UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

THE COMMONWEALTH OF KENTUCKY, Plaintiff, v. THE LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT, Defendant.	)	Civil Action No. 3:05CV.236-S
UNITED STATES OF AMERICA, Plaintiff-Intervener v. THE LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT, Defendant.	)	

CONSENT DECREE

WHEREAS, the parties to this Consent Decree, the Commonwealth of Kentucky by and through its Environmental and Public Protection Cabinet (hereinafter the "Cabinet"), the United States of America, on behalf of the United States Environmental Protection Agency (hereinafter "EPA") and the Louisville and Jefferson County Metropolitan Sewer District (hereinafter "MSD"), state as follows:

1. WHEREAS, the Cabinet is charged with the statutory duty of enforcing Kentucky Revised Statute ("KRS") Chapter 224 and the regulations promulgated pursuant thereto.

2. WHEREAS, EPA is charged with the statutory duty of enforcing the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987 ("Clean Water Act" or "the Act") pursuant to 33 U.S.C. 1251 *et. seq.*, and the regulations promulgated pursuant thereto.

3. WHEREAS, MSD owns and operates a regional sewage system in Jefferson County, Kentucky; which includes both (a) a combined sewer system (hereinafter "CSS") that conveys sanitary wastewaters and stormwaters through a single pipe system to MSD's Morris Forman Wastewater Treatment Facility ("MFWTF"), and (b) separate sanitary sewer systems (hereinafter "SSS") which convey sanitary wastewaters to other MSD wastewater plants ("WWTPs") and through the CSS to MFWTF.

4. WHEREAS, this Consent Decree between the Cabinet, EPA and MSD addresses unauthorized discharges from MSD's SSS, CSS and WWTPs, and discharges from MSD's combined sewer overflow ("CSO") locations identified in the MFWTF Kentucky Pollutant Discharge Elimination System ("KPDES") permit, and it requires MSD to finalize, develop, submit and implement plans for the continued improvement of the sewage system.

5. WHEREAS, the Cabinet initially filed an action against MSD in Franklin Circuit Court, Civil Action Number 04-CI-313, on February 27, 2004, (hereinafter "Prior Civil Action"). The Cabinet subsequently filed this action against MSD, Civil Action No. 3:05CV-236-S, on April 25, 2005, pursuant to Section 505 of the Act, 33 U.S.C. § 1365, and KRS Chapter 224. EPA filed its motion to intervene as of right and complaint in intervention under Section 505(c)(2) of the Act, 33 U.S.C. § 1365(c)(2), alleging that MSD violated and continued to violate Section 301 of the Act, 33 U.S.C. §1311. Concurrently with the filing of these complaints, the Cabinet and EPA lodged this Consent Decree concerning the unauthorized

discharges from MSD's SSS, CSS and WWTPs, and discharges from MSD's CSO locations identified in its MFWTP KPDES permit, alleging violations of the Act and KRS Chapter 224 (hereinafter "Pending Civil Action"). All parties agree that this Court has jurisdiction over the Pending Civil Action pursuant to the Act, and under the provisions for supplemental jurisdiction in 28 U.S.C. § 1367 for claims pursuant to KRS Chapter 224. The Cabinet's claims arise under the powers and duties set forth in KRS 224.10-100. EPA's claims arise under the powers and duties set forth in Section 309 of the Act, 33 U.S.C. § 1319.

6. WHEREAS, the Parties agree and recognize that the process for MSD under applicable law requiring it to comply with its KPDES permits and upgrade its SSS, CSS and WWTPs to adequately address unauthorized discharges, and discharges from MSD's CSO locations identified in its MFWTF KPDES permit, is an ongoing and evolving effort from the assessment process, to the design and construction of necessary infrastructure to meet permit conditions. The Cabinet and EPA are charged with the duties of applying applicable state and federal law and regulating MSD in a manner protective of human health and the environment. This process requires efforts that include, but are not limited to, characterizations, modeling, assessments, engineering design studies, implementation of compliance measures, and construction projects that will adequately insure MSD's compliance with permit conditions under applicable law. The Parties recognize that it will take MSD several years to achieve full compliance. However, in the interest of adequately informing the public and allowing full participation by the public in this process, the Parties agree that this Consent Decree is the appropriate mechanism for achieving these objectives.

7. WHEREAS, MSD maintains that it has implemented measures to date in its efforts to achieve compliance under its KPDES permits, including abatement of many sanitary

sewer overflows ("SSOs") and establishing controls on certain CSOs. This Consent Decree includes lists of those items completed and additional work planned for the near future to provide the public the information and an opportunity for public notice and comment on additional specific measures being taken or to be taken, in accordance with the provisions of 28 C.F. R. § 50.7. The Parties also anticipate that this Consent Decree will be amended as MSD develops, designs, submits for review and approval, and implements additional compliance measures and projects, including those specified herein. As part of that process of proposing amendments to this Consent Decree to incorporate the results of characterizations, assessments, modeling, engineering design studies, and to implement compliance measures and construction projects, the public will have an opportunity, in accordance with the provisions of 28 C.F. R. § 50.7, for notice and comment to present facts or considerations on whether the proposals are appropriate, proper and adequate to achieve full compliance with the Act.

8. WHEREAS, the Parties enter into this Consent Decree to address the claims arising from MSD's alleged violations as set forth in the complaints and as summarized below, and to agree to the performance of certain specified projects and to the completion of certain plans, characterizations, modeling, assessments, engineering design studies, implementation of compliance measures and construction projects on or before dates certain regarding unauthorized discharges from MSD's SSS, CSS and WWTPs, and discharges from MSD's CSO locations identified in its MFWTP KPDES permit, as set forth in this Consent Decree.

9. WHEREAS, MSD has documented CSOs in its CSS. These CSOs are identified under MSD's MFWTF KPDES permit. In 1996 and 1997, MSD submitted a draft Long Term Control Plan ("LTCP") under the MFWTF KPDES permit and EPA's Combined Sewer Overflow Control Policy, 59 Fed. Reg. 18688 ("CSO Control Policy"). MSD agrees to submit a

proposed interim and final LTCP as required by the terms of this Consent Decree.

10. WHEREAS, during the early 1970s, Louisville conducted an Urban Renewal Program that MSD maintains allowed it to separate some CSOs and eliminate several others. During the 1980s, MSD maintains it further modified approximately ten major CSOs. In addition to the regular maintenance performed on the collection system, MSD maintains it implemented a program in 1986 to further improve the operation and maintenance of the CSS. The program included mathematical modeling of CSO and interceptor system performance supported by a CSO monitoring program. By the early 1990s, MSD maintains it developed a pretreatment program to minimize CSO impact and correct dry weather overflow problems.

11. WHEREAS, MSD has identified SSOs and other unauthorized discharges in MSD's sewage system as set forth in the Pending Civil Action, which the Cabinet and EPA contend are violations of state law and the Act. MSD's identification of SSOs and other unauthorized discharges has been made in MSD's Sanitary Sewer Overflow Plan ("SSOP") and the annual updates to that plan made in MSD's Annual WATERS Report. MSD will submit an updated SSOP, and proposed interim and final Sanitary Sewer Discharge Plans ("SSDPs") as required by the terms of this Consent Decree.

12. WHEREAS, MSD submitted to the Cabinet the following plans and reports:

a. An annual Combined Sewer Operational Plan (hereinafter "CSOP") reports from 1993 to 1998;

b. A draft LTCP for Region 1 with the 1996 CSOP;

c. A draft LTCP for Regions 2 & 3 with the 1997 CSOP;

d. A Nine Minimum Controls (hereinafter "NMC") compliance report on January 6, 1997;

e. An annual Sanitary Sewer Overflow Plan (hereinafter "SSOP") reports in 1997 and 1998; and

f. An annual WATERS reports since 1999 containing updates on the Municipal Separate Storm Sewer System Program (hereinafter "MS4"), CSOP, LTCP, NMC, and SSOP progress.

13. WHEREAS, the Cabinet approved a LTCP submitted by MSD pursuant to the MFWTF KPDES permit as reflected in the response to comments on the renewal of the MFWTF KPDES permit dated August 2, 1999.

