (2) Independence certifies, with supporting documentation, that at least $405,000 has been disbursed to pay for the SEP water quality improvements; and (3) EPA has approved the completed SEP. If Defendant has not completed the SEP in accordance with this Consent Decree, stipulated penalties may be assessed under Section XIV of this Consent Decree.

H. Disputes concerning the satisfactory performance of the SEP and the amount of eligible SEP costs may be resolved under Section XVI of this Consent Decree (Dispute Resolution). No other disputes arising under this Section shall be subject to Dispute Resolution.

I. 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 Section XX.

J. Any public statement, oral or written, in print, film, or other media, made by Defendant making reference to the SEP under this Decree shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action, United States v. City of Independence, Missouri, taken on behalf of the U.S. Environmental Protection Agency under the Clean Water Act."

K. For federal income tax purposes, Defendant agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

XIV. STIPULATED PENALTIES

A. **Failure to Submit Timely and Complete Documents**. The City shall pay to the United States stipulated penalties, as set forth below, for each day the City fails to submit and/or complete any plans, reports, or other submittals required under this Consent Decree by the specified due dates or to make the changes to those documents per EPA comments within the required time frames. If a due date falls on a holiday or weekend, the due date shall be the following business day. The stipulated penalties for failure to meet each document submission date shall be as follows:

Period of Noncompliance	Penalty per Violation per Day
1st to 5th day	$250
6th to 30th day	$500
31st to 60th day	$750

more than 60 days	$1,500

B. **Remedial Requirements**. The City shall pay to the United States stipulated penalties as set forth below for each day the City fails to satisfy any of the remedial requirements of Section VIII of this Consent Decree, except the requirements of Section VIII(H). The stipulated penalties for failure to meet each such requirement shall be as follows:

Period of Noncompliance	Penalty per Violation per Day
1st to 15th day	$250
16th to 30th day	$500
31st to 60th day	$1,500
more than 60 days	$6,000

C. **Sanitary Sewer Overflows and Bypasses**. The City shall pay a stipulated penalty for each SSO or Prohibited Bypass as follows:

1. For each SSO that occurs prior to completion of the remedial measures identified pursuant to Subsection VIII(G), except when the flow rate at the Rock Creek WWTP equals or exceeds 16 MGD for a duration of two or more consecutive hours or when SSOs occur due to a force majeure event, the City shall pay a stipulated penalty, as set forth below:

    a.) SSO at a manhole: $2,000

    b.) SSO at a pumping station: $5,000

2. For each SSO that occurs after completion of the remedial measures identified pursuant to Subsection VIII(G), the City shall pay a stipulated penalty, as set forth below:

    a.) SSO at a manhole: $2,000

    b.) SSO at a pumping station: $5,000

3. For each Prohibited Bypass at the WWTP the City shall pay a stipulated penalty *of $5,000.*

D. **Management, Operation and Maintenance (MOM) Program**.

1. If the City fails to make required additions to its MOM Program in accordance with Subsection VIII(H), the City shall pay stipulated penalties as follows:

Period of Noncompliance	Penalty per Violation per Day
1st to 5th day	$250
6th to 30th day	$500
31st to 60th day	$750

more than 60 days	$1,500

2. Following the development of an effective and continuous MOM program pursuant to Section VIII(H), if the City fails to implement the MOM program effectively and continuously, the City shall pay stipulated penalties as follows:

Period of Noncompliance	Penalty per Violation per Day
1st to 5th day	$250
6th to 30th day	$500
31st to 60th day	$750
more than 60 days	$1,500

E. **Delay in Payment of Penalty**. The City shall pay to the United States a stipulated penalty of $2,000 for each day that the City is late in paying the civil penalty required under Section XII, which shall be in addition to accrued interest on the civil penalty at the rate specified in 28 U.S.C. § 1961.

F. **Delays in Completion of SEP.**

1. If the City fails to satisfactorily complete the SEP by the deadline set forth in Section XIII of this Consent Decree, the City shall pay stipulated penalties for each day it fails to satisfactorily complete the SEP, as follows:

Period of Noncompliance	Penalty per Violation per Day
1st to 30th day	$200
31st to 60th day	$500
more than 60 days	$1,250

2. If the City informs EPA of its intention to halt or abandon work on the SEP, the City shall pay a stipulated penalty in the amount of the difference between the amount spent to date in good faith to implement the SEP and $500,000. The penalty under this subparagraph shall accrue as of the date specified for completing the SEP or the date performance ceases, whichever is earlier.

