IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

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| UNITED STATES OF AMERICA, | ) | |
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| and | ) | |
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| COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, | ) | Civil Action No. |
| | ) | |
| Plaintiffs, | ) | |
| | ) | |
| v. | ) | |
| | ) | CONSENT DECREE |
| | ) | |
| WILLIAMSPORT SANITARY AUTHORITY, | ) | |
| | ) | |
| Defendant. | ) | |
| | ) | |

**CONSENT DECREE**

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

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| UNITED STATES OF AMERICA,<br><br>and<br><br>COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION,<br><br>Plaintiffs,<br><br>v.<br><br>WILLIAMSPORT SANITARY AUTHORITY,<br><br>Defendant. | ) | Civil Action No.<br><br>CONSENT DECREE |

**CONSENT DECREE**

WHEREAS, the Williamsport Sanitary Authority ("WSA" or "Defendant"), a municipal authority organized under the Municipal Authorities Act, as amended, 53 Pa. C.S.A. §§ 5601-5623, operates a publicly owned treatment works consisting of a wastewater collection and treatment system, including two wastewater treatment plants, ("WSA Collection and Treatment System");

WHEREAS, the geographic area served by the WSA Collection and Treatment System includes the City of Williamsport and seven municipalities that

own and/or operate their own collection systems that convey sanitary wastewater to the WSA Collection and Treatment System for treatment;

WHEREAS, three of the municipalities, the Borough of Duboistown, Borough of South Williamsport, and Loyalsock Township, have entered into consent orders and agreements with the Commonwealth of Pennsylvania Department of Environmental Protection ("PADEP") to assess, repair, and improve their municipal collection systems;

WHEREAS, the WSA Collection and Treatment System includes force mains, sewer lines, and other real and personal property and appurtenances thereto designed to collect and convey to the two wastewater treatment plants combined wastewater, including sewage and stormwater;

WHEREAS, WSA's Collection and Treatment System is designed to discharge, under certain conditions as specified in its NPDES Permits, through Combined Sewer Overflow ("CSO") discharge points, into receiving waters including the West Branch of the Susquehanna River;

WHEREAS, discharges through CSO discharge points can be a source of water pollution to receiving waters;

WHEREAS, on September 27, 2002, PADEP, as the permitting agency for the National Pollutant Discharge Elimination System ("NPDES") permit program,

reissued NPDES Permit No. PA0027057 ("2002 Central Plant NPDES Permit") authorizing certain discharges from and/or associated with WSA's "Central" wastewater treatment plant ("Central Wastewater Treatment Plant" or "Central WWTP"), including discharges from certain identified CSO discharge points, subject to the terms and conditions of the 2002 Central Plant NPDES Permit;

WHEREAS, PADEP subsequently reissued the NPDES Permit No. PA0027057, effective March 1, 2008 ("2008 Central Plant NPDES Permit");

WHEREAS, on October 31, 2002, PADEP reissued NPDES Permit No. PA0027049 ("2002 West Plant NPDES Permit"), authorizing certain discharges from and/or associated with WSA's "West" wastewater treatment plant ("West Wastewater Treatment Plant" or "West WWTP"), including discharges from certain identified CSO discharge points, subject to the terms and conditions of the 2002 West Plant NPDES Permit;

WHEREAS, PADEP subsequently reissued NPDES Permit No. PA0027049, effective, March 1, 2008 ("2008 West Plant NPDES Permit");

WHEREAS, the 2002 Central Plant and West Plant NPDES Permits (collectively "2002 NPDES Permits") and the 2008 Central Plant and West Plant NPDES Permits (collectively 2008 NPDES Permits) require WSA to implement a Long Term Control Plan for the purpose of achieving compliance with the

Pennsylvania Water Quality Standards and consistent with the United States Environmental Protection Agency's ("EPA") "Guidance for Long Term Control Plan" (EPA 832-B-95-002);

WHEREAS, the NPDES Permits for the Central Plant and West Plant require WSA to operate in compliance with the Nine Minimum Controls set forth in EPA's 1994 CSO Policy;

WHEREAS, as of the date of WSA's execution of this Consent Decree, WSA reports that it is in compliance with the Nine Minimum Control requirements of the Central Plant and West Plant NPDES Permits;

WHEREAS, on May 1, 2008, and January 30, 2008, WSA submitted to PADEP and EPA revised Long Term Control Plans for the Central Plant and the West Plant, respectively (collectively, "LTCPs");

WHEREAS, by letters dated July 8, 2008, and December 11, 2008, EPA commented on the LTCPs;

WHEREAS, by letters dated September 29, 2008, and December 29, 2008, WSA provided information to EPA and proposed revisions to the LTCPs;

WHEREAS, the Central Plant LTCP, as amended by the Central Plant Basis of Design Report, contemplates infrequent use of a CSO-related bypass for flows

greater than the new design capacity of WSA's four new secondary clarifiers and new headworks;

WHEREAS, the United States and PADEP agree that WSA's Central Plant LTCP, as amended by the Central Plant Basis of Design Report, provides the demonstration to support use of a CSO related bypass, as is required by the 1994 CSO Control Policy. To the extent that WSA has characterized cost effectiveness and technical or economical infeasibility as equivalent standards (Central Plant Basis of Design Report, 2-32), the United States and PADEP do not agree that they are necessarily equivalent. Nevertheless, EPA and PADEP do agree that the analysis provided in the Central Plant Basis of Design Report supports a finding of no feasible alternative.

