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

UNITED STATES OF AMERICA and COMMONWEALTH OF PENNSYLVANIA	)	
Plaintiffs,	)	Civil Action No.
v.	)	
CITY OF READING, PENNSYLVANIA	)	
Defendant.	)	

CONSENT DECREE

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UNITED STATES OF AMERICA and COMMONWEALTH OF PENNSYLVANIA Plaintiffs, v. CITY OF READING, PENNSYLVANIA Defendant.	)	Civil Action No.

CONSENT DECREE

WHEREAS, Plaintiff, the United States of America ("United States"), by the authority of the Attorney General of the United States and through its undersigned counsel, acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), has filed a complaint in this action seeking injunctive relief and civil penalties pursuant to Section 309 of the Clean Water Act, 33 U.S.C. § 1319, naming as defendant the City of Reading, Pennsylvania (hereinafter referred to as "City of Reading" or "Defendant");

WHEREAS, Plaintiff, the Commonwealth of Pennsylvania Department of Environmental Protection ("Commonwealth" or "PADEP") has filed a motion for intervention and complaint as a co-Plaintiff in the above captioned case pursuant to Rule 24 of the Federal Rules of Civil Procedure, and seeks injunctive relief and civil penalties for Defendant's alleged violations of the federal Clean Water Act, 33 U.S.C. §§ 1251-1387 and the Pennsylvania Clean Streams Law, Act of June 22, 1937, P.S. 1987 *as amended,* 35 P.S. §§ 691-1001 ("the Clean Streams Law");

WHEREAS, the Defendant operates a sanitary sewer collection system and wastewater treatment plant that serves the citizens of the City of Reading and surrounding municipalities;

WHEREAS, pursuant to Section 402 of the Act, 33 U.S.C. § 1342, EPA has authorized

the Commonwealth to administer the National Pollutant Discharge Elimination System ("NPDES") in Pennsylvania;

WHEREAS, the Commonwealth has issued an NPDES permit to the City of Reading authorizing the discharge of certain pollutants from the Defendant's wastewater treatment plant;

WHEREAS, the United States alleges that Defendant has violated and continues to violate Sections 301, 307 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311, 1317 and 1342 by discharging pollutants exceeding various effluent limitations and conditions set forth in Defendant's NPDES permit as well as violating the requirements of the federally approved pretreatment program;

WHEREAS, the Commonwealth alleges that Defendant has violated and continues to violate Sections 201 and 202 of the Clean Streams Law, 35 P.S. §§ 691.201 and 691.202 by discharging pollutants exceeding various effluent limitations and conditions set forth in Defendant's NPDES permit;

WHEREAS, Defendant neither admits nor denies the allegations set forth in the complaints;

WHEREAS, the Parties have negotiated in good faith and without an admission of liability have reached a settlement of the issues raised in the complaints;

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

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

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action and over the Parties to this action pursuant to Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b),

and 28 U.S.C. § 1331. The complaints state claims upon which relief may be granted against the Defendant for injunctive relief and civil penalties under Section 309 of the Clean Water Act, 33 U.S.C. § 1319, and Sections 601 and 605 of the Clean Streams Law, 35 P.S. §§ 691.601 & 691.605.. Venue is proper in this District pursuant to Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and 1395(a). Defendant waives any and all objections or defenses that it might have to the Court's jurisdiction to enter and enforce this Consent Decree or to venue in this District.

II. BINDING EFFECT

2. The provisions of this Consent Decree shall apply to and be binding on the United States and the Commonwealth of Pennsylvania and on the City of Reading and its agents, successors, and assigns.

3. Within thirty (30) days from the Date of Entry of this Consent Decree and until its termination, Defendant shall give written notice of and provide a copy of this Consent Decree to any person or entity to whom Defendant may transfer ownership or operation of any portion of its wastewater treatment facility ("Facility") and/or its wastewater collection system ("Collection System") in accordance with the Transfer of Permits provision of the Permit, currently set forth in Part B.III.B of the current Permit. In addition to any provisions for notification of transfer under the Permit, the Defendant shall notify EPA, PADEP and the United States Department of Justice in writing of any successor in interest at least twenty-one (21) days prior to any such transfer. No transfer of ownership or operation of the Facility and/or Collection System shall relieve Defendant of its obligations to ensure that the terms of this Consent Decree are implemented.

4. Defendant shall be solely responsible for ensuring that performance of the work contemplated under this Consent Decree is undertaken in accordance with the deadlines and requirements contained in this Consent Decree, and any exhibits hereto. Any action taken by any

contractor or consultant retained to implement Defendant's duties under this Consent Decree shall be considered an action of Defendant for purposes of determining compliance with this Consent Decree. In an action to enforce this Consent Decree, Defendant shall not assert as a defense against the United States, EPA or PADEP any act or failure to act by any of its officers, mayor, council members, managers, employees, agents, contractors, successors and assigns; however, this Consent Decree shall not limit Defendant's right to take all appropriate action against any person or entity that causes or contributes to Defendant's failure to perform.

III. PURPOSE

5. The express purpose of the Parties entering into this Consent Decree is for Defendant to take all measures necessary to comply with the Clean Water Act and the regulations promulgated thereunder, and the water pollution control laws of the Commonwealth of Pennsylvania and the regulations promulgated under such laws, to ensure compliance with Defendant's NPDES permit limitations and requirements, to ensure proper operation and maintenance of the sewage treatment plant and the collection system, and effective implementation of the pretreatment program.

IV. DEFINITIONS

6. Unless otherwise defined herein, the terms used in this Consent Decree will have the meaning given to those terms in the Clean Water Act, 33 U.S.C. §§ 1251 et seq., and the regulations promulgated thereunder or, if not defined in the Clean Water Act or its regulations, then as defined in Clean Streams Law, 35 P.S. §§ 691.1-691.1001 and the regulations promulgated thereunder. Any other words shall be given their ordinary meaning.