G. Stipulated penalties shall automatically begin to accrue on the first day the City fails to meet any due date in the schedules of performance required by this Consent Decree or to satisfy any obligation or requirement of this Consent Decree and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity.

H. Any stipulated penalties shall become due and payable within thirty (30) days after the City receives EPA's written demand for payment of stipulated penalties, except as provided in Subsection XIV(I) below. Stipulated penalties shall be paid to the United States in accordance with the payment procedures detailed above. Copies of any checks and the transmittal letters shall be sent simultaneously to U.S. DOJ and EPA in

accordance with Subsection VII(A).

I. Stipulated penalties shall continue to accrue as provided in Subsection H of this Section during any Dispute Resolution, in accordance with Subsection XVI(D). If the City does not prevail on the disputed issue, stipulated penalties shall be paid as provided below:

1. 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 determined to be owing, together with interest, to the United States within thirty (30) days of the effective date of the agreement or the receipt of EPA's decision or order.

2. If the dispute is appealed to the Court, the City shall pay all accrued penalties determined by the Court to be owing, together with interest, within sixty (60) days of receiving the Court's decision or order, except as provided in Paragraph 3, below.

3. If the District Court's decision is appealed, the City shall pay all accrued penalties determined to be owing by the Court, together with interest, within fifteen (15) days of receiving the final appellate court decision.

J. Obligations Prior to the Effective Date. Upon the Effective Date of this Consent Decree, the stipulated penalty provisions of this Decree shall be retroactively enforceable with regard to any and all violations that have occurred after lodging of the Consent Decree but prior to the Effective Date of the Consent Decree, provided that stipulated penalties that may have accrued prior to the Effective Date may not be collected unless and until this Consent Decree is entered by the Court.

K. The City shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Section VII, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state the violation(s) for which the penalties are being paid.

L. 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. Nothing in this Section shall be construed to limit the United States from seeking any remedy otherwise provided by law for the City's failure to pay any stipulated penalties.

M. Subject to the provisions of Section XXI 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 Defendant's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the Section 301 or 402 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1342, and regulations promulgated thereunder, Defendant shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

XV. FORCE MAJEURE

A. A "force majeure event," for purposes of this Consent Decree, 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. Unanticipated increased costs or expenses associated with implementation of this Consent Decree and changed financial ability shall not, in any event, be considered a "force majeure event."

B. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the City shall provide notice orally or by electronic or facsimile transmission as soon as possible, but not later than twenty-four (24) hours after the time the City first knew, or by the exercise of due diligence, should have known, that the event might cause delay. Within seven (7) days thereafter the City shall provide in writing to EPA an explanation and description of 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; the City's rationale for attributing any delay to a force majeure event; and a statement as to whether, in the opinion of the City, such event may cause or contribute to an endangerment to public health, welfare or the environment. The City shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude the City from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. The City shall be deemed to know of any circumstance of which the City, any entity controlled by the City, or the City's contractors knew or should have known.

C. 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, except to the extent that an obligation depends upon the obligation delayed due to a force majeure event. Where the United States agrees to an extension of time, the appropriate modification shall be made pursuant to Section XXVI of this Consent Decree and shall not require court approval.

D. 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 XVI of this Consent Decree. If the City elects to invoke the dispute resolution procedures set forth in Section XVI (Dispute Resolution), it shall do so no later than fifteen (15) days after receipt of EPA's notice. In any such proceeding, the City shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought

was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that the City complied with the requirements of Subsections A and B of this Section. If the City carries this burden, the delay at issue shall be deemed not to be a violation by the City of the affected obligation of this Consent Decree identified to EPA and the Court.

XVI. DISPUTE RESOLUTION

A. 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. The City's failure to seek resolution of a dispute under this Section shall preclude the City from raising any such issue as a defense to an action by the United States to enforce any obligation of the City arising under this Consent Decree.

B. **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 twenty-eight (28) 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 fourteen (14) days after the conclusion of the informal negotiation period, the City invokes formal dispute resolution procedures as set forth below.

C. **Formal Dispute Resolution**. The City shall invoke formal dispute resolution procedures by, within the time period provided in the preceding Subsection, 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.

1. The United States shall serve its Statement of Position within forty-five (45) 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. The United States' Statement of Position shall be binding on the City, unless the City timely files a motion for judicial review of the dispute in accordance with the following Paragraph.