14. WHEREAS, it is the purpose of the Parties in entering into this Consent Decree to further the objectives of KRS Chapter 224 and the Act, including the CSO Control Policy. All plans, reports, construction, remedial maintenance, and other obligations in this Consent Decree, any Amended Consent Decree, or resulting from the activities required by this Consent Decree, or any Amended Consent Decree, shall have the objective of ensuring that MSD complies with the Act, and all applicable federal and state regulations, and meets the goals and objectives of the Act to eliminate unauthorized discharges from MSD's SSS, CSS and WWTPs, and to address discharges from MSD's CSO locations identified in its MFWTF KPDES permit, as set forth in this Consent Decree.

15. WHEREAS, MSD neither admits nor denies the alleged violations described above, but acknowledges that discharges have occurred and accepts the obligations imposed under this Consent Decree.

16. WHEREAS, the Parties agree, without adjudication of facts or law, that settlement of the Plaintiffs' claims in accordance with the terms of this Consent Decree is in the

public interest and have agreed to entry of this Consent Decree without trial of any issues, and the Parties hereby stipulate that, in order to resolve these claims stated in Plaintiffs' complaints, this Consent Decree should be entered.

17. NOW THEREFORE, in consideration of the recitals above listed and in the interest of settling all civil claims and controversies involving the violations described above before taking any testimony and without adjudication of any fact or law, the Parties hereby consent to the entry of this Consent Decree; and the Court hereby finds that settlement of the claims alleged without further litigation or trial of any issues is fair, reasonable and in the public interest and the entry of this Consent Decree is the most appropriate way of resolving the claims alleged, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

JURISDICTION AND VENUE

18. This Court has jurisdiction and supplemental jurisdiction over the subject matter of this action, and over the Parties hereto, pursuant to Sections 309 and 505 of the Act, 33 U.S.C. §§1319, 1365 and 28 U.S.C. §§1331, 1345, 1355, and 1367. Venue is proper in the Western District of Kentucky pursuant to Section 309 of the Act, 33 U.S.C. §1319, and 28 U.S.C. §§1391 and 1395(a).

APPLICATION AND SCOPE

19. The provisions of this Consent Decree shall apply to and be binding upon the Parties to this action, and their agents, employees, successors, and assigns, as well as to all persons acting under the direction and/or control of MSD, including firms, corporations, and third parties such as contractors engaged in implementation of this Consent Decree.

20. MSD shall provide a copy of this Consent Decree to any consultant or contractor selected or retained to perform any activity required by this Consent Decree.

OBJECTIVES

21. It is the express purpose of the Parties in entering this Consent Decree to further the objectives of the Act, as stated in Section 101 of the Act, 33 U.S.C. §1251, and to eliminate unauthorized discharges from MSD's SSS, CSS and WWTPs, and to address discharges from MSD's CSO locations identified in its MFWTF KPDES permit, in the manner set forth in this Consent Decree. All plans, reports, construction, remedial maintenance, and other obligations in this Consent Decree or resulting from the activities required by this Consent Decree, and under an Amended Consent Decree, shall have the objective of insuring that MSD complies with the Act, all applicable federal and state regulations, and the terms and conditions of MSD's KPDES permits, and meets the objectives of the CSO Control Policy.

COMPLIANCE PROGRAM AND SCHEDULES

22. To effectuate the remedial measures under this Consent Decree, MSD shall create a directorship-level position ("Director") which will report directly to MSD's Executive Director and the Board of MSD, and will organize a Wet Weather Team regarding CSOs and SSOs; establish communications, coordination and control procedures for team members and other participants; identify tasks and associated resource needs; and schedule tasks.

The Director shall establish management tasks such as: estimating, forecasting, budgeting, and controlling costs; planning, estimating, and scheduling program activities; developing and evaluating quality control practices; and developing and controlling the program scope.

The Director will assemble a Wet Weather Team that shall include all entities who have a stake in the program outcome, and should be sufficiently multidisciplinary to address the myriad

of engineering, economic, environmental, and institutional issues that will be raised during the implementation of the remedial measures under this Consent Decree. The team will prepare a plan for funding the program and will develop a program for public information, education, and involvement.

The Wet Weather Team assembled by the Director shall contain MSD personnel such as wastewater treatment plant operators and engineering personnel, local political officials, and the general public, including rate payers and environmental interests. Private consulting resources may also be included. The Wet Weather Team may consult as appropriate with the Cabinet and EPA officials on the progress of MSD's implementation of the requirements of this Consent Decree.

23. **Early Action Plan** – Not later than six (6) months after the entry of this Consent Decree, MSD shall prepare and submit an Early Action Plan for Cabinet/EPA review and joint approval. The Early Action Plan shall include the following components:

a. **Nine Minimum Controls (NMC) Compliance**. The Early Action Plan shall contain documentation demonstrating the status of MSD's compliance with the NMC requirements within the CSS as set forth in the CSO Control Policy. If MSD cannot document in the Early Action Plan that all NMC requirements are being met, the Early Action Plan shall specify the activities to be performed, including schedules, so that compliance with the NMC requirements is achieved by no later than September 30, 2006. The documentation of the compliance status and the proposed activities shall be consistent with the "Guidance for Nine Minimum Controls", EPA 832-B-95-003, May 1995. The documentation submitted shall demonstrate compliance with the following controls:

(1) proper operation and regular maintenance programs for the CSS and the CSOs;

(2) maximum use of the collection system for storage;

(3) review and modification of pretreatment requirements to assure CSO impacts are minimized;

(4) maximization of flow to the WWTP for treatment;

(5) prohibition of CSOs during dry weather, including provision for backup power where appropriate (provided, however, those discharges resulting from MSD's compliance with the requirements of the United States Army Corps of Engineers' Ohio River Flood Protection System Pumping Operations Manual, dated 1954 and revised 1988, shall be addressed under the interim and final LTCP);

(6) control of solid and floatable materials, including installation of devices where appropriate;

(7) pollution prevention;

(8) public notification to ensure that the public receives adequate notification of CSO occurrences and CSO impacts, including improving the current signage at each CSO location to an easily readable type size and style, and in both English and Spanish; and

(9) monitoring to effectively characterize CSO impacts and the efficacy of CSO controls.

Upon review of the NMC Compliance portion of the Early Action Plan, the

Cabinet/EPA may jointly (1) approve, in whole or in part, or (2) provide comments to MSD identifying the deficiencies. Upon receipt of Cabinet/EPA comments, MSD shall have thirty (30) days to revise and resubmit the NMC Compliance portion of the Early Action Plan for review and approval, subject only to MSD's rights under the dispute resolution provisions of this Consent Decree. Upon resubmittal, the Cabinet/EPA may jointly (1) approve or (2) disapprove and provide comments to MSD identifying the deficiencies. Upon such resubmittal, if the NMC Compliance portion of the Early Action Plan is disapproved, the Cabinet/EPA may jointly deem MSD to be out of compliance with this Consent Decree for failure to timely submit such portion and may assess stipulated penalties pursuant to this Consent Decree, subject only to MSD's rights under the dispute resolution provisions of this Consent Decree. Upon Cabinet/EPA joint approval of all or any part of the NMC Compliance portion of the Early Action Plan, the NMC Compliance portion, or any approved part thereof (provided that the approved part is not dependent upon implementation of any part not yet approved), shall be deemed incorporated into this Consent Decree as an enforceable requirement of this Consent Decree.

b. **Capital Improvement Project List.** The Early Action Plan shall include a list that identifies projects that have been or will be initiated by MSD prior to the implementation of the final SSDP and final LTCP. The Capital Improvement Project List shall include, at a minimum, the following projects, which MSD represents either are completed or shall be completed before the Abatement Date listed below. Estimated project costs are also based on MSD estimates. Those

projects completed are included to demonstrate the efforts MSD maintains it has been making to date to address compliance. MSD shall certify to the Cabinet and EPA the completion of any project within thirty (30) days of the signing of this Consent Decree or within thirty (30) days of completion of the project.