The following terms used in this Consent Decree, its appendices, and studies and plans submitted by Defendant and approved by EPA and PADEP are defined as follows:

(a) "Collection System Components" shall mean those components of the Sanitary Sewer

Collection System described below specifically including all force mains, gravity lines, pump stations and their respective related appurtenances owned, operated or maintained by the City of Reading.

(b) "Construction Completion" of a construction project under Paragraph 23 or the accomplishment of a rehabilitation project under Paragraph 28 shall mean the point in time the new, modified, or rehabilitated facilities are functioning.

(c) "Date of Entry" or "Entry Date" shall mean the date on which the Consent Decree is approved and entered by the United States District Court for the Eastern District of Pennsylvania.

(d) "Date of Lodging" shall mean the date on which the Consent Decree is lodged with the United States District Court for the Eastern District of Pennsylvania.

(e) "Day" or "days" shall mean a calendar day or calendar days. When the day a report or other deliverable is due under this Consent Decree falls on a Saturday, Sunday or any Federal, Commonwealth of Pennsylvania or City of Reading legal holiday, Defendant shall have until the next calendar day that is not one of the aforementioned days for submittal of such report or other deliverable.

(f) "Force main" shall mean any pipe that receives and conveys wastewater from the discharge side of a pump. A force main is intended to convey wastewater under pressure.

(g) "Gravity sewer line" shall mean a pipe that receives, contains and conveys wastewater not normally under pressure, but is intended to flow unassisted under the influence of gravity. Gravity sewers are not intended to flow completely filled under normal operating conditions.

(h) "Parties" shall mean the United States of America, the Commonwealth of Pennsylvania and Defendant.

(i) "Permit" shall mean the currently effective City of Reading NPDES permit No. PA 0026549 authorizing discharge of certain pollutants and setting forth requirements regarding the operation and maintenance of the Facility and Collection System as well as effective implementation of the Pretreatment Program. As of the date of Entry of this Decree, the current

Permit was issued April 10, 2001. This definition includes any subsequent modification or reissuance of the Permit in accordance with 40 C.F.R. Part 123.

(j) "Plant" or "Facility" shall mean the publicly owned treatment works (POTW) located at Route 10, Morgantown Road in Reading, PA owned and operated by the City of Reading. This Facility provides wastewater treatment service for the City of Reading and portions of the following municipalities: Alsace Township, Bern Township, Cumru Township, Kenhorst Borough, Laureldale Borough, Mohnton Borough, Mt. Penn Borough, Muhlenberg Township, Robeson Township, Shillington Borough, Spring Township, and Wyomissing Borough. This definition may be modified in accordance with written agreement of the parties consistent with Paragraph 18 of this Decree identifying additional or new locations for the Plant operations.

(k) "Pretreatment Program" shall mean the currently approved and effective pretreatment program of the City of Reading developed in accordance with 40 C.F.R. Part 403.

(l) "Pump Station" shall mean facilities comprised of pumps which lift wastewater to a higher hydraulic elevation, including all related electrical, mechanical, and structural systems necessary to the operation of that pump station.

(m) "Separate Sanitary Sewer Collection System" or "Collection System" shall mean the collection and transmission system (including all pipes, force mains, sanitary sewer lines, overflow structures, regulators, lift stations, pump stations, manholes, and appurtenances thereto) owned by Defendant and designed to convey only sewage, and not storm water, from residences, commercial buildings, industrial plants and institutions for treatment at Defendant's wastewater treatment plants, including portions of the system added after the Date of Entry of the Consent Decree.

(n) "Significant Industrial User" has the meaning as set forth at 40 C.F.R. § 403.4(t) and as used in Defendant's current approved pretreatment program. The regulatory definition at 403.4(t) is controlling in the case of any conflict.

(o) "United States" shall mean the United States of America, acting on behalf of EPA.

V. REMEDIAL MEASURES

A. General Duties

7. **Duty to Comply with Permit.** At all times Defendant shall comply with all terms, conditions and requirements of the currently effective NPDES permit including the effluent limitations. Discharges of pollutants from the Facility or Collection System are prohibited except as authorized by the currently effective NPDES permit and otherwise in compliance with the applicable technology-based and water quality based effluent limitations set forth in that permit in accordance with the requirements of Section 402 of the CWA.

8. **Operation and Maintenance of the Facility.** Defendant shall at all times maintain in good working order and properly operate and maintain the Facility, collection system, pump stations and laboratory (including appropriate lab controls and quality assurance procedures).

B. Interim Measures

9. **Interim Compliance - Environmental Management System.**

(a) Submission. Within six months of the Entry Date, the Defendant shall submit an Environmental Management System as further described below to the EPA and PADEP for review and approval in accordance with Paragraph 43 of this Decree. This submission shall consist of (1) a computer program setting forth the Maintenance Management system described in subparagraph 9.b; (2) a certification of that Defendant has developed and has implemented an interim Supervisory control and data acquisition (SCADA) system as described in subparagraph 9.c;. and (3) a Pretreatment data management system as described in subparagraph 9.d. below.

(b) Maintenance management system. Defendant shall develop and submit a plan for a maintenance management system (MMS) in the form of a computer program that will address among other issues the inspection, evaluation, repair, and/or replacement of existing electrical and mechanical equipment. This MMS computer program will provide for scheduling and tracking of preventive and predictive maintenance, as well as, scheduled and unscheduled

repairs of electrical and mechanical equipment. Upon approval by EPA and PADEP in accordance with Paragraph 43 or this Decree, Defendant shall immediately implement this system.

(c) Supervisory control and data acquisition (SCADA) system.