WHEREAS, Plaintiff United States of America, 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 EPA, and PADEP have filed a complaint in this action, seeking injunctive relief and civil penalties pursuant to the Clean Water Act, 33 U.S.C. § 1251 et seq. ("Clean Water Act"), specifically Section 309 of the Clean Water Act, 33 U.S.C. § 1319, and the Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended* ("Clean Streams Law"), 35 P.S. §§ 691.601 and 695.605;

WHEREAS, the United States and PADEP allege that WSA has violated and continues to violate Section 301 of the Clean Water Act, 33 U.S.C. § 1311, and Sections 3, 302, and 401 of the Clean Streams Law, 35 P.S. §§ 691.3, 691.302, and 691.401, by failing to comply with the requirements of the 2002 and 2008 NPDES Permits;

WHEREAS, by entering into this Consent Decree, WSA does not admit any liability to the Plaintiffs arising out of the transactions or occurrences alleged in the Complaint and Complaint in Intervention;

WHEREAS, the measures set forth in the LTCP are required to attain compliance with the 2008 NPDES Permits, the Clean Water Act, and the Pennsylvania Water Quality Standards, 25 Pa. Code Chapter 93;

WHEREAS, the Parties enter into this Consent Decree to establish, through judicial order, enforceable schedules and requirements for the amendment to and implementation of the WSA Long Term Control Plans for the Central Plant and West Plant and associated tasks necessary to achieve compliance with the Clean Water Act;

WHEREAS, the Parties agree, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated in good faith and will avoid

litigation, and that this Consent Decree is fair, reasonable, and in the public interest.

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

## I. JURISDICTION AND AUTHORITY

1. This Court has jurisdiction over the subject matter of this action and over the Parties, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309 (b) of the Clean Water Act, 33 U.S.C. § 1319(b). This Court has supplemental jurisdiction over the State law claims asserted by PADEP pursuant to 28 U.S.C. § 1367.

2. For purposes of this Decree, or any action to enforce this Decree, WSA waives any and all objections it might have to the Court's jurisdiction to enter and enforce this Consent Decree.

3. The Complaint states claims upon which relief may be granted under the Clean Water Act and the Clean Streams Law.

4. The authority for the United States to bring this action is vested in the United States Department of Justice pursuant to Section 506 of the Clean

Water Act, 33 U.S.C. § 1366, and 28 U.S.C. §§ 516 and 519. The authority for PADEP to bring this action is pursuant to Sections 601 and 605 of the Clean Streams Law, 35 P.S. § 691.601 and 691.605.

## II. VENUE

5. Venue is proper in this District pursuant to Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b), and 29 U.S.C. §§ 1391(b) and 1395(a). WSA is located in this judicial district and the violations alleged in the Complaint are alleged to have occurred in this judicial district.

## III. PARTIES BOUND

6. The provisions of this Consent Decree shall apply to and are binding on WSA, its directors, employees, agents, servants, successors and assigns, and on the United States and PADEP.

7. From the Effective Date of this Consent Decree until its termination, WSA shall give written notice of this Consent Decree to each person or entity to whom WSA may transfer ownership or operation of the WSA Collection and Treatment System, or any component thereof, and shall provide a copy of this Consent Decree to each such person or entity. WSA shall notify EPA, the United States, and PADEP, in writing, of each successor-in-interest at least 21 Days prior to each such transfer. Any alteration to or transfer of WSA's ownership

or operation of the WSA Collection and Treatment System, or any component thereof, shall not in any manner relieve WSA of its responsibilities to ensure the terms of this Consent Decree are implemented. Any attempt to transfer ownership or operation of the WSA Collection and Treatment System, or any component thereof, without complying with this Paragraph constitutes a violation of this Decree.

8. WSA shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any engineering, consulting, and/or contracting firm retained or to be retained to perform any work required by this Consent Decree, upon the execution of any contract or other agreement relating to such work. WSA shall also provide a copy to each engineering, consulting, and/or contracting firm already retained to perform such work no later than thirty (30) Days after the Effective Date of this Consent Decree. WSA shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

9. WSA shall not raise as a defense against the United States, EPA, or PADEP any act or failure to act by any of WSA's officers, directors, employees, agents, servants, contractors, successors, and assigns.

## IV. PURPOSE

10. The purpose of the Parties entering into this Consent Decree is to ensure that WSA undertakes measures necessary to comply with the Clean Water Act, including, but not limited to, 33 U.S.C. § 1342(q) and the regulations promulgated thereunder, and the Clean Streams Law and the regulations promulgated thereunder. The obligations in this Consent Decree, or resulting from the activities required by this Consent Decree, have the objective of causing WSA to achieve and thereafter maintain, full compliance with the terms and conditions of its NPDES Permits, the Clean Water Act, the Clean Streams Law, and to meet the objectives of EPA's April 1994 "Combined Sewer Overflow (CSO) Control Policy," as these terms are defined in Section V (Definitions) of this Consent Decree.

## V. DEFINITIONS

11. 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., the regulations promulgated thereunder, and EPA's 1994 CSO Policy. Terms not defined in the Clean Water Act, its regulations, or EPA's 1994 CSO Policy shall have the meanings given in the 2008 NPDES Permits. Terms not defined in any of the above shall have the meanings given in the

Pennsylvania Clean Streams Law. All other words shall be given their ordinary meaning. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. "Business Day" shall mean a calendar day, excluding Saturdays, Sundays, and legal holidays as that term is defined by Federal Rule of Civil Procedure 6(a)(4).

b. "Central Plant LTCP" shall mean the revised April 2008 CSO Long Term Control Plan - Central WWTP prepared for WSA by Malcolm Pirnie, attached hereto as Appendix A and incorporated herein by reference.

c. "Central Plant Phase I Basis of Design Report and CSO LTCP Addendum" or "Central Plant Basis of Design Report" shall mean the August 2009 Final Report attached hereto as Appendix B and incorporated herein by reference.

d. "Central Wastewater Treatment Plant," "Central WWTP," or "Central Plant" shall mean the Williamsport Sanitary Authority Central Plant located in the City of Williamsport, Lycoming County, Pennsylvania, as referenced in the 2008 Central Plant NPDES Permit.

e. "Combined Sewer Overflow" or "CSO" shall mean a discharge of sanitary wastewater or sanitary wastewater and stormwater from a discharge point located within the WSA Collection and Treatment System and identified as a CSO discharge point in the 2002 and 2008 NPDES Permits.

f. "1994 Combined Sewer Overflow Control Policy" or "1994 CSO Policy" shall mean the policy issued by EPA regarding combined sewer overflows, entitled "Combined Sewer Overflows (CSO) Control Policy," 59 Fed. Reg. 18,688 (April 19, 1994), and incorporated by reference at 33 U.S.C. § 1342(q).

g. "Complaint" shall mean the complaint filed by the United States and the Pennsylvania Department of Environmental Protection in this action.

h. "Consent Decree" or "Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXVI of this Consent Decree), and any plans incorporated into this Consent Decree pursuant to the provisions of Paragraph 31 of this Consent Decree.

i. "Date of Lodging" shall mean the date this Consent Decree is filed for lodging with the United States District Court for the Middle District of Pennsylvania.