2. The City may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section VII of this Consent Decree, a motion requesting judicial resolution of the dispute. The motion must be filed within ten (10) days of receipt of the United States' 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.

3. 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.

4. Standard of Review

   a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Subsection C pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendant shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

   b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Subsection C, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree, or, if the dispute does not concern an express requirement of this Consent Decree, Defendant shall bear the burden of demonstrating that its position better furthers the objectives of the Consent Decree and the Clean Water Act.

5. 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.

D. **Stipulated Penalties**. With respect to the disputed matter, stipulated penalties shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute. If the City does not prevail on the disputed issue, Stipulated Penalties shall be assessed and paid as provided in Section XIV.

XVII. RIGHT OF ENTRY

A. The United States, and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree,

at all reasonable times, upon presentation of credentials, to: (1) monitor the progress of activities required under this Consent Decree; (2) verify any data or information submitted to the United States in accordance with the terms of this Consent Decree; (3) obtain samples and, upon request, splits of any samples taken by the City or its representatives, contractors, or consultants; (4) obtain documentary evidence, including photographs and similar data; and (5) assess the City's compliance with this Consent Decree.

B. Upon request, the City shall provide EPA or its authorized representatives splits of any samples taken by the City. Upon request, EPA shall provide the City splits of any samples taken by EPA.

XVIII. INFORMATION COLLECTION AND RETENTION

A. Until five years (5) after the termination of this Consent Decree, the City shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relates in any manner to the City's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, the City shall provide copies of any documents, records, or other information required to be maintained under this Subsection.

B. At the conclusion of the information-retention period provided in the preceding Subsection, the City shall notify the United States at least ninety (90) days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Subsection and, upon request by the United States, the City shall deliver any such documents, records, or other information to EPA. 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 or Missouri state law. If the City asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by the City.

C. The City may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that the City seeks to protect as CBI, the City shall follow the procedures set forth in 40 C.F.R. Part 2.

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

or state laws, regulations, or permits.

XIX. PERMIT OBLIGATIONS

A. This Consent Decree does not authorize or approve the construction of any physical structure or facilities, or the modification of any existing treatment works or WCTS. Approval of such construction or modification shall be as required by applicable county, state, or federal laws or regulations, including applicable requirements of Missouri law and regulations with regard to permits.

B. This Consent Decree is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, nor shall it be interpreted to be such. This Consent Decree does not relieve the City of any obligation to apply for, obtain and comply with the requirements of any new or existing NPDES permit or to comply with any federal, state or local laws or regulations.

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

XX. CERTIFICATION

A. Any report, plan, or other submission that the City is required by this Consent Decree to submit, including reports, plans or other submissions that the City is required to submit by its NPDES Permits, shall be signed by an official or authorized agent of the City and shall include the following certification:

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

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

B. The City shall not object to the admissibility into evidence of any report, plan, or other submission prepared in accordance with this Consent Decree or the information contained in said reports in any proceeding to enforce this Consent Decree.

XXI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

A. This Consent Decree resolves the claims for civil penalties for the violations alleged in the Complaint filed by the United States in this action through the date of lodging of this Consent Decree.

B. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, unless expressly stated in the Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions, unless expressly specified in this Consent Decree. The United States reserves all rights against Defendant with respect to criminal liability. The United States further reserves 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's WCTS, whether related to the violations addressed in this Consent Decree or otherwise.

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

D. 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; and the City's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits. The United States does not by its 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 Act, 33 U.S.C. § 1251, et seq., or with any other provisions of federal, State, or local laws, regulations, or permits.

E. This Consent Decree does not limit or affect the rights of the Parties against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against the City, except as otherwise provided by law.

F. 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.

XXII. FAILURE OF COMPLIANCE

The United States reserves any and all legal and equitable remedies available to enforce the provisions of this Consent Decree. The City reserves all legal and equitable defenses to enforcement under this Consent Decree which are not specifically waived.

XXIII. COSTS

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 enforce this Consent Decree or to collect any portion of the civil penalty or any Stipulated Penalties due but not paid by the City.

XXIV. EFFECTIVE DATE

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

XXV. RETENTION OF JURISDICTION

The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree pursuant to Section XVI or entering orders modifying this Decree pursuant to Section XXVI, and for the purpose of effectuating or enforcing compliance with the terms of this Decree.