1. Interim SCADA System. Within six months of the Entry Date, Defendant shall develop and implement a supervisory control and data acquisition (SCADA) system consisting of an electronic monitoring system for the monitoring and control of the two largest pump stations, as well as the major pump stations throughout the treatment plant.. In addition, this system shall provide for monitoring of the flow metering from the remote pumping stations and the flow meters in the treatment plant. This system shall also include the solids handling processes of thickening and dewatering, as well as, the air pollution control devices that are currently permitted by PADEP. After the submission of the certification, and at the request of EPA and/or PADEP, Defendant shall demonstrate the system to EPA and/or PADEP. By that date, Defendant shall provide written certification to EPA and PADEP of the completion of this task in accordance with this Paragraph.

2. Upgrades to SCADA System. By no later than eighteen months after the approval by EPA and PADEP of the Treatment Alternatives Plan in accordance with Paragraph 18.b. Defendant shall update the Defendant's SCADA system to include any and all major necessary components of the existing system that are proposed to stay in their current configuration and use. By that date, Defendant shall submit a written summary of the updates for review and approval by EPA and PADEP in accordance with Paragraph 43 of this Decree. Upon approval by EPA and PADEP, Defendant shall immediately implement this system. As part of the capital improvements contemplated herein, during construction for new or modified treatment units considered to be major or key processes in the plant, the Defendant shall sequentially incorporate each unit into the Defendant's existing SCADA system for monitoring and control of the unit's operation.

(d) Pretreatment data management system. Defendant shall submit a computerized data management system addressing the approved pretreatment program. This system shall be developed in order to achieve and maintain full and complete compliance with the pretreatment requirements set forth in the CWA , the implementing regulations promulgated pursuant thereto; Defendant's approved pretreatment program including, but not limited to, the terms and conditions of Defendant's NPDES permit. By no later than three months from the date of approval by EPA and PADEP in accordance with Paragraph 43 of this Decree, Defendant shall implement this system.

10. **Interim Plant Influent Monitoring.** Within sixty (60) days from the Entry Date, Defendant shall commence and thereafter continue to monitor flow and obtain composite samples of the influents to the plant from the Sixth and Canal pump station and the headworks grit chamber. Defendant shall also take representative grab samples of these influents for pH. This data shall be used to calculate a flow-proportional raw influent for BOD_5, TSS, and NH_3-N. Additionally, Defendant shall continue to monitor the influent that includes the recycled flows from internal plant processes as long as the plant continues with its current configuration.

11. **Interim Trickling Filter Performance Measures.** For the purpose of improving and monitoring the trickling filter performance at the existing plant, upon Entry of the Decree, Defendant shall commence and thereafter continue to monitor trickling filter performance, improve flexibility to recirculate primary trickling filter effluent, meter said recirculated flow and make appropriate adjustments to recirculation of primary trickling filter effluent. Reading shall have the ability to increase and meter the recirculation rate to the trickling filters in accordance with the normal flow procedures and the current high flow procedures until and unless replaced by an approved Interim Wet Weather Operational Strategy in accordance with Paragraph 17 of this Decree.

(a) Performance Improvements. Defendant has made improvements to the trickling filter performance prior to the Entry Date, and shall continue to maintain those

improvements including: improvements to the flow distribution over the trickling filter media; replacement and/or repair of splash plates on the trickling filer distribution arms; and institution of a process of route inspection to ensure an equal flow distribution over the trickling filter media.

(b) Unit Efficiency Monitoring Recirculation Rate . Prior to the Entry Date, Defendant began monitoring trickling filter unit efficiency three times weekly via the use of a composited grab sample and analyzing these samples for BOD_5, TSS, and NH_3-N. Defendant shall continue to perform such efficiency monitoring of the trickling filter unit until Defendant commences daily monitoring under subsection d below.

(c) Recirculation Rate. Within sixty days of the Entry Date, Defendant shall experiment with increasing the recirculation rates to the primary trickling filters and monitoring the flow of the recirculation as compared to the total plant flow. Defendant shall have the ability to perform composite sampling from each individual trickling filter unit. Defendant shall monitor the effluent from the trickling filters for BOD_5, TSS, NH_3-N, alkalinity, and pH.

(d) Longer term Monitoring and Reporting. Within 60 days of the Entry Date, Defendant shall commence monitoring as described above in subsection c daily for a period of at least two months with reports submitted to EPA and PADEP by the 20th day of every month after the first complete month. If after two or more reporting periods the monitoring results indicate stable trickling filter performance, Defendant may submit a written request to EPA and PADEP for a reduced monitoring frequency. Upon written approval from EPA and PADEP under this paragraph, Defendant may reduce the monitoring frequency. However, in the event EPA and PADEP do not disapprove and/or do not respond in writing within sixty days of the submittal of the request, the Defendant may resume monitoring three times a week as described in subsection b above.

12. **Process Control Testing**. Within ninety days of the Entry date, Defendant shall submit to EPA and PADEP a plan and schedule to perform process control testing and unit

efficiency monitoring. Upon approval by EPA and PADEP in accordance with Paragraph 43 of this Decree, Defendants shall implement the plan.

13. **Dangerous Gas Detection**. Immediately upon the Entry Date, Defendant shall provide and utilize adequate portable explosive gas detection equipment that monitors for toxic or explosive gases, including carbon monoxide, hydrogen sulfide, sulfur dioxide, chlorine, and methane as required at any such location where such gas(es) are present. Within thirty (30) days of the Entry Date, the Defendant shall identify areas within the plant with the potential for the buildup of toxic or explosive gases, and identify the gases that potentially may collect in those areas. Based on that identification and within three months of the Entry Date, Defendant shall install fixed gas detection equipment that monitors for toxic or explosive gases including carbon monoxide, hydrogen sulfide, sulfur dioxide, chlorine, and methane appropriate for each specific location. Additionally, in areas where atmospheric oxygen levels may be reduced to harmful or fatal levels, Defendant shall also provide monitoring of the atmospheric oxygen level. This equipment shall also provide a local alarm system that notifies employees of danger from dangerous gas levels prior to entry into those areas, as well as inform facility operators when such explosive or toxic gases or low oxygen levels are present.