(1) Project Locations as follows:

SSO Location	Discharges per the Pending Civil Action	WTP Service Area	Estimated Projected Cost	Abatement Date	
				Quarter	Calendar Year
7204 Preston Hwy	2	WCWTP[1]	$1,165,000	1 QTR	2002
West Goose Creek PS	1	MFWTP[2]	$10,000	3 QTR	2002
Park Ridge Woods PS	1	WCWTP	$5,000	4 QTR	2002
Vagabond and Siesta	2	WCWTP	$500,000	2 QTR	2002
Melody PS	1	MFWTP	$2,238,000	1 QTR	2003
Cedar Creek WTP	1	CCWTP[3]	$34,000,000	1 QTR	2003
12700 Abbey Lane	1	WCWTP	$178,000	2 QTR	2003
Fairway View PS	1	Hunting Creek TP	$5,000	2 QTR	2003
Olde Copper PS	8	FFWTP[4]	$12,000	1 QTR	2004
Running Creek WTP	2	Running Creek TP	$1,680,000	1 QTR	2004
Savage Dr. PS	1	WCWTP	$1,000,000	1 QTR	2004
Woodland Hills PS	8	MFWTP and FFWTP	$2,452,000	2 QTR	2004
English Station WTP	1	English Station TP	$2,500,000	2 QTR	2004
Jarvis Ln PS	2	MFWTP	$75,000	2 QTR	2005
Hurstbourne Ln PS	8	MFWTP	$224,000	2 QTR	2005
Hite Creek WTP	4	HCWTP	$12,700,000	4 QTR	2005
Shelbyville & Marshall	3	MFWTP	$3,148,000	4 QTR	2005
Canoe Lane PS	3	MFWTP	$200,000	2 QTR	2006
Gunpowder PS	3	Hunting Creek TP	$101,000	2 QTR	2006
Total	53		$62,193,000		

[1]WCWTP is West County Wastewater Treatment Plant. [2]MFWTP is Morris Forman Wastewater Treatment Plant. [3]CCWTP is Cedar Creek Wastewater Treatment Plant. [4]FWTP is Floyds Fork Wastewater Treatment Plant.

(2) Installation of backup power at the following facilities within the CSS by the date indicated, which MSD believes will result in a total overflow volume reduction of 19 million gallons annually calculated on MSD's previous reporting history:

A. 34th Street Pump Station, at an approximate cost estimated by MSD to be $300,000, to be completed by the end of the 1st quarter 2006;

B. Buchanan Street Pump Station, at an approximate cost estimated by MSD to be $630,000, to be completed by the end of the 2nd quarter 2006;

(3) Installation of solids and floatables control devices at fifteen (15) CSO locations as shown below by the date indicated:

CSO	**Estimated Cost**	Completion Date Quarter	Completion Date Calendar Year
109	$164,000	4 QTR	2004
113	$146,500	4 QTR	2004
125	$122,000	4 QTR	2004
126	$92,000	4 QTR	2004
127	$62,400	4 QTR	2004
144	$34,800	4 QTR	2004
166	$12,500	4 QTR	2004
28	$40,300	1 QTR	2005
30	$40,800	1 QTR	2005
34	$42,800	1 QTR	2005
54	$45,800	1 QTR	2005
119	$46,300	1 QTR	2005
83	$65,500	2 QTR	2005
121	$106,400	2 QTR	2005
82	$49,400	3 QTR	2005
Total	$1,071,500		

(4) Elimination of three (3) CSO locations through sewer separation projects as shown below by the date indicated:

CSO	Estimated Cost	Completion Date Quarter	Completion Date Calendar Year
CSO 209	$2,560,000	3 QTR	2005
CSO 87	$1,058,000	3 QTR	2006
CSO 147	$2,225,000	3 QTR	2007

(5) Implementation of a fully operational Real Time Control System, Initial Implementation phase, which MSD estimates will achieve a minimum of 10% reduction of the average annual overflow volume by not later than twelve (12) months after the entry of this Consent Decree.

The portion of the Early Action Plan consisting of the Capital Improvement Project List is not being submitted for Cabinet/EPA approval.

c. **CMOM (Capacity, Management, Operation and Maintenance) Programs Self-Assessment.** The Early Action plan shall include a CMOM Programs Self-Assessment of MSD's combined and separate sewer collection and transmission systems, in accordance with US EPA Region IV methodology as set forth in the attached CDROM disk, to ensure that MSD has CMOM Programs in place that are effective at eliminating SSOs, including unauthorized discharges, within the combined and separate sewer collection and transmission systems. This Self-Assessment shall include an evaluation of, and recommendation of improvements to, each CMOM Program to ensure that such Programs contain the following key CMOM elements: written, defined purpose(s); written defined goal(s);

documented in writing with specific details; implemented by well trained personnel; established performance measures; and written procedures for periodic review. Recommended improvements shall include schedules for implementation. Particular emphasis shall be placed upon the following Programs, as more particularly described in the attached CDROM: Continuous Sewer System Assessment Program; Infrastructure Rehabilitation Program; Collection and Transmission Plans Program; System Capacity Assurance Program; Water Quality Monitoring Program; Pump Station Preventive Maintenance Program; Gravity Line Preventive Maintenance Program; Contingency Plan for Utility Infrastructure (this shall include the evaluation of the need for backup power for each pump station); and Sewer Use Ordinance Legal Support Program. The Cabinet/EPA shall have forty-five (45) days to review the CMOM Programs Self-Assessment and recommended improvements and schedules. If the Cabinet/EPA do not jointly accept the CMOM Programs Self-Assessment or recommended improvements and schedules, modifications to the CMOM Programs Self-Assessment shall be made in accordance with the Cabinet's/EPA's joint comments and resubmitted by MSD within forty-five (45) days of receipt of the aforementioned comments, subject only to MSD's rights under the dispute resolution provisions of this Consent Decree. Upon resubmittal, the Cabinet/EPA may jointly (1) approve or (2) disapprove and provide comments to MSD identifying the deficiencies. Upon such resubmittal, if the CMOM Programs Self-Assessment portion of the Early Action Plan is disapproved, the Cabinet/EPA may jointly deem MSD to be out of compliance with this Consent

Decree for failure to timely submit such portion and may assess stipulated penalties pursuant to this Consent Decree, subject only to MSD's rights under the dispute resolution provisions of this Consent Decree. Upon Cabinet/EPA joint approval of all or any part of the Early Action Plan containing MSD's CMOM Programs Self-Assessment, the CMOM Programs and recommended improvements and schedules, or any approved part thereof (provided that the approved part is not dependent upon implementation of any part not yet approved), shall be deemed incorporated into this Consent Decree as an enforceable requirement of this Consent Decree.

d. **Sewer Overflow Response Protocol ("SORP").** The Early Action Plan shall include a SORP in compliance with 401 KAR 5:015 for review and approval by the Cabinet/EPA, to establish the timely and effective methods and means of: (1) responding to, cleaning up, and/or minimizing the impact of all overflows, including unauthorized discharges; (2) reporting the location, volume, cause and impact of all overflows, including unauthorized discharges, to the Cabinet and EPA; and (3) notifying the potentially impacted public. The Cabinet/EPA shall have thirty (30) days to review the SORP. If the Cabinet/EPA do not jointly accept the SORP, modifications in the SORP shall be made by MSD in accordance with the Cabinet's/EPA's joint comments and resubmitted within thirty (30) days of receipt of the aforementioned comments, subject only to MSD's rights under the dispute resolution provisions of this Consent Decree. Upon resubmittal, the Cabinet/EPA may jointly (1) approve or (2) disapprove and provide comments to MSD identifying the deficiencies. Upon such resubmittal, if

the SORP is disapproved, the Cabinet/EPA may jointly deem MSD to be out of compliance with this Consent Decree for failure to timely submit the SORP portion of the Early Action Plan and may assess stipulated penalties pursuant to this Consent Decree, subject only to MSD's rights under the dispute resolution provisions of this Consent Decree. If approved, MSD shall implement the SORP within fifteen (15) days of receiving the Cabinet's/EPA's approval. By the anniversary date of the approval of the SORP, MSD shall annually review the SORP and propose changes as appropriate subject to Cabinet/EPA review and approval. A copy of future updates to the SORP shall also be provided to the Louisville Regional Office of the Division of Water within fifteen (15) days of incorporation of the update. Upon Cabinet/EPA joint approval of all or any part of the SORP, the SORP, or any approved part thereof (provided that the approved part is not dependent upon implementation of any part not yet approved), and any subsequently approved changes, shall be deemed incorporated into this Consent Decree as an enforceable requirement of this Consent Decree.