XXVI. MODIFICATION

A. Except as further set forth in this Section, the terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court. Modifications (whether material or not) to this Consent Decree that are specifically allowed under the terms of this Consent Decree may be made in accordance with the terms of this Consent Decree.

B. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XVI of this Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph XVI(C)(4), the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

C. It is the intention of the Parties to this Consent Decree that the Defendant shall have the opportunity, consistent with applicable law, to conform compliance with this Consent Decree to any modification in EPA's regulations or national policies governing SSOs or bypassing; to conform compliance with this Consent Decree to any applicable new or revised water quality standards that have been approved or promulgated by EPA in accordance with 33 U.S.C. § 1313(c) and 40 C.F.R. § 131.21 and 131.22; and to conform compliance with this Consent Decree to any new, revised or more stringent requirements that are included in Current Permits pertaining to Defendant's WWTP or WCTS.

1. Consequently, upon issuance of any new EPA final regulation (as promulgated in the Federal Register) or national policy governing SSOs or bypassing, upon EPA approval or promulgation of new or revised water quality standards in accordance with 33 U.S.C. § 1313(c) and 40 C.F.R. § 31.21 and 131.22; or upon the issuance of a Current Permit that contains new or more stringent requirements pertaining to Defendant's WWTP or WCTS, Defendant may request modification of this Consent Decree (including requests for extensions of time) from EPA to conform the requirements of this Consent Decree to such regulation, national policy, new or revised water quality standard or Current Permit. For the purposes of this Paragraph, "national policy" refers to a formal written policy statement issued by the Assistant Administrator for the Office of Water and/or the Assistant Administrator for the Office of Enforcement and Compliance Assurance. Upon Defendant's request, the parties shall discuss the matter. If the Parties agree on a proposed modification to the Consent Decree, they shall prepare a joint motion to the Court requesting such modification.

2. If the Parties do not agree, and Defendant still believes modification of this Consent Decree is appropriate, it may file a motion seeking such modification in accordance with Federal Rule or Civil Procedure 60(b); provided, however, that nothing in this Paragraph is intended to waive the Plaintiffs' rights to oppose such motion and to argue that such modification is unwarranted.

3. Following the filing of a motion under Rule 60(b), stipulated penalties shall accrue due to Defendant's failure, if any, to continue performance of obligations under the Consent Decree that are necessarily the subject of the Rule 60(b) motion; provided, however, that such penalties need not be paid if the Court resolves the motion in Defendant's favor and Defendant shall comply with the Decree as modified.

XXVII. PUBLIC PARTICIPATION

This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments 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 and agrees not to withdraw from or 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.

XXVIII. SIGNATORIES/SERVICE

A. Each undersigned representative of the City and the Acting Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this

Consent Decree, to execute this document, and to legally bind the Party he or she represents to this document.

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

C. 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.

D. 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.

XXIX. INTEGRATION

This Consent Decree and its Appendix 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 Appendix, which is attached hereto and explicitly incorporated into this Decree, and deliverables 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.

XXX. TERMINATION

This Consent Decree shall not terminate until the City has achieved and maintained compliance with all provisions of this Consent Decree, including requirements relating to the SEP pursuant to Section XIII, for twelve (12) consecutive months to the satisfaction of EPA. The Consent Decree shall not terminate thereafter until each of the following occur:

1. The United States determines that:

    a. the City has satisfactorily completed all remedial measures required under Section VIII,

    b. the City has achieved and maintained substantial compliance with its NPDES permit for twelve (12) consecutive months, and

    c. the City has paid all penalties due under this Consent Decree;

2. The City submits notice in writing to the Court and the United States that it has satisfied each provision of the Consent Decree; and

3. The City and the United States jointly move the Court for termination of the Consent Decree.

XXXI. APPENDICES

The following appendix is attached to this Consent Decree:

Appendix A: Map of the Mill Creek, Rock Creek and Sugar Creek Sewersheds

XXXII. FINAL JUDGMENT

A. 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 Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

B. 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 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.

SO ORDERED THIS __ DAY OF _____, 2009.