14. **Certified Plant Operators**. Prior to the Lodging of the Decree, Defendant has advertised internally and externally their intention to hire qualified, certified treatment plant operators who shall be supervisors in charge and responsible for the operation of the facility during their shift in order to ultimately staff the facility 24 hours per day, seven days per week, with certified personnel. Within twelve (12) months from the Entry Date, the Defendant shall hire a sufficient number of supervisors with appropriate qualifications to staff the Facility 24 hours per day, seven days per week. In the event the selected individual does not currently possess the appropriate Pennsylvania State certification to operate Defendant's waste water treatment Plant, that individual shall be required to obtain certification within 12 months of the date of hire.

15. **Operations and Maintenance Plan**. Within six months of the Date of Entry, Defendant shall develop and submit to EPA and PADEP a copy of a written treatment system operations and maintenance plan for achieving and/or maintaining compliance with all applicable permits, laws, and regulations. This plan shall include an identification of existing key processes and assessment of the vulnerability of each such process from man made (both internal and external) threats and from natural threats. A process shall be considered key if its failure or malfunction may endanger human or aquatic health. This plan shall detail a method for monitoring each process, such as by inspection and/or SCADA monitoring to inform personnel of a malfunction or failure within each such process. Preventive and emergency maintenance procedures shall be detailed for all identified key processes including the spare parts inventory required and vendor information for obtaining critical parts. As part of the identification of each key process, Defendant shall assess the vulnerability of said processes. Defendant shall also assess the need for provision of commonly required spare parts, and the lead time generally needed to obtain such parts. Additionally, within six months of the Entry Date, Defendant shall create and maintain an adequate spare parts inventory as determined for key processes and/or have contracts in place for timely repairs by reputable contractors.

16. **Staffing Plan.** Immediately upon the Entry Date, Defendant shall submit a staffing plan to Plaintiffs that will provide for supervision to be continuously present at the Treatment Facility. Said plan shall further describe the communication processes between shift supervisors, as well as within the management structure of the facility to assure efficient and effective management of the facilities operations and maintenance.

17. **Interim Wet Weather Operational Strategy.** Within twelve months of the Entry Date, Defendant shall develop and implement an interim wet weather operational strategy that includes both the treatment plant and the collection system. Defendant shall submit this strategy to EPA and PADEP for review and comment. Any comments provided to Defendant on this strategy shall be adequately addressed in the submission of the Wet Weather Operational

Plan described in Paragraph 29 of this Decree. This strategy shall provide for maximizing the flow to the treatment plant and through the treatment plant while minimizing the washout of solids throughout the treatment process. This strategy shall include process monitoring during periods of wet weather flow. The data compiled during this operation shall be used for an annual evaluation and modification of the wet weather strategy, if required, as well as in the preparation of the Wet Weather Operation Plan required under Paragraph 29 of this Decree..

C. Long Term Evaluation and Construction Schedule

18. **Treatment Plant and Alternatives Submission.** By no later than one year from the Entry Date, Defendant shall develop and submit to Plaintiffs for review and approval in accordance with Paragraph 43 of this Decree the following two reports: "Existing Plant Process Evaluation Report"and "Evaluation of Treatment Alternatives Report." These two submissions are intended to provide an evaluation of: (1) the current treatment plant; and (2) technically sound and economically feasible treatment alternatives to meet projected capacity based on influent wastewater characteristics, waste load projections, current permit limits, and future regulatory requirements. These reports may be combined with any required update to the Defendant's Act 537 Plan. The purpose of the Existing Plant Process Evaluation is to establish the basis for any future design alternatives and to identify any operational modifications that may enhance the overall plant performance without major capital expenditures. Evaluations shall discuss in detail the need for capital expenditures, and further provide preliminary estimates of such capital expenditures.

(a) Existing Plant Process Evaluation Report. By no later than one year from the Entry Date, the Defendant shall submit to EPA and the PADEP a report entitled "Existing Plant Process Evaluation" that will assess the treatment capacity of the existing facility and identify the enhancements required to the existing facility in order to meet current and anticipated regulatory requirements. This evaluation shall include:

1. Characterization of the existing influent wastewater,

2. Waste load projections taking into account the impacts of the industrial pretreatment program and satellite communities and treatment capacity;

3. Process modeling of the existing liquid process treatment train; and

4. Evaluation of the existing process capabilities to meet existing and future load and nutrient limits.

(b) Evaluation of Treatment Alternatives Report. By no later than one year from the Entry Date, Defendant shall also perform an evaluation of treatment alternatives including the construction of new facilities and/or the modification of the existing facility, and submit a report describing that evaluation and Defendant's proposed solution. That report shall include an evaluation of the financial impacts of modifying the existing treatment facility rather than constructing new facilities. The "Evaluation of Treatment Alternatives Report" shall include the following elements:

1. Sizing Evaluation of Existing Treatment Facilities - Defendant shall evaluate the sizing of the existing liquid process and solids handling facilities. If Defendant finds these adequately sized, Defendant shall then optimize the facilities as described in subparagraph *2* below. If Defendant does not find the units adequately sized, Defendant shall perform further evaluation as described in sub-paragraph *3* below.

2. Optimize Existing Treatment Facilities

a) Liquid Process Facilities - The Defendant shall evaluate the existing liquid process facilities, describe how to optimize current facilities and develop cost estimates addressing the rehabilitation of existing liquid treatment process units required to meet regulatory requirements. As part of that evaluation, Defendant shall perform a hydraulic evaluation to determine the hydraulic limitations of the existing facility.

b) Solids Handling Facilities - The Defendant shall evaluate the existing solids handling facilities to determine the treatment efficiency and capacity of the solids handling equipment. This report will include evaluation of capacity limitations and cost

estimates to increase capacity to meet future needs based on current waste load projections. This report will also review and evaluate Defendant's solids handling operational procedures and include recommendations for optimizing the operations of the existing equipment.