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

k. "Effective Date" shall have the definition provided in Section XVII.

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

m. "MGD" shall mean a flow rate of one million gallons per day.

n. "Nine Minimum Controls" shall have the definition provided in EPA's April 1994 CSO Control Policy.

o. "PADEP" shall mean the Pennsylvania Department of Environmental Protection

p. "Parties" shall mean the United States, the Pennsylvania Department of Environmental Protection and WSA.

q. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral.

r. "Pennsylvania Water Quality Standards" shall mean the water quality standards for the Commonwealth of Pennsylvania as set forth at Pennsylvania Code, Title 25, Chapter 93.

s. "Section" shall mean a portion of this Decree identified by a Roman Numeral.

t. "State" shall mean the Commonwealth of Pennsylvania.

u. "Substantially Completed" shall mean treatment units and upgrades are mechanically operational and are being used as intended subject to operational adjustments being made as needed to meet final design parameters within five months after being placed in operation.

v. "Tributary Municipalities" shall mean the municipalities that, pursuant to contract with WSA, send sanitary wastewater (including sewage) to the WSA Collection and Treatment System for treatment at the Central or West WWTPs, and shall include Loyalsock Township, Old Lycoming Township, Borough of South Williamsport, Borough of Duboistown, Armstrong Township, Woodward Township, and Lycoming Township.

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

x. "West Plant LTCP" shall mean the revised January 2008

CSO Long Term Control Plan - West WWTP prepared for WSA by Malcolm Pirnie, attached hereto as Appendix C and incorporated herein by reference.

y. "West Wastewater Treatment Plant," "West WWTP,"or "West Plant" shall mean the Williamsport Sanitary Authority West Plant located in the City of Williamsport, Lycoming County, Pennsylvania, as referenced in the 2008 West Plant NPDES Permit.

z. "WSA Collection and Treatment System" shall mean the West Wastewater Treatment Plant, the Central Wastewater Treatment Plant, and all force mains, sewer lines, and other real and personal property and appurtenances thereto owned and/or operated by WSA and designed to collect and convey sanitary wastewater (including sewage) or sanitary wastewater (including sewage) and stormwater to the West Wastewater Treatment Plant and/or the Central Wastewater Treatment Plant, excluding any pipes, sewer lines, and/or other real and personal property and appurtenances thereto owned and/or operated by an entity other than WSA pursuant to separate permits issued by PADEP.

## VI. CIVIL PENALTY

12. No later than (30) Days after the Effective Date of this Consent Decree, WSA shall pay a civil penalty of $320,000. One half of the civil penalty ($160,000) shall be paid to the United States pursuant to the requirements of

Paragraph 13, below, and one half ($160,000) shall be paid to the Commonwealth of Pennsylvania pursuant to the requirements of Paragraph 15, below.

13. WSA shall pay the civil penalty to the United States, required by Paragraph 12 of this Consent Decree, by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with written instructions to be provided to WSA, following lodging of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney's Office for the Middle District of Pennsylvania, Herman T. Schneebeli Federal Building, 240 West Third Street, Suite 316, Williamsport, PA 17701. At the time of payment, WSA 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 *United States v. Williamsport Sanitary Authority*, and shall reference the civil action number and DOJ case number 90-5-1-1-09293, to the United States in accordance with Section XVI of this Decree (Notices); by email to acctsreceivable.CINWD@epa.gov; and by mail to:

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

and to:

Docket Clerk
U.S. Environmental Protection Agency
Region III
3RC00
1650 Arch Street
Philadelphia, PA 19103

14. WSA shall not deduct any penalties paid under this Decree pursuant to this Section or Section X (Stipulated Penalties) in calculating its federal and state income tax.

15. Payments required by Paragraph 12 of this Consent Decree to be made to the Commonwealth of Pennsylvania shall be made by corporate check or similar instrument to the Commonwealth of Pennsylvania, with a note on the memo line stating "Clean Water Fund," and sent to the address set forth in Paragraph 81 of this Consent Decree.

## VII. CLEAN WATER ACT REMEDIAL CONTROLS AND REMEDIAL ACTIVITIES

### A. Amendments to the West Plant LTCP

16. No later than 120 Days after the Effective Date of this Consent Decree, WSA shall submit to EPA and to PADEP for approval pursuant to Section VIII of this Consent Decree (Review and Approval of Submissions) an amended West Plant LTCP. WSA shall amend the West Plant LTCP to:

a. Incorporate a unified post-construction monitoring plan to be used at the Central and West Plants for monitoring discharges from CSO discharge point(s) identified in the 2008 West and Central Plants NPDES Permits ("Unified Post-Construction Monitoring Plan"). The Unified Post-Construction Monitoring Plan shall be developed based on a water quality sampling and evaluation framework provided in the Central Plant LTCP to evaluate the efficacy of the controls described in the LTCP for the West Plant and to evaluate whether discharges from CSO discharge point(s) identified in the 2008 West Plant NPDES Permit cause or contribute to excursions from or impairment of uses under Pennsylvania's Water Quality Standards, regardless of whether the discharges were caused by or associated with precipitation calculated as "typical" in the West Plant LTCP for design purposes. The Unified Post-Construction Monitoring Plan shall include monitoring protocols to be followed, including the necessary ambient and effluent monitoring and a determination and explanation of whether other monitoring protocols are necessary to evaluate whether discharges from CSO discharge point(s) identified in the 2008 West Plant NPDES Permit are causing or contributing to excursions from or impairment of uses under Pennsylvania Water Quality Standards. EPA and PADEP have the discretion to approve the Unified Post- Construction Monitoring Plan separately from the West Plant LTCP. Within

ten (10) Days of notice from EPA of EPA and PADEP's approval of the Unified Post -Construction Monitoring Plan, WSA shall implement the Unified Post-Construction Monitoring Plan for the West Plant; and

b. Incorporate NOAA Climatography No. 81 data as a benchmark of total monthly and annual precipitation normals.