_____

United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Independence, Missouri, relating to the City's Sanitary Sewer Overflows:

FOR THE UNITED STATES OF AMERICA:

3/25/2009
Date

/s/ John C. Cruden
JOHN C. CRUDEN
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

3/30/09
Date

/s/ Erika M. Zimmerman
FREDERICK S. PHILLIPS
ERIKA M. ZIMMERMAN
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Telephone: (202) 305-0439; (202) 514-5270
E-mail: frederick.philipps@usdoj.gov
E-mail: erika.zimmerman@usdoj.gov

3/31/09
Date

/s/ Charles M. Thomas
CHARLES M. THOMAS, MO #28522
Assistant United States Attorney
Charles Evans Whittaker Courthouse
400 East Ninth Street, Room 5510
Kansas City, Missouri 64106
Telephone: (816) 426-3130
E-mail: charles.thomas@usdoj.gov

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Independence, Missouri, relating to the City's Sanitary Sewer Overflows:

FOR THE ENVIRONMENTAL PROTECTION AGENCY:

3/27/09
Date

/s/ William W. Rice
WILLIAM W. RICE
Acting Regional Administrator
U.S. Environmental Protection Agency,
Region 7
901 N. Fifth Street
Kansas City, KS 66101

3/27/09
Date

/s/ Elizabeth Huston
ELIZABETH HUSTON
Assistant Regional Counsel
U.S. Environmental Protection Agency,
Region 7
901 N. Fifth Street
Kansas City, KS 66101

3/30/09
Date

/s/ Adam M. Kushner
ADAM M. KUSHNER
Director, Office of Civil Enforcement
U.S. Environmental Protection Agency,
Headquarters
Ariel Rios Building
1200 Pennsylvania Ave, NW
Washington, DC 20460

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Independence, Missouri, relating to the City's Sanitary Sewer Overflows.

FOR THE CITY OF INDEPENDENCE, MISSOURI:

3/30/09
Date

/s/ Parthenia Evans
PARTHENIA EVANS
Stinson Morrison Hecker
1201 Walnut, Ste. 2900
Kansas City, MO 64106-2150

3/30/09
Date

/s/ B. Allen Garner
B. ALLEN GARNER
City Counselor
City of Independence, Missouri
111 East Maple
Independence, MO 64051-0519

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Independence, Missouri, relating to the City's Sanitary Sewer Overflows:

FOR THE UNITED STATES OF AMERICA:

Date

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

3-30-09
Date

FREDERICK S. PHILLIPS
ERIKA M. ZIMMERMAN
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 305-0439

3-31-09
Date

CHARLES M. THOMAS
Assistant United States Attorney
Charles Evans Whittaker Courthouse
400 East 9th Street, Room 5510
Kansas City, Missouri 64106
Telephone: (816) 426-312

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Independence, Missouri, relating to the City's Sanitary Sewer Overflows:

FOR THE ENVIRONMENTAL PROTECTION AGENCY:

3/27/09
Date

WILLIAM W. RICE
Acting Regional Administrator
U.S. Environmental Protection Agency,
Region 7
901 N. Fifth Street
Kansas City, KS 66101

3/27/09
Date

Gail Cogal for LH
ELIZABETH HUSTON
Assistant Regional Counsel
U.S. Environmental Protection Agency,
Region 7
901 N. Fifth Street
Kansas City, KS 66101

Date

ADAM M. KUSHNER
Director, Office of Civil Enforcement
U.S. Environmental Protection Agency,
Headquarters
Ariel Rios Building
1200 Pennsylvania Ave, NW
Washington, DC 20460

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Independence, Missouri, relating to the City's Sanitary Sewer Overflows:

FOR THE ENVIRONMENTAL PROTECTION AGENCY:

Date

WILLIAM W. RICE
Acting Regional Administrator
U.S. Environmental Protection Agency,
Region 7
901 N. Fifth Street
Kansas City, KS 66101

Date

ELIZABETH HUSTON
Assistant Regional Counsel
U.S. Environmental Protection Agency,
Region 7
901 N. Fifth Street
Kansas City, KS 66101

March 30, 2009
Date

ADAM M. KUSHNER
Director, Office of Civil Enforcement
U.S. Environmental Protection Agency,
Headquarters
Ariel Rios Building
1200 Pennsylvania Ave, NW
Washington, DC 20460

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Independence, Missouri, relating to the City's Sanitary Sewer Overflows.