3. Evaluation of New Treatment Facilities -The Defendant will complete a review, including preliminary cost estimates, of alternative treatment systems that will effectively meet the needs of the Defendant based on current loading and regulatory requirements, future loading projections, and anticipated regulatory requirements. Defendant shall identify in this evaluation its preference(s) among the alternatives discussed.

4. Canal Street Pump Station & Headworks Oxidizer Evaluation - The Defendant shall also include in this report an evaluation of the need for the addition of a strong oxidizer at the Canal Street pumping station and/or the headworks facility of the wastewater treatment plant.

19. **Capital Improvements Plan**. By no later than October 15, 2005, the Defendant shall develop and submit a capital improvements plan, as provided below in subparagraphs (a) to (c), to Plaintiffs for review and approval in accordance with Paragraph 43 of this Decree. This plan shall include the capital cost and budgetary impact for implementation of the recommended alternative submitted by Defendant and approved by Plaintiffs as described in Paragraph 18 (b) above. The scope of the Capital Improvements Plan will be dependent upon the approved conclusions of the "Evaluation of Treatment Alternatives Report"described in Paragraph 18 (b) above.

(a) If upgrade of the existing facility is the approved alternative, a full facility audit of the plant infrastructure will be completed including plant inventory of structural, electrical and mechanical components, and their life expectancy. This facility audit will be submitted within six (6) months of the written approval of the treatment alternative.

(b) If utilization of a combination of new and existing equipment is the approved alternative, an audit of the equipment and facilities to be reused will be performed. This partial

facility audit will be submitted within six (6) months of the written approval of the treatment alternative.

(c) If a new facility is the approved alternative, a report will be prepared summarizing cost effective upgrades that may be required to improve performance of the existing facility until start-up of the new plant. The report will be submitted within three (3) months of the written approval of this treatment alternative.

20. **Request for Proposals**. By no later than nine (9) months from the Plaintiffs' approval of the Evaluation of Treatment Alternatives Report submitted pursuant to Paragraph 18 of this Decree, the Defendant shall seek proposals through its request for proposal (RFP) process pursuant to the Charter and City Ordinances. Upon the completion of all required policies and procedures set forth therein, the Defendant shall designate a design engineer to commence with the design phase of the project.

21. **Permit Applications and Design.** By no later than October 15, 2006 the Defendant shall complete and submit to PADEP the NPDES (Part I) and the Water Quality Management (Part II) Permit applications, as necessary, to implement the approved treatment alternative described in Paragraph 18 of this Decree above. The applications shall include among other items all the design, architectural and engineering plans and information necessary to secure permits, receive bids and construct the Treatment Alternative submitted by Defendant and approved by Plaintiffs as described in Paragraph 18 (b) above. Defendant shall also obtain other approvals and/or permits as necessary including but not limited to: NPDES permits; permits for Construction and/or Earthmoving permits pursuant to 25 PA Code Chapter 102; and, if necessary, a permit for water obstruction/wetlands pursuant to 25 PA Code Chapter 105 and/or a permit issued under Section 404 of the Clean Water Act.

22. **Permitting.** PADEP shall use best efforts to provide a timely review of the submitted permit applications required for the permit issuance with the intention that both Phase I and Phase II permits may be issued by February 28, 2007.

23. **Construction Completion**

(a) For new construction of one or more treatment plants at a different location the Defendant shall complete construction by no later than January 15, 2010.

(b) For upgrade and/or expansion at the existing location, Defendant shall complete construction by no later than September 15, 2012.

24. **Start-Up & Operation**. The Defendant shall complete start-up and operation of the plant improvements within six months of construction completion.

D. Collection System

25. **GIS Sewer Mapping System.**

(a) Purpose of GIS System. The development and implementation of a Geographic Information System (GIS) mapping of the sanitary and storm water sewer collection systems shall enable Defendant to better track, respond to and investigate problems arising in the collection systems and affecting the operation of the Plant. The GIS will assist the Defendant in prioritizing sanitary sewer repairs; prioritizing sanitary sewer maintenance; identifying the sanitary sewer overflow locations; identifying locations of elevated pollutant concentrations in the collection system; and, identifying the causes and sources of industrial site discharges causing a problem in the collection system. This system shall enable Defendant to respond in a more timely fashion to any wet weather problems and/or sanitary sewer system overflow events, and to facilitate the investigation of the cause(s) including but not limited to the inflow and infiltration of storm water into the sanitary collection system. Mapping of the storm water collection system will enable Defendant to more quickly investigate and determine the cause(s) of illegal discharges into storm water catch basins and collection lines and discharges of such pollutants from storm water outfalls. By having both the storm water and sanitary sewer collection system on the same GIS information management system, Defendant will be better able to prioritize collection system repairs based on impact to critical collection system components and the potential to cause a water quality impact (e.g., a discharge of untreated

sewage).