17. Implementation of West Plant LTCP. Upon notice by EPA of EPA and PADEP's approval of the amended West Plant LTCP required by Paragraph 16 of this Consent Decree, WSA shall implement the terms of the West Plant LTCP.

**B. Amendments to the Central Plant LTCP**

18. No later than 120 Days after the Effective Date of this Consent Decree, WSA shall submit to EPA and PADEP for approval pursuant to Section VIII of this Consent Decree (Review and Approval of Submissions) an amended Central Plant LTCP. The amended Central Plant LTCP shall:

a. Include the CSO controls enumerated in Paragraph 21 of this Section VII of this Consent Decree;

b. Revise the Central Plant Post-Construction Monitoring Plan described in Section 16 of the Central Plant LTCP, dated April 2008, by incorporating a Unified Post-Construction Monitoring Plan to be used at the

Central and West Plants for monitoring discharges from CSO discharge point(s) identified in the 2008 West and Central Plant NPDES Permits. The Unified Post-Construction Monitoring Plan shall be developed based on a water quality sampling and evaluation framework provided in the Central Plant LTCP to evaluate the efficacy of the controls described in the LTCP for the Central Plant and to evaluate whether discharges from CSO discharge point(s) identified in the 2008 Central Plant NPDES Permit cause or contribute to excursions from or impairment of uses under the Pennsylvania Water Quality Standards, regardless of whether the discharges were caused by or associated with precipitation calculated as "typical" in the Central Plant LTCP for design purposes. The Unified Post-Construction Monitoring Plan shall include monitoring protocols to be followed, including the necessary ambient and effluent monitoring and a determination and explanation whether other monitoring protocols are necessary to evaluate whether discharges from CSO discharge point(s) identified in the 2008 Central Plant NPDES Permit are causing or contributing to excursions from or impairment of uses under the Pennsylvania Water Quality Standards. EPA and PADEP have the discretion to approve the Unified Post-Construction Monitoring Plan separately from the Central Plant LTCP. Within ten (10) Days of notice from EPA of EPA and PADEP's approval of the Unified Post-Construction Monitoring Plan, WSA

shall implement the Unified Post-Construction Monitoring Plan for the Central Plant in accordance with the provisions of Paragraph 16(a);

c. Incorporate NOAA Climatography No. 81 data as a benchmark of total monthly and annual precipitation normals; and

d. Revise page ES-4 and Section 10 of the Central Plant LTCP addressing CSO-related bypass. The Central Plant LTCP revisions required by this Paragraph shall state that no CSO-related bypass may occur unless and until (1) WSA is fully compliant with the Central Plant LTCP and this Decree, (2) WSA has fully implemented all of its Nine Minimum Controls, (3) the rate of flow through the secondary treatment system is at least 21 MGD, (4) WSA's Wet Weather Operating Plan ("High Flow Operating Procedures") (set forth in appendix C to the Central Plant LTCP, Attachment 2.1 and any future approved revisions) has been fully implemented, and 5) all requirements set forth in 40 C.F.R. § 122.41(m) and Section II.C.7 of the 1994 CSO Control Policy are satisfied. When the rate of flow through the secondary treatment system is below 21 MGD any bypass will be governed by Part B.I.F. of NPDES Permit PA0027057 and 40 C.F.R. § 122.41(m).

19. WSA shall amend the Central Plant LTCP Section 15.1 (Conclusions and Plan of Action) to require a 2.0 million gallon storage tank

adjacent to the Central Plant instead of the 1.5 million gallon storage tank provided for in the Central Plant LTCP attached hereto as Appendix A.

20. Implementation of Central Plant LTCP. Upon notice by EPA of EPA and PADEP's approval, WSA shall implement its amended Central Plant LTCP consistent with the schedule set forth in the Central Plant Basis of Design Report and in accordance with the requirements of this Consent Decree.

21. WSA shall achieve the milestones required by this Paragraph 21, in accordance with the schedule set forth below:

a. By February 10, 2010, WSA shall submit to PADEP, with a copy to EPA, a Part II Water Quality permit application, inclusive of the engineering design drawings for permit application, for the construction contract referred to at page 17-1 in the Central Plant Basis of Design Report as "Contract C4;"

b. By May 15, 2010, WSA shall submit to PADEP, with a copy to EPA, a Part II Water Quality permit application, inclusive of the engineering design drawings for permit application, for the construction contract referred to at page 17-1 of the Central Plant Basis of Design Report as "Contract C5;"

c. By October 31, 2010, WSA shall notify EPA and PADEP of the status of WSA's bidding for the construction of upgrades to control CSOs required by this Consent Decree. In the event that bids for all of the construction required by this Consent Decree have not been let by June 30, 2011, WSA's notice shall explain the cause of the delay in bidding and WSA shall provide to EPA and PADEP, in addition to the initial notice required by this Paragraph, written monthly reports on the status of the bidding process. The monthly reports shall be submitted to EPA and PADEP on the last day of each month following June 30, 2011, until all such contracts have been awarded. WSA's failure to award a contract shall not constitute a reason to extend any deadline for performance under this Consent Decree.

d. By June 30, 2013, WSA shall have Substantially Completed construction of the upgrades identified in Paragraph 21.e. of this Consent Decree; and

e. By November 28, 2013, WSA shall be in full compliance with its NPDES Permit No. PA0027057 and operating as designed the following upgrades to control CSOs:

1. Plant Modifications. Plant modifications necessary to allow the Central WWTP to achieve a peak flow capacity of 21 MGD as described in the Central Plant Basis of Design Report, Section 17, including:

(A) Installation of ferric chloride and polymer storage and feed systems to feed both chemicals upstream of the primary clarifiers;

(B) Conversion of the abandoned chlorine contact tank to achieve high-rate disinfection and sized to provide five minutes of contact time with supplemental flash mixers, and connecting the chlorine tank outfall into the existing Central Plant outfall;

(C) Installation of gates at the effluent of the primary clarifiers to create a bypass of the secondary and nutrient removal process;

(D) Construction of a new headworks to accommodate influent wet weather flows of 21 MGD, including: new screens, new pumping system and new grit removal.