24. **Discharge Abatement Plans** – MSD shall prepare and submit, for Cabinet/EPA review and joint approval, a Sanitary Sewer Discharge Plan ("SSDP") designed to eliminate unauthorized discharges in the SSS. MSD shall also prepare and submit an updated LTCP, for Cabinet/EPA review and joint approval, which complies with the CSO Control Policy. MSD shall develop these Discharge Abatement Plans for the elimination of unauthorized discharges from the SSS and CSS, the reduction and control of discharges from CSO locations identified in the MFWTF KPDES permit, and the improvement of water quality in the receiving waters. MSD shall prepare conventional and innovative or alternative designs as part of each plan,

including but not limited to: sewer rehabilitation, sewer replacement, sewer separation, relief sewers, above ground or below ground storage, high rate secondary treatment, illicit connection removal, remote wet weather secondary treatment facilities, and other appropriate alternatives. Designs shall be based on sound engineering judgment and shall be in accordance with generally accepted engineering design criteria and may include interim remedial measures to reduce pollutant loading and improve water quality in the short term while alternatives for final remedial measures are being developed, evaluated and implemented.

a. **Sanitary Sewer Discharge Plan.**

(1) MSD shall submit to the Cabinet and EPA an update to the current SSOP by no later than six (6) months after the entry of this Consent Decree, which will detail the improvements to be accomplished through December 31, 2008. Upon submittal, the updated SSOP shall be deemed incorporated into this Consent Decree as an enforceable requirement of this Consent Decree.

(2) By September 30, 2007, MSD shall submit to the Cabinet/EPA for review and approval an interim SSDP to identify remedial measures to eliminate unauthorized discharges, including those resulting from MSD's use of pumps, within the Hikes Point and the Beechwood Village areas, and to eliminate unauthorized discharges at the Highgate Pump Station and the Southeastern Diversion Structure. The interim SSDP shall include expeditious schedules for design, initiation of construction, and completion of construction of remedial measures; provided, however, such schedules shall not extend beyond December 31, 2011 for those unauthorized discharges within the Beechwood area and at the Southeastern Diversion Structure, and such schedules shall not extend beyond

December 31, 2013 for those unauthorized discharges in the Hikes Point area and at the Highgate Pump Station. Upon review of the interim SSDP, the Cabinet/EPA may jointly (1) approve, in whole or in part, or (2) provide comments to MSD identifying the deficiencies. Upon receipt of Cabinet/EPA comments, MSD shall have sixty (60) days to revise and resubmit the interim SSDP for review and approval, subject only to MSD's rights under the dispute resolution provisions of the Consent Decree. Upon resubmittal, the Cabinet/EPA may jointly (1) approve or (2) disapprove and provide comments to MSD identifying the deficiencies. Upon such resubmittal, if the interim SSDP is disapproved, the Cabinet/EPA may jointly deem MSD to be out of compliance with this Consent Decree for failure to timely submit the interim SSDP and may assess stipulated penalties pursuant to this Consent Decree, subject only to MSD's rights under the dispute resolution provisions of this Consent Decree. Upon Cabinet/EPA joint approval of all or any part of the interim SSDP, the interim SSDP, or any approved part thereof (provided that the approved part is not dependent upon implementation of any part not yet approved), shall be incorporated into this Consent Decree by proposed material amendment under paragraph 46 of this Consent Decree and, upon approval by the Court, become an enforceable requirement of this Consent Decree.

(3) By December 31, 2008, MSD shall submit to the Cabinet/EPA for review and joint approval a final SSDP to identify remedial measures to eliminate unauthorized discharges from the SSS at locations other than those identified in paragraph (2) above. The final SSDP shall contain the long term SSDP projects,

including schedules, milestones, and deadlines. The final SSDP shall also include the results of an evaluation of WWTP peak flow treatment capacity for Jeffersontown WWTP and any WWTP that will receive additional flow based on any interim or final SSDP project. Such evaluation shall be consistent with the EPA publications "Improving POTW Performance Using the Composite Correction Approach," EPA CERI, October 1984, and "Retrofitting POTWs," EPA CERI, July 1989. The final SSDP shall include, at a minimum, the following elements:

A. A map that shows the location of all known unauthorized discharges. The map shall include the areas and sewer lines that serve as a tributary to each unauthorized discharge. Smaller maps of individual tributary areas also may be included to show the lines involved in more detail.

B. A description of each unauthorized discharge location that includes:

(i) The frequency of the discharge;

(ii) The annual volume of the discharge;

(iii) A description of the type of discharge, i.e. manhole, pump station, constructed discharge pipe, etc.;

(iv) The receiving stream;

(v) The immediate area and downstream land use, including the potential for public health concerns;

(vi) A description of any previous (within the last 5 years),

current, or proposed studies to investigate the discharge; and

(vii) A description of any previous (within the last 5 years), current, or proposed rehabilitation or construction work to remediate or eliminate the discharge.

C. A prioritization of the unauthorized discharge locations identified above, based upon the frequency, volume and impact on the receiving stream and upon public health, and in coordination with the CMOM programs. Based upon this prioritization, MSD shall develop remedial measures and expeditious schedules for design, initiation of construction and completion of construction. Such schedules shall be phased based on sound engineering judgment and in no case shall extend beyond December 31, 2024.

D. A plan to involve stakeholders in the planning, prioritization and selection of projects.

Upon review of the final SSDP, the Cabinet/EPA may jointly (1) approve, in whole or in part, or (2) provide comments to MSD identifying the deficiencies. Upon receipt of Cabinet/EPA comments, MSD shall have sixty (60) days to revise and resubmit the final SSDP for review and approval, subject only to MSD's rights under the dispute resolution provisions of this Consent Decree. Upon resubmittal, the Cabinet/EPA may jointly (1) approve or (2) disapprove and provide comments to MSD identifying the deficiencies. Upon such resubmittal, if the final SSDP is disapproved, the Cabinet/EPA may jointly deem MSD to be out

of compliance with this Consent Decree for failure to timely submit such portion and may assess stipulated penalties pursuant to this Consent Decree, subject only to MSD's rights under the dispute resolution provisions of this Consent Decree. Upon Cabinet/EPA joint approval of all or any part of the final SSDP, the final SSDP, or any approved part thereof (provided that the approved part is not dependent upon implementation of any part not yet approved), shall be incorporated into this Consent Decree by proposed material amendment under paragraph 46 of this Consent Decree and, upon approval by the Court, become an enforceable requirement of this Consent Decree.

b. **Long Term Control Plan.**

(1) By no later than six (6) months after the entry of this Consent Decree, MSD shall submit to the Cabinet/EPA for review and joint approval an interim LTCP that updates the previously submitted draft LTCP.

A. The interim LTCP shall specify the activities which demonstrate MSD's efforts to date to achieve compliance with the following goals:

(i) Ensure that if CSOs occur, they are only as a result of wet weather (including activities to address those discharges resulting from MSD's compliance with the requirements of the United States Army Corps of Engineers' Ohio River Flood Protection System Pumping Operations Manual, dated 1954 and revised 1988);

(ii) Bring all wet weather CSO discharge points into

compliance with the technology-based and water quality-based requirements of the Act;

(iii) Minimize the impacts of CSOs on water quality, aquatic biota, and human health; and

(iv) Bring stakeholders into the planning, prioritization and selection of projects process.

B. The interim LTCP shall describe the manner in which MSD plans to undertake the development of the final LTCP, including, at a minimum, the following elements:

(i) Characterization, monitoring, modeling activities, and design parameters as the basis for selection and design of effective CSO controls (including controls to address those discharges resulting from MSD's compliance with the requirements of the United States Army Corps of Engineers' Ohio River Flood Protection System Pumping Operations Manual, dated 1954 and revised 1988);

(ii) A public participation process that actively involves the affected public in the decision-making to select long-term CSO controls;

(iii) Consideration of sensitive areas as the highest priority for controlling overflows;

(iv) Evaluation of alternatives that will enable MSD, in consultation with the Cabinet and EPA, water quality

standards authority, and the public, to select CSO controls that will meet the requirements of the Act;

(v) Cost/performance considerations to demonstrate the relationships among a comprehensive set of reasonable control alternatives;

(vi) Operational plan revisions to include agreed-upon long-term CSO controls; and

(vii) Maximization of treatment at MSD's existing wastewater treatment plants for wet weather flows.