(b) GIS mapping of the Sanitary Sewer Collection System. By no later than two years from the Entry Date, the Defendant shall develop and implement a functional Geographic Information System (GIS) to map the sanitary sewer collection system. By that date, Defendant shall provide written certification of the completion of this task in accordance with this Paragraph to EPA and PADEP. The GIS shall be able to display all collection system components, link attribute data and schematic diagrams for collection system components, indicate areas within the collection system that have been inspected and rehabilitated, and display locations for flow meters, points of connection and industrial users. While Defendant has discretion on how to complete this task within the specified time frame, this GIS system shall map the complete sanitary sewer collection system. Defendant shall identify all force mains, noting their location and flow from the City-owned pump stations until those mains enter a gravity portion of the system. For the mapping of the sanitary sewer collection system, Defendant shall use Global Positioning System (GPS) units to verify field locations of appurtenances of the sanitary sewer collection system including but not limited to manholes, pump stations, and air release valves. Defendant shall use the combination of the GIS system with field verification by GPS units to develop an inventory of the sanitary collection system components. From the date of completion of the GIS mapping of the Reading sanitary collections system, Defendant shall update this inventory on an annual calendar basis to include information regarding new installations, repairs, inspection sites, and rehabilitation sites. Defendant shall also include a separate database or data layer in or linked to the GIS system to track and monitor complaints regarding overflows, ongoing and repeated problem areas in the sanitary sewer collection system including but not limited to areas with grease blockages and root intrusions in the system.

(c) GIS mapping of the Storm Water Collection System. By no later than three years from the Entry Date, the Defendant shall complete GIS mapping of Defendant's storm

water collection system using and further expanding the GIS system developed under Subparagraph 25 (b) of this Decree. By that date, Defendant shall provide written certification of the completion of this task in accordance with this Paragraph to EPA and PADEP. For the mapping of the storm water sewer collection system, Defendant shall use GPS units to field verify the locations of catch basins, junction boxes and outfalls. By no later than three years from the Entry Date, Defendant shall use the combination of the GIS system with field verification by GPS units to develop an inventory of the storm water collection system components. From the date of completion of the GIS mapping of the Reading storm sewer collections Defendant shall update this inventory on an annual calendar basis to include information regarding new installations, repairs, inspection sites, and rehabilitation sites. Defendant shall also include a separate database or data layer in or linked to the GIS system to track and monitor complaints regarding overflows, ongoing and repeated problem areas in the storm water collection system including but not limited to root intrusions and or other blockages in the system.

26. **Sanitary Sewer System Evaluation Program.** By no later than January 15, 2008 and based on the tasks as further described below in this Paragraph, Defendant shall develop a program of continuing infiltration/inflow (I/I) analysis and sewer system evaluation of its collection system to identify the priority areas of the sanitary sewer system that require repair, replacement and/or other remediation. By that date and as part of the submission required under Paragraph 27 of this Decree, Defendant shall submit a report to EPA and PADEP describing the ongoing program including the identification of priority areas.

(a) I/I Analysis by Subsystem. Defendant shall perform the I/I analysis in accordance with the requirements in the Handbook: Sewer System Infrastructure Analysis and Rehabilitation, EPA/625/6-91/030, October 1991 (unless that EPA Handbook is replaced or superceded by other Agency guidance or regulations, in which case the replacement or superceding guidance or regulations shall govern.) This analysis shall include the use of the

document's excessive/non-excessive I/I determination criteria and/or other relevant industry and engineering practice to determine whether further field investigations to locate specific sources of I/I within a subsystem are required. This Analysis shall identify among other things, which subsystems require a sewer system evaluation survey as described in Paragraph 26.b. below,

1. Commencing no later than twelve (12) months from the Entry Date, and as a part of the I/I analysis, the Defendant shall conduct rainfall and flow monitoring to determine baseline I/I rates in each subsystem in accordance with the EPA Handbook.

2. Commencing no later than twenty-four (24) months from the Entry date, and using the rainfall and flow monitoring results from subparagraph 26 (a)1 above, the Defendant shall conduct hydraulic modeling of all sewers 18" diameter and larger and identify areas of limited sewer capacity.

(b) Sewer System Evaluation Survey. Commencing no later than thirty (30) months from the Entry Date, Defendant shall conduct a Sewer System Evaluation Survey ("SSES") in accordance with Handbook: Sewer System Infrastructure Analysis and Rehabilitation, EPA/625/6-91/030, October 1991 (unless that EPA Handbook is replaced or superceded by other Agency guidance or regulations, in which case the replacement or superceding guidance or regulations shall govern.) This SSES shall address, among other items, those subsystems identified in Paragraph 26 (a) of this Decree. Where appropriate, the Defendant shall use additional means to identify sources of I/I including flow isolation, testing, manhole inspections, and closed circuit television inspections as necessary in accordance with sound industry or engineering practice. The results of the SSES shall identify priority areas of the sanitary sewer system that require repair, replacement, upgrade and/or other remediation.

27. **Rehabilitation Plan.** By no later than January 15, 2008 and consistent with the report required for submission by Defendant in Paragraph 26 of this Decree, the Defendant shall

develop and submit to Plaintiffs a "Rehabilitation Plan" to adequately address those specific priority areas of the sanitary sewer system that require repair, replacement, upgrade and/or other remediation. Defendant shall submit the "Rehabilitation Plan" to EPA and the PADEP for review and approval in accordance with Paragraph 43 of this Decree. Upon approval, this Plan shall serve as the basis for Defendant's implementation of the sanitary sewer system collection system rehabilitation required by Paragraph 28 of this Decree.

28. **Rehabilitation of Priority Areas of Collection System.** By no later than January 15, 2012 and in accordance with the approved "Rehabilitation Plan"described in Paragraph 27 of this Decree, the Defendant shall complete the recommendations set forth in that Plan for repair, replacement, upgrade and/or other remediation of the priority areas.

29. **Wet Weather Operation Plan.** By no later than eighteen (18) months from the Entry Date, the Defendant shall develop and submit a "Wet Weather Operation Plan" (WWOP) and a schedule for implementation to EPA and PADEP for review and approval in accordance with Paragraph 43 of this Decree. The WWOP shall set forth how to operate the treatment plant and the collection system during wet weather events to maximize treatment and prevent sanitary sewer overflows (SSOs) or bypasses. This Plan shall build on and update the development of the Interim Wet Weather Operational Strategy described above at Paragraph 17 of this Decree. The WWOP shall adequately address any comments from EPA and PADEP on that wet weather operational strategy. The WWOP shall also provide for and include a log of any SSO events which identify the nature of the storm events, the locations of the SSO discharges, and the duration and estimated volume of the SSO discharges. Upon approval from EPA & PADEP, the Defendant shall implement the WWOP.