2. Pipe Replacement. Replacement of the 12-inch pipe connecting the Chestnut Street CSO regulator structure to the Chestnut Street interceptor with an 18-inch pipe;

3. Overflow Wet Well, Pumping System, and CSO Tank Feed Piping. Construction of an overflow wet well and pumping system, integrated into the new headworks required under Paragraph 21.e.1(D) of this Consent Decree. The wet well and pumping system shall feed up to 25 MGD of peak wet weather flow through new piping into the CSO Tank.

4. CSO Tank. Construction of a 2.0 million gallon CSO storage tank to accept the peak wet weather flow from the pumping and piping system required by Paragraph 21.e.3 of this Consent Decree.

22. By December 30, 2013, for each upgrade required by Paragraph 21.e of this Consent Decree to be operating as designed by November 28, 2013, WSA shall submit to Plaintiffs a Professional Engineer's certification that the upgrades have been completed and are operating as designed as of November 28, 2013.

23. Post-Construction Monitoring Plan Reporting. WSA shall submit a report of the results of post-construction monitoring required pursuant to the requirements of Paragraphs 16.a and 18.b of this Consent Decree to EPA and PADEP on March 31 of each year. WSA may fulfill the reporting requirement of this Paragraph by submitting to EPA portions of the report required by 25 Pa. Code, Chapter 94 ("Chapter 94 Report") rather than preparing a report specifically

for the purposes of this Paragraph only if the Chapter 94 Report includes all of the information required by this Paragraph.

24. Nine Minimum Controls. WSA shall, on at least an annual basis, beginning twelve (12) months after the Effective Date of this Decree, evaluate the efficiency of the measures implemented under its Nine Minimum Control Plan to reduce the impacts of Combined Sewer Overflows on receiving waters. WSA shall report the results of its evaluation to PADEP as part of WSA's Municipal Wasteload Management Report required by 25 Pa. Code, Chapter 94, Section 94.12 ("Chapter 94 Report"). In addition, based on such evaluation, WSA shall submit to PADEP, as part of WSA's annual Chapter 94 Report, for review and approval, any additional proposed changes to its Nine Minimum Controls Plan, which, upon approval by PADEP, WSA shall implement in accordance with the provisions and schedule set forth therein.

25. NPDES Permits. WSA shall comply with all terms and conditions of the 2008 NPDES Permits and any revisions, modifications, or reissued versions of those permits issued pursuant to 25 Pa. Code Chapter 92, unless compliance is stayed or suspended by a court of competent jurisdiction or the Pennsylvania Environmental Hearing Board. Nothing in this Consent Decree authorizes any discharge from the WSA Collection

and Treatment System other than those discharges authorized by the 2008 NPDES Permits or any subsequent applicable NPDES Permits.

## VIII. REVIEW AND APPROVAL OF SUBMISSIONS

26. Approval of Deliverables. After review of any plan, report, notice, or other item that is required to be submitted pursuant to this Consent Decree, EPA, after consultation with PADEP, shall in writing: a) approve the submission; b) approve the submission upon specified conditions; c) approve part of the submission and disapprove the remainder; or d) disapprove the submission.

27. If the submission is approved pursuant to Paragraph 26.a), WSA shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved, or approved only in part, pursuant to Paragraph 26.b) or 26.c), WSA shall take all actions required by the approved plan, report, or other item that EPA, after consultation with PADEP, determines are technically severable from any disapproved or conditionally approved portions, subject to WSA's right to dispute only the specified conditions or the disapproved portions under Section XII of this Decree (Dispute Resolution).

28. If the submission is disapproved in whole or in part pursuant to Paragraph 26.c) or 26.d), WSA shall, within forty-five (45) Days or such other time

as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs, unless WSA requests additional time in writing and EPA and PADEP grant such request in writing, or unless WSA invokes the procedures in Section XII (Dispute Resolution). If the resubmission is approved in whole or in part, WSA shall proceed in accordance with Paragraph 27 of this Consent Decree.

29. Any stipulated penalties applicable to the original submission, as provided in Section X (Stipulated Penalties) of this Decree, shall accrue during the 45-Day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of WSA's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

30. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA, after consultation with PADEP, may again require WSA to correct any deficiencies, in accordance with the preceding Paragraphs, or may itself correct any deficiencies, subject to WSA's right to invoke

Dispute Resolution and the right of EPA and PADEP to seek stipulated penalties as provided in the Paragraphs below.

31. All plans approved submitted pursuant to this Consent Decree shall be incorporated herein as part of this Consent Decree upon approval by EPA.

32. WSA shall take all lawful and appropriate actions to facilitate the implementation of this Consent Decree.

33. Where any compliance obligation under this Section requires WSA to obtain a federal, state, or local permit or approval, WSA shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

## IX. REPORTING REQUIREMENTS

34. WSA shall submit the following reports:

a. Progress Reports. Within thirty (30) Days after the end of each calendar-year quarter (i.e., by April 30, July 30, October 30, and January 30) after the Date of Lodging, until termination of this Decree pursuant to Section XXV, WSA shall submit to EPA and PADEP a quarterly report for the preceding quarter that shall include (1) the status of activities required by Section VII (Clean Water Act Remedial Controls and Remedial Activities), including but not limited to the status of all contracts from initial award through completion of the work; (2)

a list of all violations of the requirements of this Consent Decree, including the date of the violation, the provision(s) violated, a description of the nature of the violation, an explanation of the violation's likely cause and remedial steps taken or to be taken, and any action taken to correct the violation; and (3) a schedule of activities for the next quarter.

b. If WSA violates, or has reason to believe that it may violate, any requirement of this Consent Decree, WSA shall notify the United States, EPA, and PADEP of such violation or potential violation and its likely duration, in writing, within ten (10) Business Days of the date WSA first becomes aware of the violation or potential violation, with an explanation of the likely cause of a violation and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation or potential violation cannot be fully explained at the time the report is due, WSA shall so state in the report. WSA shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within thirty (30) Days of the date WSA becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves WSA of its obligation to provide the notice required by Section XI of this Consent Decree (Force Majeure).