Upon review of the interim LTCP, the Cabinet/EPA may jointly (1) approve, in whole or in part, or (2) provide comments to MSD identifying the deficiencies. Upon receipt of Cabinet/EPA comments, MSD shall have thirty (30) days to revise and resubmit the interim LTCP for review and approval, subject only to MSD's rights under the dispute resolution provisions of this Consent Decree. Upon resubmittal, the Cabinet/EPA may jointly (1) approve or (2) disapprove and provide comments to MSD identifying the deficiencies. Upon such resubmittal, if the interim LTCP is disapproved, the Cabinet/EPA may jointly deem MSD to be out of compliance with this Consent Decree for failure to timely submit the interim LTCP and may assess stipulated penalties pursuant to this Consent Decree, subject only to MSD's rights under the dispute resolution provisions of this Consent Decree. Upon Cabinet/EPA joint approval of all or any part of the interim LTCP, the interim LTCP, or any approved part thereof (provided that the approved part is not dependent upon implementation of any part not yet

approved), shall be deemed incorporated into this Consent Decree as an enforceable requirement of this Consent Decree.

(2) By December 31, 2008, MSD shall submit a final LTCP to the Cabinet/EPA for review and joint approval that complies with the CSO Control Policy and is consistent with EPA's "Guidance for Long-Term Control Plan," EPA 832-B- 95-002, September 1995. The final LTCP shall include schedules, deadlines and timetables for remedial measures that achieve full compliance with the criteria listed for the demonstrative approach or the presumptive approach as soon as practicable based on sound engineering judgment but in no event later than December 31, 2020.

A. The final LTCP shall meet the following goals:

(i) Ensure that if CSOs occur, they are only as a result of wet weather (this goal shall include addressing those discharges resulting from MSD's compliance with the requirements of the United States Army Corps of Engineers' Ohio River Flood Protection System Pumping Operations Manual, dated 1954 and revised 1988);

(ii) Bring all wet weather CSO discharge points into compliance with the technology-based and water quality-based requirements of the CWA; and

(iii) Minimize the impacts of CSOs on water quality, aquatic biota, and human health.

B. The final LTCP shall include, at a minimum, the following

elements:

(i) The results of characterization, monitoring, modeling activities, and design parameters as the basis for selection and design of effective CSO controls (including controls to address those discharges resulting from MSD's compliance with the requirements of the United States Army Corps of Engineers' Ohio River Flood Protection System Pumping Operations Manual, dated 1954 and revised 1988);

(ii) The results of an evaluation of WWTP peak flow treatment capacity for any WWTP that will receive additional flow based on any LTCP project. Such evaluation shall be consistent with the EPA publications "Improving POTW Performance Using the Composite Correction Approach," EPA CERI, October 1984, and "Retrofitting POTWs," EPA CERI, July 1989;

(iii) A report on the public participation process;

(iv) Identification of how the final LTCP addresses sensitive areas as the highest priority for controlling overflows;

(v) A report on the cost analyses of the alternatives considered;

(vi) Operational plan revisions to include agreed-upon long-term CSO controls;

(vii) Maximization of treatment at MSD's existing wastewater treatment plants for wet weather flows;

(viii) Identification of and an implementation schedule for the selected CSO controls; and

(ix) A post-construction compliance monitoring program adequate to verify compliance with water quality-based CWA requirements and ascertain the effectiveness of CSO controls.

Upon review of the final LTCP, the Cabinet/EPA may jointly (1) approve, in whole or in part, or (2) provide comments to MSD identifying the deficiencies. Upon receipt of Cabinet/EPA comments, MSD shall have sixty (60) days to revise and resubmit the final LTCP for review approval, subject only to MSD's rights under the dispute resolution provisions of this Consent Decree. Upon resubmittal, the Cabinet/EPA may jointly (1) approve or (2) disapprove and provide comments to MSD identifying the deficiencies. Upon such resubmittal, if the final LTCP is disapproved, the Cabinet/EPA may jointly deem MSD to be out of compliance with this Consent Decree for failure to timely submit the final LTCP and may assess stipulated penalties pursuant to this Consent Decree, subject only to MSD's rights under the dispute resolution provisions of this Consent Decree. Upon Cabinet/EPA joint approval of all or any part of the final LTCP, the final LTCP, or any approved part thereof (provided that the approved part is not dependent upon implementation of any part not yet approved), shall be incorporated into this Consent Decree by proposed material amendment under paragraph 46 of this Consent Decree and, upon approval by the Court, become an enforceable requirement of this Consent Decree.

REPORTING REQUIREMENTS

25. Quarterly Reports - MSD shall submit a quarterly report for the previous quarter no later than thirty (30) days after the end of each quarter, with the first such report to be submitted no later than January 31, 2006, to the Cabinet and EPA that describes its progress in complying with this Consent Decree. The quarterly report shall include, at a minimum:

a. A detailed description of projects and activities conducted during the past to comply with the requirements of this Consent Decree, in Gantt chart or similar format;

b. An accounting of the current quarter and the cumulative reductions in volume and in number of occurrences of unauthorized discharges from the SSS, CSS and WWTPs and discharges from MSD's CSO locations identified in its MFWTP KPDES permit;

c. The anticipated projects and activities that will be performed in the upcoming quarter to comply with the requirements of this Consent Decree, in Gantt chart or similar format; and

d. Any additional information necessary to demonstrate that MSD is adequately implementing its Early Action Plan and Discharge Abatement Plans.

26. Annual Reports - MSD shall submit an annual report for its previous fiscal year, with the first report due December 31, 2006 and each year thereafter by December 31, with a summary of the CMOM Programs implementation pursuant to this Consent Decree, including a comparison of actual performance with any performance measures that have been established.

PAYMENT OF CIVIL PENALTIES AND SUPPLEMENTAL ENVIRONMENTAL PROJECT

27. In the Prior Civil Action, the Cabinet and MSD agreed that MSD would pay a civil penalty in the amount of one million dollars ($1,000,000) to resolve the violations alleged in the Cabinet's complaint. Within sixty (60) days of the entry of this Consent Decree, MSD will pay a civil penalty to the Commonwealth in the amount of one million dollars ($1,000,000) to resolve the violations alleged in the Cabinet's and EPA's complaints up through the date of entry of this Consent Decree.

28. In the Prior Civil Action, the Cabinet and MSD agreed that MSD shall timely perform supplemental environmental projects (SEPs) as set forth in Exhibit A. The total expenditure for the SEPs shall not be less than two million two hundred fifty thousand dollars ($2,250,000). If MSD fails to perform these SEPs by the dates specified in Exhibit A, then MSD shall pay the difference between its documented SEP expenditures and two million two hundred fifty thousand dollars ($2,250,000) as an additional civil penalty. Such payment shall be due and payable to the Cabinet on the latest date for completion of SEPs identified in Exhibit A. Alternatively, MSD may propose, and the Cabinet shall consider, additional SEPs for which the total expenditure shall not be less than the difference between its documented SEP expenditures and two million two hundred fifty thousand dollars ($2,250,000).

29. MSD shall submit to the Cabinet a SEP Completion Report for each SEP described in Exhibit A no later than sixty (60) days from the date for completion of the SEP set forth in Exhibit A. The Report shall contain the following information for each SEP: i) a detailed description of the SEP as implemented; ii) a description of any operating problems encountered and the solutions thereto; iii) itemized costs; iv) certification that the SEP has been

fully implemented pursuant to Exhibit A and the provisions of this Consent Decree; and v) a description of the environmental and public health benefits resulting from implementation of the SEP.

STIPULATED PENALTIES

30. For failure to timely submit the Early Action Plan, or any specified portion thereof, the Cabinet/EPA may jointly assess against MSD a stipulated penalty in the amount of two thousand dollars ($2,000). For each day that MSD remains out of compliance for failure to timely submit the Early Action Plan, or any specified portion thereof, the Cabinet/EPA may jointly assess against MSD a stipulated penalty of an additional one hundred dollars ($100) per day. This penalty is in addition to, and not in lieu of, any other penalty that could be assessed.