E. Pretreatment Program

30. Defendant shall not accept non-domestic wastewater from industrial users that causes pass through or interference at the Facility and that does not comply with local limits.

31. The Defendant shall implement its pretreatment enforcement program for all

permitted significant industrial users (SIUs) in accordance with the current EPA approved Enforcement Response Plan.

32. For any SIU that was in significant noncompliance (SNC) as defined in the approved Pretreatment Program at the end of 2003 and which has not returned to compliance prior to the end of the 3rd quarter 2004, the Defendant shall escalate penalties for each violation by that SIU leading to repeat SNC. For any SIU that continues in repeat SNC through the end of the 4th quarter 2004, the Defendant shall place the SIU on an expeditious enforceable compliance schedule, assess and collect penalties consistent with the approved Enforcement Response Plan (ERP), and submit a copy of this schedule and action to EPA on a quarterly basis as provided in Paragraph 39 below.

33. Defendant shall implement its currently effective ERP to address IU noncompliance. After the Defendant assesses any penalties and/or a compliance schedule, if such SIU remains in SNC, or the SIU does not agree to a reasonable compliance schedule and/or penalty consistent with the ERP, then the Defendant shall escalate its response in accordance with the current ERP, including the issuance of an administrative order by the Defendant, the revocation of the local permit and/or referring the SIU to EPA for additional federal enforcement.

34. The Defendant shall require that all contributing member municipalities adopt local limits by ordinance within one (1) year of EPA acceptance of revised or new local limits. If any such municipality has not adopted all current local limits within one (1) year from the Date of Entry, then the Defendant shall take further actions to compel the contributing municipality to formally adopt the local limits by ordinance. These further actions may include equitable enforcement of the intermunicipal agreement requesting injunctive relief, damages, penalties, attorneys' fees, and other costs that may be incurred by the Defendant in compelling compliance and/or any other penalties allowable under state or federal law.

35. The Defendant shall evaluate and report to EPA and PADEP within two years of the Entry Date, those nonresidential connections as reported by contributing municipalities. The

Defendant shall investigate and reevaluate those municipalities that have not as of the Entry Date identified any IUs, and require such municipality to certify that it has conducted an investigation and determined that it does not have any IUs contributing any non-domestic discharge into the Defendant's sanitary sewer system that would require such municipality to adopt the local limits. At a minimum the Defendant shall require certifications to be signed by the township or borough manager, mayor, chairman, engineer, or solicitor (or equivalent) of each such municipality to certify its status as a residential-only township or borough.

36. For any SIU that is a frequent violator of pretreatment standards as defined in 40 C.F.R. Part 403 (including approved local limits), the Defendant shall require more frequent monitoring in accordance with the IU permit, pretreatment regulations and Defendant's approved pretreatment program. If necessary, the Defendant shall amend or reissue an existing IU permit to increase the frequency of self-monitoring for the pollutants of concern. Such sampling shall commence within thirty (30) days of the Date of Entry. For any SIU that violates the local limit for mercury, the Defendant shall require resampling and, if mercury is detected, require more frequent monitoring of mercury for that SIU.

37. **Pretreatment Computerized Management System**. To improve tracking of document submission violations, required resampling, and compliance milestones and aid in assessment of SNC, the Defendant shall implement a computerized data management system for the pretreatment program. This system shall be on-line and fully functional for these purposes within three (3) months of the implementation of the approved pretreatment management system as described in Paragraph 9 (c) of this Decree

38. By no later than six months from the Entry Date, the Defendant shall complete its reevaluation of local limits as specified in the current NPDES permit and submit that reevaluation to EPA for review.

39. The Defendant shall submit quarterly reports to EPA indicating which SIUs are in SNC. This report shall also include enforcement actions taken, penalties issued, payment

status of prior penalties, proposed enforcement actions, and copies of all enforcement actions beyond a notice of violation and associated penalty taken during the quarter.

F. Funding

40. **Funding**. Defendant acknowledges that in the calendar year 2002 as part of its budgetary process pursuant to the Home Rule Charter for Reading, the City of Reading had adopted a budget for the calendar year 2003 that included a transfer from the sewer revenue fund to the general fund in the sum of $6,790,505.00. Whereas Defendant, as a show of good faith during settlement discussions of this matter in calendar year 2003, during its budget preparation for the calendar year 2004, voluntarily reduced the transfer by the sum of $790,505 to $6,000,000 for budget year 2004. The City of Reading shall continue to reduce said transfers from the sewer revenue fund by the sum of not less than $750,000.00 for each budget it adopts for each year after the Entry Date of this Decree until such time as the amount transferred reaches the sum of $3,000,000.00, which amount shall constitute the maximum amount that the City of Reading may transfer from the sewer revenue account to the general fund. Defendant agrees that it will adopt budgets in each calendar year that are consistent with this provision. The City of Reading further agrees that among sources of funding for the City sewer revenue fund the City may use, the source of that funding shall include at a minimum: (1) the current user fees (and any necessary surcharges) charged to and collected by the City from its users, including residential, commercial, and industrial users and municipal users pursuant to the existing intermunicipal agreements; and (2) any increases in rates which may go into effect during the term of this Decree. Other than the transfers from the sewer revenue fund set forth above, the City of Reading agrees that the sewer revenue fund including all revenues generated and paid by the users of its sewage and collection system will be dedicated to the operation and maintenance of that sewage treatment and collection system, and will not be diverted to fund other portions of the City's municipal budget obligations, services or government. This provision shall not prohibit the reimbursement of all appropriate amounts incurred by the general City fund for

expenses attributable in part to the operation and maintenance of the sewer system.