35. Whenever any violation of this Consent Decree or of any applicable permits or any other event affecting WSA's performance under this Decree, or the performance of the WSA Collection and Treatment System, may pose an immediate threat to the public health or welfare or the environment, WSA shall notify EPA and PADEP orally or by electronic or facsimile transmissions to the numbers specified in Paragraph 81 of this Consent Decree as soon as possible, but no later than 24 hours after WSA first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

36. All reports shall be submitted to the persons designated in Section XVI of this Consent Decree (Notices).

37. Each report submitted by WSA under this Section shall be signed by an official of WSA and include the following certification:

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

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

38. The reporting requirements of this Consent Decree do not relieve WSA 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.

39. Maintaining Records. WSA shall maintain the following documents for the time period required by Paragraph 69 of this Consent Decree:

a. all written reports prepared pursuant to the West Plant or Central Plant LTCPs or this Decree;

b. All communications received by WSA from any of the Tributary Municipalities or other person or entity pertaining to the matters addressed by this Consent Decree;

c. All documents required to be maintained pursuant to the 2002 and 2008 Central Plant and West Plant NPDES Permits, 40 C.F.R. § 122.41 and/or the Pennsylvania Clean Streams law;

d. Documentation of all measures undertaken by WSA to comply with the terms of this Consent Decree; and

e. All work orders and documents associated with preparation and implementation of the Central Plant and West Plant LTCPs and all reports prepared by WSA pursuant to Section IX (Reporting Requirements) of this Consent Decree.

40. 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.

## X. STIPULATED PENALTIES

41. WSA shall be liable for stipulated penalties to the United States and PADEP for violations of this Consent Decree as specified below, unless excused under Section XI (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

42. Late Payment of Civil Penalty. If WSA fails to pay either of the civil penalties required to be paid to the United States and PADEP under Section VI of this Decree (Civil Penalty) when due, WSA shall pay a stipulated penalty of $2,500 per Day for each Day that payment is late.

43. Amendment of LTCPs, Interim Compliance Milestones. The following stipulated penalties shall accrue per violation per Day for each violation of the requirements of Paragraphs16 through 20, 21.a., 21.b., 27, and 28, above:

| Penalty Per Violation Per Day | Period of Noncompliance |
|---|---|
| $250 | 1st through 14th Day |
| $500 | 15th through 30th Day |
| $1,000 | 31st Day and beyond |

44. Final Compliance Deadlines. The following stipulated penalties shall accrue per violation per Day for each violation of the compliance deadlines included in Paragraphs 21.d, 21.e, and, 22, above:

| Penalty Per Violation Per Day | Period of Noncompliance |
|---|---|
| $ 500 | 1st through 14th Day |
| $1,000 | 15th through 30th Day |
| $2,500 | 31st Day and beyond |

45. Nine Minimum Controls Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the requirements of Paragraph 24, above:

| Penalty Per Violation Per Day | Period of Noncompliance |
|---|---|
| $ 500 | 1st through 14th Day |

| | |
|---|---|
| $1,000 | 15th through 30th Day |
| $2,500 | 31st Day and beyond |

46. Submission and Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the submission requirements of Paragraph 21.c, Paragraph 23, and the reporting requirements of Section IX (Reporting Requirements) of this Consent Decree:

| Penalty Per Violation Per Day | Period of Noncompliance |
|---|---|
| $250 | 1st through 14th Day |
| $500 | 15th through 30th Day |
| $750 | 31st Day and beyond |

47. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

48. WSA shall pay any stipulated penalty within forty-five (45) Days of the date WSA receives a demand by either Plaintiff. The Plaintiff making the demand for payment of a stipulated penalty shall simultaneously send a copy of

the demand to the other Plaintiff. WSA shall pay 50 percent of the total stipulated penalty amount due to the United States and 50 percent to PADEP.

49. Either Plaintiff may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

50. Stipulated penalties shall continue to accrue as provided in Paragraph 66 during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA or PADEP that is not appealed to the Court, WSA shall pay accrued penalties determined to be owing, together with interest, to the United States or PADEP within thirty (30) Days of the effective date of the agreement or the receipt of EPA's or PADEP's decision or order.

b. If the dispute is appealed to the Court and the United States or PADEP prevails in whole or in part, WSA 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 subparagraph c, below.

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

51. WSA shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 13 of this Consent Decree (for payment of the civil penalty), except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid. WSA shall pay stipulated penalties owing to PADEP by corporate check or similar instrument to the Commonwealth of Pennsylvania, with a note on the memo line of "Clean Water Fund" and sent to the address set forth in Paragraph 81 of this Consent Decree.

52. If WSA fails to pay stipulated penalties according to the terms of this Consent Decree, WSA 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 Paragraph shall be construed to limit the United States or PADEP from seeking any remedy otherwise provided by law for WSA's failure to pay any stipulated penalties.

53. Subject to the provisions of Section XIV 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 WSA's violation of this Consent Decree or applicable law.