31. For failure to timely submit the interim SSDP or the final SSDP, the Cabinet/EPA may jointly assess against MSD a stipulated penalty in the amount of three thousand dollars ($3,000). For each day MSD remains out of compliance for failure to timely submit the interim SSDP or the final SSDP, the Cabinet/EPA may jointly assess against MSD a stipulated penalty of an additional one hundred dollars ($100) per day. This penalty is in addition to, and not in lieu of, any other penalty that could be assessed.

32. For failure to timely submit the interim LTCP or the final LTCP, the Cabinet/EPA may jointly assess against MSD a stipulated penalty in the amount of three thousand dollars ($3,000). For each day that MSD remains out of compliance for failure to timely submit the interim LTCP or the final LTCP, the Cabinet/EPA may jointly assess against MSD a stipulated penalty of an additional one hundred dollars ($100) per day. This penalty is in addition to, and not in lieu of, any other penalty that could be assessed.

33. For failure to timely submit a Quarterly Report or an Annual Report, the

Cabinet/EPA may jointly assess against MSD a stipulated penalty in the amount of one thousand dollars ($1,000). This penalty is in addition to, and not in lieu of, any other penalty that could be assessed.

34. For the circumstances described below, the Cabinet/EPA may jointly assess against MSD stipulated penalties as follows:

a. For dry weather discharges from the CSS occurring after September 30, 2006, two thousand dollars ($2,000) per discharge (provided, however, the Cabinet/EPA shall not assess stipulated penalties for those discharges resulting from MSD's compliance with the requirements of the United States Army Corps of Engineers' Ohio River Flood Protection System Pumping Operations Manual, dated 1954 and revised 1988, which shall be addressed under the interim and final LTCP).

b. For any unauthorized discharge (not including any effluent limitation violation of a WWTP KPDES permit and those discharges described in paragraph 34.c below) occurring after two (2) years from entry of this Consent Decree, five hundred dollars ($500) per discharge.

c. For unauthorized discharges within the Beechwood Village Area and at the Southeast Diversion at Fountain Court, five thousand dollars ($5,000) per discharge occurring after December 31, 2011. For unauthorized discharges within the Hikes Point Area and at the Highgate Springs Pump Station, five thousand dollars ($5,000) per discharge occurring after December 31, 2013.

35. For each day that MSD fails to timely complete approved projects under the interim SSDP, the final SSDP, the final LTCP, or any approved amendments thereto, the Cabinet/EPA may jointly assess against MSD stipulated penalties for each such project as

follows:

Period Beyond Completion Date	Penalty Per Violation Per Day
1 - 30 days	$1,000
31 - 60 days	$2,000
60 - 120 days	$3,000
more than 120 days	$5,000

36. MSD shall tender all stipulated penalty payments specified in paragraphs 30 through 35 above within ten (10) days of receipt of written notice from the Cabinet/EPA jointly that such penalty has been assessed. Fifty (50) percent of each payment due pursuant to these paragraphs 30 through 35 shall be paid to the Cabinet and fifty (50) percent shall be paid to EPA. MSD shall tender all penalty payments due to the Cabinet by certified check, cashier's check or money order, payable to the KENTUCKY STATE TREASURER. Payment shall be tendered to the Kentucky Division of Enforcement, 14 Reilly Road, Frankfort, Kentucky 40601; note Case No. DOW-32604-056. MSD shall tender all penalty payments due to EPA by electronic funds transfer, in accordance with written instructions to be provided by EPA after entry of this Consent Decree. The costs of such electronic transfer shall be the responsibility of MSD. Notice of such payment shall be provided under the Form of Notice provision in this Consent Decree.

FORM OF NOTICE

37. Unless otherwise specified, or as may be changed from time to time, all reports, notices, or any other written communications required to be submitted under this Consent Decree shall be sent to the respective Parties at the following addresses:

As to the Commonwealth of Kentucky:

Director, Division of Enforcement
Department of Environmental Protection
14 Reilly Road
Frankfort, Kentucky 40601

For verbal notifications: Mark Cleland, Division of Enforcement, (502) 564-2150 (subject to change on written notice to MSD).

As to EPA:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Post Office Box 7611
Washington, D.C. 20044-7611
Reference DOJ Case No. 90-5-1-1-08254

Chief, Water Programs Enforcement Branch
Water Management Division
U.S. Environmental Protection Agency,
Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

For verbal notifications: Doug Mundrick, Chief, Water Programs Enforcement Branch, (404) 562-9328 (subject to change on written notice to MSD).

As to MSD:

H. J. Schardein, Jr.
Executive Director
Louisville and Jefferson County Metropolitan Sewer District
700 West Liberty Street
Louisville, Kentucky 40203

Laurence J. Zielke
Special Counsel to the Board
Pedley Zielke Gordinier & Pence, PLLC
2000 Meidinger Tower
462 South Fourth Avenue
Louisville, Kentucky 40202

Notifications to, or communications with, the Parties shall be deemed submitted on the date they are postmarked and sent by certified mail, return receipt requested, or deposited with an overnight mail/delivery service.

COSTS OF SUIT

38. The Parties shall bear their own costs and attorneys' fees with respect to matters related to this Consent Decree. In the event, however, that the Cabinet or EPA must enforce this Consent Decree, MSD shall pay all attorneys' fees and costs incurred by the Cabinet or EPA if the Cabinet or EPA prevails on the issue for which enforcement is sought; this obligation shall not apply to any procedures that may arise under the dispute resolution provisions of this Consent Decree.

REVIEW OF SUBMITTALS

39. The Cabinet/EPA agree to use their best efforts to expeditiously review and comment on submittals that MSD is required to submit to the Cabinet/EPA for approval pursuant to the terms and provisions of this Consent Decree. If the Cabinet/EPA cannot complete their review of a submittal within sixty (60) days of receipt of the submittal, or within the time period otherwise provided in this Consent Decree, the Cabinet/EPA shall so notify MSD before the expiration of the applicable review period. If the Cabinet/EPA fail to approve, provide comments or otherwise act on a submittal within sixty (60) days of receipt of the submittal, or within the time period otherwise provided in this Consent Decree, any subsequent milestone date dependent upon such action by the Cabinet/EPA shall be extended by the number of days beyond the applicable review period that the Cabinet/EPA use to act on that submittal.

CERTIFICATION OF SUBMISSIONS

40. In all notices, documents or reports submitted pursuant to this Consent Decree, MSD shall, by a responsible party of MSD, as defined by 40 C.F.R. §122.22, sign and certify each such notice, document and report as follows:

> 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 such 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.

RIGHT OF ENTRY

41. The Cabinet and EPA and their authorized representatives and contractors shall have authority at all times, upon the presentation of proper credentials, to enter the premises of MSD to:

a. Monitor the work required by this Consent Decree;

b. Verify any data or information submitted to the Cabinet or EPA;

c. Obtain samples from any portion of the SSS, CSS or WWTPs;

d. Inspect and evaluate any portions of the SSS, CSS or WWTPs;

e. Inspect and review any records required to be kept under the terms and conditions of this Consent Decree or any KPDES permit, the CWA and KRS Chapter 224; and

f. Otherwise assess MSD's compliance with state and federal environmental laws and this Consent Decree.

The rights created by this paragraph are in addition to, and in no way limit or otherwise affect,

the authority of the Cabinet or EPA to conduct inspections, to require monitoring and to obtain information from MSD as authorized by law.

RECORD RETENTION

42. MSD shall retain all data, documents, plans, records and reports that relate to MSD's performance under this Consent Decree which are in the possession, custody, or control of MSD or its consultants or contractors. MSD shall retain all such materials for five (5) years from the date of origination. Drafts of final documents, plans, records, or reports do not need to be retained. This paragraph does not limit or affect any duty or obligation of MSD to maintain records or information required by any KPDES permit. At the conclusion of this retention period MSD shall notify the Cabinet and EPA at least one-hundred and twenty (120) days prior to the destruction of any such materials, and upon request by any of these Parties, MSD shall deliver any such materials to that Party.