FOR THE CITY OF INDEPENDENCE, MISSOURI:

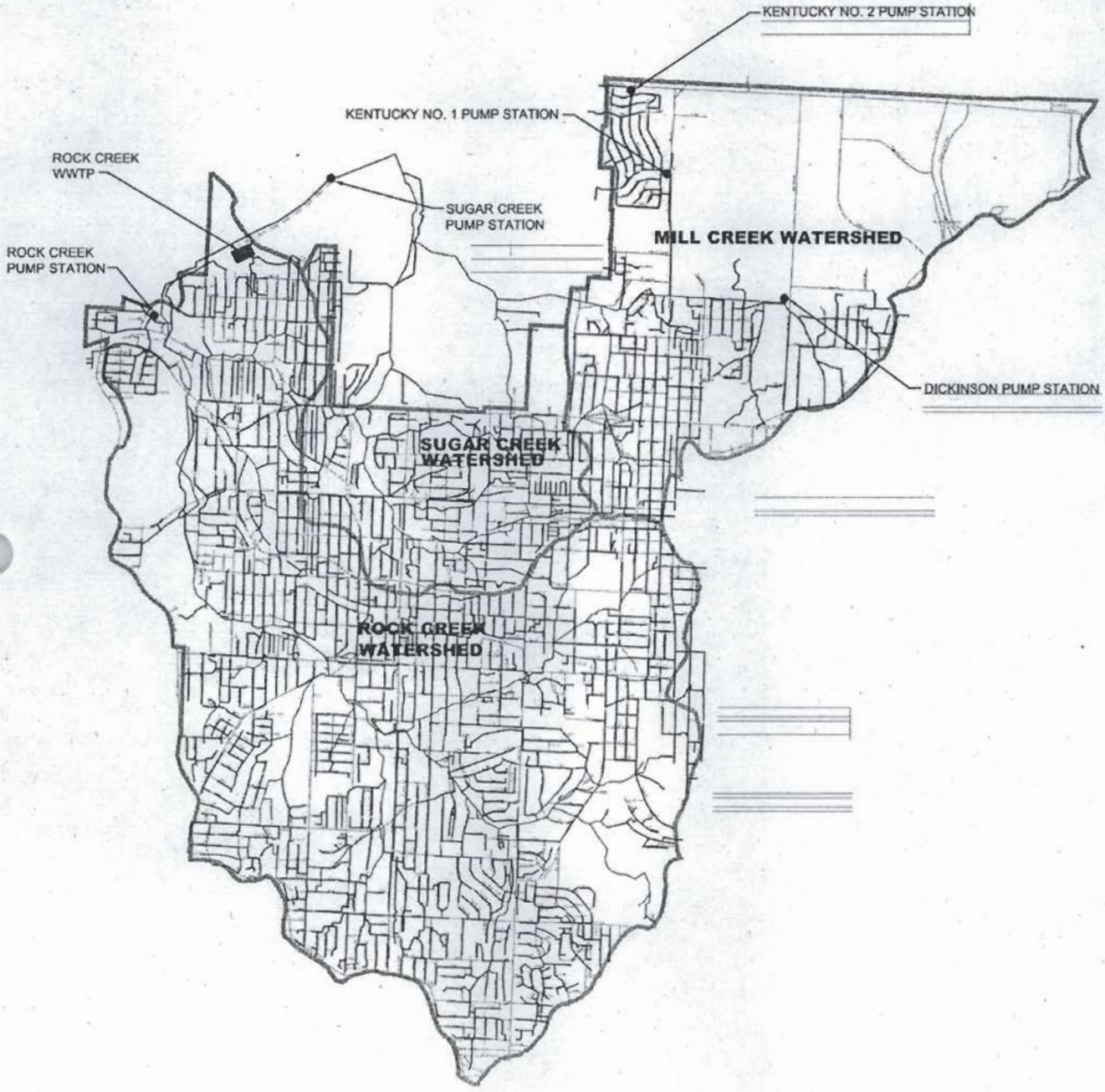
March 30, 2009
Date

PARTHENIA EVANS
Stinson Morrison Hecker
1201 Walnut, Ste. 2900
Kansas City, MO 64106-2150

March 30, 2009
Date

B. ALLEN GARNER
City Counselor
City of Independence, Missouri
111 East Maple
Independence, MO 64051-0519

APPENDIX A TO CONSENT DECREE
UNITED STATES OF AMERICA V. CITY OF INDEPENDENCE, MO
CITY COLLECTION SYSTEM SUBJECT TO CONSENT DECREE



LEGEND

- PUMP STATION
- WASTEWATER TREATMENT PLANT
- WATERSHED BOUNDARIES
- GRAVITY SEWER LINES (10) INCHES OR LARGER
- SEWER
- FORCEMAIN
- ROADS

E. T. ARCHER CORPORATION D.B.A. Archer TOTAL PROJECT MANAGEMENT