## XI. FORCE MAJEURE

54. Force Majeure Events. "Force majeure," for purposes of this Consent Decree, is defined as an event arising from causes beyond the control of WSA or the control of its employees, agents, consultants, and contractors, that delays or prevents the performance of any obligation under this Consent Decree despite WSA's best efforts to fulfill the obligation. The requirement that WSA exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. Unanticipated or increased costs or expenses associated with implementation of this Consent Decree and changed financial circumstances shall not be considered Force Majeure events. In addition, the failure by WSA to apply for a required permit or approval or to provide in a timely manner all information required to obtain a permit or approval that is necessary to meet the requirements of this Consent Decree, or failure of WSA to approve contracts, shall not be considered a Force Majeure event. WSA

may seek relief under the provisions of Section XI of this Consent Decree (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if WSA has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

55. Notice of Force Majeure Events. 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, WSA shall provide notice orally or by electronic or facsimile transmission to the numbers and addresses provided in Paragraph 81 of this Consent Decree within 72 hours of when WSA first knew that the event might cause a delay. Within seven (7) Days thereafter, WSA shall provide in writing to EPA and PADEP an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; WSA's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of WSA, such event may cause or contribute to an endangerment to public health, welfare or the environment. WSA shall include with any notice all available documentation

supporting the claim that the delay was attributable to a force majeure event. Failure to comply with the requirements of this Paragraph shall preclude WSA 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. WSA shall be deemed to know of any circumstance of which WSA, any entity controlled by WSA, or WSA's contractors knew or should have known.

56. Extension Based on Force Majeure. If EPA, after a reasonable opportunity for review and comment by PADEP, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended only for such time as is necessary to complete those obligations. EPA will notify WSA in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation.

57. If EPA, after a reasonable opportunity for review and comment by PADEP, does not agree that the delay or anticipated delay has been or will be

caused by a force majeure event, EPA will notify WSA in writing of EPA's decision.

58. If WSA elects to invoke the dispute resolution procedures set forth in Section XII (Dispute Resolution), it shall do so no later than fifteen (15) Days after receipt of EPA's notice under Paragraph 57 of this Consent Decree. In any such proceeding, WSA 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 WSA complied with the requirements of Paragraphs 54 and 55 above. If WSA carries this burden, the delay at issue shall be deemed not to be a violation by WSA of the affected obligation of this Consent Decree identified to EPA and the Court.

## XII. DISPUTE RESOLUTION

59. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. WSA's failure to seek resolution of a dispute under this Section shall preclude

WSA from raising any such issue as a defense to an action by the United States to enforce any obligation of WSA arising under this Decree.

60. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when WSA sends the United States, EPA, and PADEP 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 (20) 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, after consultation with PADEP, shall be considered binding unless, within twenty (20) Days after the conclusion of the informal negotiation period, WSA invokes formal dispute resolution procedures as set forth below.

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

62. The United States and PADEP shall serve their respective Statements of Position within forty-five (45) Days of receipt of WSA's Statement of Position. The government agencies' Statements of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the government agencies. The United States' Statement of Position shall be binding on WSA, unless WSA files a motion for judicial review of the dispute in accordance with the following Paragraph.

63. WSA may seek judicial review of the dispute by filing with the Court and serving on the United States and PADEP, in accordance with Section XVI of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 10 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of WSA's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

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

65. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 61 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, WSA 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 Paragraph 61, WSA shall bear the burden of demonstrating that its position complies with this Consent Decree and furthers the objectives of the Consent Decree better than the position of United States and/or PADEP.

66. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of WSA under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 50 of this Consent Decree. If WSA does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section X (Stipulated Penalties).

## XIII. INFORMATION COLLECTION AND RETENTION

67. The United States, PADEP, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

a. monitor the progress of activities required under this Consent Decree;

b. verify any data or information submitted to the United States or PADEP in accordance with the terms of this Consent Decree;

c. obtain samples and, upon request, splits of any samples taken by WSA or its representatives, contractors, or consultants;

d. obtain documentary evidence, including photographs and similar data; and

e. assess WSA's compliance with this Consent Decree.

68. Upon request, WSA shall provide EPA and PADEP or their authorized representatives splits of any samples taken by WSA. Upon request, EPA and PADEP shall provide WSA splits of any samples taken by EPA or PADEP.

69. For a minimum of five years following the termination of this Consent Decree, WSA shall retain, and shall instruct its contractors and agents with responsibility for implementing the requirements of this Consent Decree 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 relate to WSA'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, EPA, or PADEP, WSA shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

70. At the conclusion of the information-retention period provided in the preceding Paragraph, WSA shall notify the United States, EPA, and PADEP at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, EPA, or PADEP, WSA shall deliver any such documents, records, or other information to the United States, EPA, or PADEP. WSA may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If WSA asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by WSA. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

71. WSA 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 WSA seeks to protect as CBI, WSA shall follow the procedures set forth in 40 C.F.R. Part 2.

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

## XIV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

73. This Consent Decree resolves the civil claims of the United States and PADEP for the violations alleged in the Complaints filed in this action through the Date of Lodging.

74. Nothing in this Consent Decree shall be construed as approval of, or agreement or consent to, the Nutrient Removal Improvements provided in any or all of the following documents: WSA's Act 537 Plan, the Central Plant LTCP, the West Plant LTCP, the Central Plant Basis of Design Report, or in any other study or document submitted to EPA or PADEP in connection with this Consent Decree.

75. The United States and PADEP reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States or PADEP to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 73. The United States and PADEP further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, WSA's Collection and Treatment System, whether related to the violations addressed in this Consent Decree or otherwise.

76. In any subsequent administrative or judicial proceeding initiated by the United States or PADEP for injunctive relief, civil penalties, other appropriate relief relating to the Facility or WSA's violations, WSA shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or PADEP in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 73 of this Section.

77. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. WSA is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits; and WSA's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and PADEP do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that WSA'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.*, the Pennsylvania Clean Streams Law, or with any other provisions of federal, state, or local laws, regulations, or permits.

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

79. 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.

## XV. COSTS

80. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and PADEP 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 WSA.

## XVI. NOTICES

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

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-1-1-09293
Telefax: 202-616-6583

To EPA:

Chief, NPDES Enforcement Branch
U.S. Environmental Protection Agency
Region III, 3WP42
1650 Arch Street
Philadelphia, PA 19103-2029

Stefania D. Shamet
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III, 3RC20
1650 Arch Street
Philadelphia, PA 19103-2029
Telephone 202-514-2682
Telefax: 215-814-2603

To PADEP:

Environmental Program Manager
Water Quality Program
PA DEP Northcentral Regional Office
208 W. Third Street, Suite 101
Williamsport, PA 17701
Telefax: 570-327-3565

To WSA:

David A. DiNicola
Director of Operations
Williamsport Sanitary Authority
253 West 4th Street
Williamsport, PA 17701-6148
Telephone: 570-323-6148

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

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

## XVII. EFFECTIVE DATE

84. 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.