MISCELLANEOUS PROVISIONS

43. This Consent Decree and any Amended Consent Decree is designed to resolve the civil claims for penalties of the Cabinet and EPA for the violations of KRS Chapter 224 and the Act as alleged in the complaints filed by the Cabinet and EPA up through the date of entry of this Consent Decree. The Cabinet and EPA have relied upon the factual representations of MSD. Nothing contained herein shall be construed to waive or to limit any remedy or cause of action by the Cabinet and EPA based on statutes or regulations under applicable jurisdiction and MSD reserves its defenses thereto, except that MSD shall not use this Consent Decree or any Amended Consent Decree as a defense. The Cabinet and EPA expressly reserve their rights at any time to issue administrative orders and to take any other action deemed necessary, including the right to order all necessary remedial measures, assess penalties for violations, or recover all response

costs incurred, and MSD reserves its defenses thereto, except that MSD shall not use this Consent Decree or any Amended Consent Decree as a defense.

44. This Consent Decree or any Amended Consent Decree shall not prevent the Cabinet and EPA from issuing, reissuing, renewing, modifying, revoking, suspending, denying, terminating, or reopening any permit to MSD. MSD reserves its defenses thereto, except that MSD shall not use this Consent Decree or any Amended Consent Decree as a defense.

45. MSD waives its right to any hearing on the matters admitted herein. However, failure by MSD to comply strictly with any or all of the terms of this Consent Decree or any Amended Consent Decree shall be grounds for the Cabinet and EPA to seek enforcement of this Consent Decree or any Amended Consent Decree in this Court and to pursue any other appropriate administrative or judicial action under the Act or KRS Chapter 224, and the regulations promulgated pursuant thereto.

46. The terms and conditions stated herein are intended to be implemented as a whole and may not be challenged independently. Except as set forth below, this Consent Decree may not be materially amended or modified except by written agreement of the Parties, and approval of this Court. Any material modification of this Consent Decree shall be effective upon approval of the Court. Non-material modifications of the Consent Decree which do not significantly alter the requirements of this Consent Decree may be made in writing by the Parties.

47. The Cabinet and EPA do not, by consent to the entry of this Consent Decree, warrant or aver in any manner that MSD's complete compliance with this Consent Decree will result in compliance with the provisions of the Act or KRS Chapter 224, and the regulations promulgated pursuant thereto, nor with any permit. Notwithstanding the Cabinet's and EPA's

review and approval of any plans formulated pursuant to this Consent Decree, MSD shall remain solely responsible for compliance with the terms of the Act and KRS Chapter 224, and the regulations promulgated pursuant thereto, this Consent Decree and any permit and compliance schedule requirements. This Consent Decree is not and shall not be construed as a permit, nor a modification of any existing permit, issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, nor shall it in any way relieve MSD of its obligations to obtain permits for its WWTPs and related operations or facilities and to comply with the requirements of any KPDES permit or with any other applicable state or federal law or regulation. Any new permit, or modification of existing permits, must be complied with in accordance with applicable state or federal laws and regulations.

48. The provisions of this Consent Decree shall apply to and be binding upon MSD. The acts or omissions of MSD's officers, directors, agents, and employees shall not excuse MSD's performance of any provisions of this Consent Decree. The Cabinet and EPA reserve the right to seek enforcement of this Consent Decree against the successors and assigns of MSD. MSD shall give notice of this Consent Decree to any purchaser, lessee or successor-in-interest prior to the transfer of ownership and/or operation of any part of the now-existing facility occurring prior to termination of this Consent Decree, shall notify the Cabinet and EPA that such notice has been given, and shall follow all statutory and regulatory requirements for a transfer. Whether or not a transfer takes place, MSD shall remain fully responsible for payment of all civil penalties, stipulated/performance penalties, and for performance of all remedial measures identified in this Consent Decree.

49. This Consent Decree shall not be contingent on the receipt of federal or state funds.

PUBLIC COMMENTS

50. The Parties agree and acknowledge that final approval of this Consent Decree by the Cabinet and EPA, and entry of this Consent Decree by the Court, are subject to the requirements of 28 C.F.R. §50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and consideration of any comments. MSD hereby agrees not to withdraw from, oppose entry of, or challenge any provision of this Consent Decree, unless the Cabinet or EPA has notified MSD in writing that it no longer supports entry of the Consent Decree.

FORCE MAJEURE

51. MSD shall perform the requirements of this Consent Decree within the time limits set forth or approved herein, unless the performance is prevented or delayed solely by events which constitute a force majeure, in which event the delay in performance shall be excused and no performance or stipulated penalty shall be assessed. A force majeure is defined as any event arising from causes not reasonably foreseeable and beyond the control of MSD, or MSD's consultants and contractors, which could not be overcome by due diligence, and which delays or prevents performance by a date required by this Consent Decree. Force majeure events do not include unanticipated or increased costs of performance, changed economic or financial conditions, the failure by a contractor to perform, or the failure by a supplier to deliver.

52. MSD shall notify the Cabinet's Director of the Enforcement Division and EPA's Chief of the Water Programs Enforcement Branch by telephone by the end of the next business day and in writing within ten (10) business days after it becomes aware of events which it knows or should know constitute a force majeure. The notice shall estimate the anticipated length of delay, including necessary demobilization and remobilization, its cause, measures taken or to be

taken to minimize the delay and an estimated timetable for implementation of these measures. Failure to comply with the notice provision of this paragraph shall be grounds for the Cabinet and EPA to deny an extension of time for performance. If an event is anticipated to occur which may cause a delay in meeting the requirements of this Consent Decree, MSD shall notify the Cabinet's Director of the Enforcement Division and EPA's Chief of the Water Programs Enforcement Branch by telephone by the end of the next business day and in writing within ten (10) business days of learning of the possibility of a force majeure event, if the event has not already occurred. The Cabinet or EPA will respond in writing to any written notice received.

53. If MSD reasonably demonstrates to the Cabinet and EPA that the delay has been or will be caused by a force majeure event, the Cabinet and EPA will extend the time for performance for that element of the Consent Decree for a period not to exceed the delay resulting from such circumstances.

54. If a dispute over the occurrence or impact of a force majeure event cannot be resolved, MSD may invoke its rights under the dispute resolution provisions of this Consent Decree. In any such dispute, MSD shall have the burden of proof that a violation of this Consent Decree was caused by a force majeure event.

CONTINUING JURISDICTION, TERMINATION AND AMENDMENTS TO CONSENT DECREE

55. The Court shall retain jurisdiction to effectuate and enforce the terms and conditions and achieve the objectives of this Consent Decree and any Amended Consent Decree, and to resolve disputes arising hereunder as may be necessary or appropriate for the construction, modification, implementation, or execution of this Consent Decree or any Amended Consent Decree.

56. The Consent Decree is subject to termination on the date that MSD certifies that it

has (1) completed all SEPs, (2) paid all penalties and stipulated penalties due, (3) submitted and received approval of the Early Action Plan, the interim SSDP, the final SSDP, the interim LTCP, and the final LTCP, and (4) completed all work and implemented all the requirements in the Early Action Plan, the interim SSDP, the final SSDP, the interim LTCP , and the final LTCP, as required under this Consent Decree or any Amended Consent Decree. The Cabinet/EPA's determination that the Consent Decree or any Amended Consent Decree should be terminated shall be based on a consideration of whether all of the four (4) requirements listed above have occurred.

a. MSD may request that the Cabinet/EPA make a determination that this Consent Decree be terminated. Any such request shall be in writing and shall include a certification that the four (4) requirements listed above have been met. MSD shall serve a copy of any such request on the Cabinet through the office of its Secretary and EPA through the Director of the EPA Region 4 Water Division.

b. If the Cabinet/EPA agree that MSD has met all four of the requirements listed above, the Cabinet/EPA and MSD shall file a joint motion with the Court seeking an order terminating the Consent Decree or any amended Consent Decree.

c. If the Cabinet/EPA determine not to seek termination of the Consent Decree or Amended Consent Decree because they determine all of the four requirements listed above were not met, they shall so notify MSD in writing. The Cabinet/EPA's notice shall summarize the basis for its decision and describe the actions necessary to achieve final compliance. If MSD disagrees with any such determination by the Cabinet/EPA, it must invoke the dispute resolution procedures described in paragraphs 57 and 58 below before filing any motion with the Court regarding the disagreement.

DISPUTE RESOLUTION

57. Any dispute that arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the Parties. MSD shall invoke the informal dispute resolution procedures by notifying all other Parties in writing of the matter(s) in dispute and of MSD's intention to resolve the dispute under these paragraphs 57 and 58. The notice shall: (1) outline the nature and basis of the dispute; (2) include MSD's proposed resolution; (3) include all information or data relating to the dispute and the proposed resolution; and (4) request negotiations pursuant to this paragraph to informally resolve the dispute. The Parties shall then attempt to resolve the dispute informally for a period of thirty (30) days from the date of the notice with the goal of resolving the dispute in good faith, without further proceedings. The period for informal negotiations shall not exceed thirty (30) days from the date of the original notice of this dispute, unless the parties otherwise agree in writing to extend that period.

58. If informal negotiations are unsuccessful, the position of the Cabinet and EPA shall control unless, within thirty (30) days after the conclusion of the informal negotiation period, MSD seeks judicial review of the dispute by filing with the Court and serving on the Cabinet and EPA a motion requesting judicial resolution of the dispute. The motion shall contain a written statement of MSD'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. The Cabinet and EPA shall respond to MSD's motion within thirty (30) days. Either party may request an evidentiary hearing for good cause. The burden of proof is on MSD to demonstrate that its position on the matter in dispute meets the objectives of the Consent Decree, any Amended Consent Decree, the Act and KRS Chapter 224. If the dispute is not resolved

within the schedule identified for orderly implementation of the Consent Decree in MSD's motion, MSD may request additional time beyond compliance schedules or deadlines in this Consent Decree that are dependent upon the duration and/or resolution of the dispute.

SIGNATORIES

59. The signatories for the Cabinet and EPA certify that they are fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Parties to this document.

60. MSD's agent identified on the attached signature page is authorized to accept service of process by mail on MSD's behalf with respect to all matters arising under or related to this Consent Decree. MSD agrees to accept service of process in that manner and to waive the formal service and notice requirements set forth in Section 505 of the Act, 33 U.S.C. § 1365, and Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to service of a summons.

So ORDERED, this _____ day of _____, 2005.

_____
UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED Party enters into this Consent Decree, subject to the public notice requirements of 28 C.F.R. §50.7, and submits it to the Court for entry.

FOR THE COMMONWEALTH OF KENTUCKY,
ENVIRONMENTAL AND PUBLIC PROTECTION
CABINET

LAJUANA S. WILCHER
Secretary

DAVID A. SMART
Executive Director, Office of Legal Services
Fifth Floor, Capital Plaza Tower
Frankfort, Kentucky 40601
(502) 564-5576

THE UNDERSIGNED Party enters into this Consent Decree, subject to the public notice requirements of 28 C.F.R. §50.7, and submits it to the Court for entry.

FOR THE UNITED STATES OF AMERICA

KELLY A. JOHNSON
Acting Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

ELLEN M. MAHAN
Assistant Section Chief
Environment and Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
Post Office Box 7611
Washington, D.C. 20044
(202) 514-3646

DAVID L. HUBER
United States Attorney

WILLIAM F. CAMPBELL
Assistant United States Attorney
Western District of Kentucky
510 W. Broadway, 10th Floor
Louisville, Kentucky 40402
(502) 582-6773

THOMAS V. SKINNER
Acting Assistant Administrator
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

THE UNDERSIGNED Party enters into this Consent Decree, subject to the public notice requirements of 28 C.F.R. §50.7, and submits it to the Court for entry.

MARY KAY LYNCH
Regional Counsel
United States Environmental Protection Agency
Region 4
61 Forsyth Street
Atlanta, Georgia 30303
(404) 562-9556

WILLIAM B. BUSH, JR.
Assistant Regional Counsel
United States Environmental Protection Agency
Region 4
61 Forsyth Street
Atlanta, Georgia 30303
(404) 562-9538

THE UNDERSIGNED Party enters into this Consent Decree, subject to the public notice requirements of 28 C.F.R. §50.7, and submits it to the Court for entry.

FOR LOUISVILLE AND JEFFERSON COUNTY
METROPOLITAN SEWER DISTRICT

FRED DALLENBACH
Chairman of the Board

H. J. SCHARDEIN, JR.
Executive Director

LAURENCE J. ZIELKE
Special Counsel to the Board
Pedley Zielke Gordinier & Pence, PLLC
2000 Meidinger Tower
462 South Fourth Avenue
Louisville, Kentucky 40202
(502) 589-4600

Exhibit A
Supplemental Environmental Projects
Louisville and Jefferson County Metropolitan Sewer District

The following list contains proposed Supplemental Environmental Projects (SEPs) to be funded by the Louisville and Jefferson County Metropolitan Sewer District (MSD) as part of the consent decree associated with alleged unauthorized discharges from the Combined and Separate Sewer Systems. The SEPs will be funded by MSD and will cost $2,250,000.

Public Health Screenings - Western Louisville
Perform public health screenings for residents of neighborhoods adjacent to the industrialized areas of the western portion of Louisville Metro. The screenings will be coordinated through the Louisville Metro Board of Health and will be performed at no cost to the residents. Approximately 30,000 residents will be eligible for the screenings (see attached map). The parameters of the screening shall include the types of health concerns most commonly associated with living in close proximity to industrialized areas including certain forms of cancer. Proposed cost is $1,000,000. **This is to be performed no later than December 31, 2007. This date is subject to approval of the Health Department.**

Environmental Education and Public Outreach
Perform or provide funding for groups that will perform efforts to raise environmental awareness and stewardship for the local and regional community. Specific emphasis will be placed on efforts that promote watershed focused environmental activities. Proposed cost is $950,000. Specific activities will include:

- Riparian Buffers - Education, planning, and plant material for the development and implementation or restoration of riparian buffers along urbanized streams. Additionally, a demonstration project will be implemented that restores a small section of riparian buffer that will be a "no mow zone" to demonstrate the process and define expectations for prospective participants in the program. ($250,000) **To be performed no later than three (3) years from the date of this decree.**
- Sustainable Landscaping - Education, planning, and plant material for implementing sustainable landscaping for urban areas. Specifically, schools and in-fill low income housing will be targeted. ($100,000) **To be performed no later than two (2) years from the date of this decree.**
- Outdoor Classroom - Continued support of the ongoing Outdoor Classroom program with Jefferson County Public Schools. This program was started under the MFWTP Agreed Order and is closely connected to the previous item. ($100,000) **Monies are to be spent no later than five (5) years from the date of this decree.**
- PRIDE - Implementation and/or expansion of PRIDE into the local and regional area. ($200,000) **To be allotted to PRIDE no later than six (6) months from the date of this decree.**
- Environmental Education Certification - Continue support for this existing program. ($50,000) **Monies are to be spent no later than five (5) years from the date of this decree.**

EXHIBIT
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- Watershed Focused Environmental Groups - Provide funding to assist these groups with environmental education and public outreach activities. Providing water quality data interpretation for these groups and the general public. ($150,000) **Monies are to be spent no later than five (5) years from the date of this decree.**
- Bicycle and Pedway Connections along K&I Railroad Bridge and Metro Park System. ($100,000) **This is to be performed no later than eighteen (18) months from the date of this decree. This date is subject to approval of the Waterfront Commission.**

Property Reclamation and Community Connectivity
Convert the Lee's Lane Landfill into an area for public use. Develop a plan and perform the associated construction that will convert this property to active and/or passive recreational activities for the area residents. Evaluate the ability to connect this area with previous efforts through the community such as the Ohio River Walk, Ohio River Levee Trail, and other existing or proposed trails, paths, connections, and greenways in the community. Proposed cost is $300,000. **To be finished three (3) years from the date of this decree.**

Wintz/Lowe/LJCMSD/Pleadings/NewSEP-04-05

For your information:

CASE NUMBER: 3:05CV-236-S

DATE FILED: 4/25/2005

Document(s) filed but
NOT SCANNED:

Attachment To Exhibit A Too Large To Scan.

MAP