## XVIII. RETENTION OF JURISDICTION

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

## XIX. MODIFICATION

86. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties and approved by the Court. Schedules for completion of the work required by Section VII of this Consent Decree may be modified by written agreement of the Parties.

87. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XII of this Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 65, the Party

seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

## XX. PUBLIC PARTICIPATION

88. 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. WSA 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 WSA in writing that it no longer supports entry of the Decree.

## XXI. SIGNATORIES/SERVICE

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

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

## XXII. INTEGRATION

91. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supercedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. 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.

## XXIII. FUNDING

92. Compliance with the terms of this Consent Decree by WSA is not conditioned on the receipt of any grant funds or loans. In addition, compliance is not excused by the lack of any grant funds or loans.

## XXIV. FINAL JUDGMENT

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

## XXV. TERMINATION

94. After WSA has completed the requirements of Section VII (Clean Water Act Remedial Controls and Remedial Activities) of this Decree, has thereafter maintained continuous satisfactory compliance with this Consent Decree and WSA's NPDES Permits for a period of two years, has complied with all other requirements of this Consent Decree, and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, WSA may serve a Request for Termination on the United States, EPA, and PADEP. The Request for Termination shall state that WSA has satisfied the requirements of Section VII of this Consent Decree and the requirements identified in this Paragraph 94, and shall include supporting documentation sufficient to demonstrate that it has satisfied the foregoing criteria.

95. Following receipt by the United States and PADEP of WSA's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether WSA has satisfactorily complied with the requirements for termination of this Consent

Decree. If the United States, after consultation with PADEP, agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

96. If the United States, after consultation with PADEP, does not agree that the Decree may be terminated, WSA may invoke Dispute Resolution under Section XII of this Decree. However, WSA shall not seek Dispute Resolution of any dispute regarding termination under Paragraph 94 of this Consent Decree until 180 Days after service of its Request for Termination.

## XXVI. APPENDICES

97. The following appendices are attached to and part of this Consent Decree:

Appendix A is the Central Plant LTCP, dated April 2008
Appendix B is the Central Plant Phase I Basis of Design Report and CSO LTCP Addendum, dated August 2009
Appendix C is the West Plant LTCP, dated January 2008

Dated and entered this __ day of _____, 2010.

_____

UNITED STATES DISTRICT JUDGE
Middle District of Pennsylvania

The Undersigned Parties enter into this Consent Decree in the matter of *United States and Commonwealth of Pennsylvania v. Williamsport Sanitary Authority* (M.D. Pa.) relating to alleged violations of the Clean Water Act.

FOR PLAINTIFF UNITED STATES OF AMERICA:

6/17/10
Date

Ignacia S. Moreno
IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

6/18/10
Date

Donna D. Duer
DONNA D. DUER
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
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The Undersigned Parties enter into this Consent Decree in the matter of *United States and Commonwealth of Pennsylvania v. Williamsport Sanitary Authority* (M.D. Pa.) relating to alleged violations of the Clean Water Act.

ON BEHALF OF THE ENVIRONMENTAL PROTECTION AGENCY:

6/4/10
Date

Pamela J. Mazakas

ADAM M. KUSHNER
Office Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
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6/4/10
Date

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The Undersigned Parties enter into this Consent Decree in the matter of *United States and Commonwealth of Pennsylvania v. Williamsport Sanitary Authority* (M.D. Pa.) relating to alleged violations of the Clean Water Act

6/4/10
Date

SUSHILA NANDA
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The Undersigned Parties enter into this Consent Decree in the matter of *United States and Commonwealth of Pennsylvania v. Williamsport Sanitary Authority* (M.D. Pa.) relating to alleged violations of the Clean Water Act.

ON BEHALF OF THE ENVIRONMENTAL PROTECTION AGENCY:

6/17/10
Date

SHAWN M. GARVIN
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1650 Arch Street
Philadelphia, PA 19103-2029

6/14/10
Date

MARCIA MULKEY
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6-7-10
Date

STEFANIA D. SHAMET
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Philadelphia, PA 19103-2029

The Undersigned Parties enter into this Consent Decree in the matter of *United States and Commonwealth of Pennsylvania v. Williamsport Sanitary Authority* (M.D. Pa.) relating to alleged violations of the Clean Water Act.

FOR THE COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION:

6/14/10
Date

ROBERT HAWLEY
Environmental Program Manager
Water Quality Program
PA Department of Environmental Protection
208 W. Third Street, Suite 101
Williamsport, PA 17701

5/28/10
Date

LANCE H. ZEYHER
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Williamsport, PA 17701

The Undersigned Parties enter into this Consent Decree in the matter of *United States and Commonwealth of Pennsylvania v. Williamsport Sanitary Authority* (M.D. Pa.) relating to alleged violations of the Clean Water Act.

FOR DEFENDANT WILLLIAMSPORT SANITARY AUTHORITY:

5-24-2010
Date

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5/25/2010
Date

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Telefax 215-661-0315

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

| | |
|---|---|
| UNITED STATES OF AMERICA and COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION,<br><br>Plaintiffs,<br><br>v.<br><br>WILLIAMSPORT SANITARY AUTHORITY,<br><br>Defendant. | Civil Action No. |

**CERTIFICATE OF SERVICE**

I, Cindy J. Long, hereby certify that on June 22, 2010, I caused a true and correct copy of the foregoing COMPLAINT, PLAINTIFF UNITED STATES OF AMERICA'S NOTICE OF LODGING OF CONSENT DECREE and attached CONSENT DECREE with Appendix A, B & C to be served by first class mail on the following:

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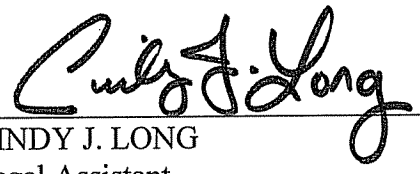

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