VI. REPORTING REQUIREMENTS

41. Beginning with the first full calendar quarter after the Date of Entry of the Consent Decree, Defendant shall submit to EPA and PADEP within thirty (30) days after the end of each calendar quarter until termination of this Consent Decree a Calendar Quarterly Progress Report ("Calendar Quarterly Report") covering the applicable subject(s). This Calendar Quarterly Report shall contain, the following:

(a) Progress reports on the implementation of the requirements of Section V (Remedial Measures) as described in Paragraphs 7 through 40.

(b) A description of any problems anticipated with respect to meeting the requirements of Section V (Remedial Measures) of this Consent Decree; and

(c) Any such additional matters as Defendant believes should be brought to the attention of EPA and PADEP.

(d) The Calendar Quarterly Report shall be certified, consistent with the requirements of 40 C.F.R. 122.22(a)(3), by the person responsible for compliance or by a person responsible for overseeing implementation of this Consent Decree, which shall state:

> "I certify under penalty of law that this information was 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 directions and my inquiry of the person(s) who manage the system, or the person(s) directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete."

VII. RIGHT OF ENTRY

42. (a) EPA and PADEP, and their authorized representatives and contractors, shall

each have authority at all reasonable times, upon the presentation of credentials, to enter the property of Defendant to:

1. Monitor the progress of activities required by this Consent Decree;
2. Verify any data or information submitted to the United States and/or Pennsylvania;
3. Obtain samples;
4. Observe performance tests;
5. Inspect and evaluate any portion of the Collection System; and
6. Review and copy any record required to be kept under the terms and conditions of this Consent Decree.

(b) Upon request, Defendant shall provide EPA or PADEP or their authorized representatives splits of any samples collected by Defendant or its consultants and contractors. Upon request, EPA or PADEP shall provide Defendant splits of any samples collected by EPA or PADEP.

(c) These inspection rights are in addition to, and in no way limit or otherwise affect, EPA's and PADEP's statutory authorities to conduct inspections, to require monitoring and to obtain information from Defendant as authorized by law.

VIII. REVIEW AND APPROVAL PROCEDURES

43. (a) After receipt and review of any plan, program or other document which is required to be submitted for approval pursuant to this Consent Decree, EPA and PADEP may (1) approve, in whole or in part, the submission; (2) approve the complete submission or portions of the submission upon specified conditions; (3) disapprove the submission, in whole or in part, and direct that Defendant modify the submission as described further in Paragraph 44 below; or (4) any combination of the above.

(b) In the event of approval of the complete submission, Defendant shall proceed

to take any actions required by the plan, program or other approved document, as approved by EPA and PADEP and as further described below in Paragraph 46.

(c) In the event of approval of portions of the submission or approval upon specified conditions, Defendant shall proceed to take the actions identified in the non-deficient portion of the plan, program, other document, or portion thereof, in accordance with any applicable conditions specified by EPA and PADEP, subject only to Defendant's right to invoke the Dispute Resolution procedures set forth in Section XIII with respect to the conditions imposed. Implementation of any non-deficient portion of the submission shall not eliminate the potential of Defendant to incur stipulated penalties pursuant to Section XI.

44. Upon receipt of a notice of disapproval of all or part of a submission from EPA and PADEP, Defendant shall, within thirty (30) days (or such greater time frame as specified by EPA and PADEP in writing), correct the deficiencies as directed by EPA's and PADEP's written comments and resubmit the plan, program or other document for approval. Any stipulated penalties applicable to the submission, as provided in Section XI, shall accrue during the 30-day period (or any such more extended time as is provided herein), but shall not be payable unless the resubmission is disapproved due to a material defect as provided in Paragraph 45.

45. In the event that a resubmitted plan, program or other document, or portion thereof, is disapproved by EPA and PADEP, EPA and PADEP may again require the Defendant to correct the deficiencies in accord with Paragraph 44, or EPA and PADEP may modify the submission. Unless Defendant invokes the Dispute Resolution Procedures set forth in Section XIII, and the disapproval by EPA and PADEP of the Defendant's resubmission is overturned pursuant to that Section, Defendant shall be deemed to have failed to submit such program, plan or other document timely and adequately and stipulated penalties shall accrue for such violation from the date on which the initial submission was originally due.

46. All programs, plans or other documents required to be submitted pursuant to this Consent Decree shall become incorporated into and enforceable under this Consent Decree, upon

EPA and PADEP approval. In the event EPA and PADEP approve a portion of any program, plan or other document pursuant to this Section, then the approved portion shall become incorporated into and enforceable under this Consent Decree.

IX. CIVIL PENALTY

47. Defendant shall pay a total civil penalty in the amount of $239,000 to the United States and the Commonwealth of Pennsylvania for violations as alleged by the United States and the Commonwealth of Pennsylvania in the Complaint. Defendant shall pay $59,750 (or twenty-five percent of the civil penalty) to the United States within thirty (30) days of the Date of Entry of this Consent Decree and an additional $59,750 (or 25%) within 365 days of the Entry Date in accordance with the procedures described in Paragraph 49, below. Defendant shall pay $59,750 (25% of the civil penalty) to the Commonwealth of Pennsylvania Clean Water Fund within thirty (30) days of the Date of Entry and an additional $59,750 (or 25%) within 365 days of the Entry Date in accordance with the procedures described in Paragraph 50, below.

48. The United States and the Commonwealth of Pennsylvania shall be deemed judgment creditors for purposes of collection of this penalty.

49. Payment of the civil penalty to the United States shall be made by Electronic Funds Transfer ("EFT") to the U.S. Department of Justice ("DOJ") lockbox bank, referencing USAO NO 2003V00437. Payment shall be made in accordance with instructions provided by the United States to Defendant following execution of this Consent Decree. Any EFT received at the DOJ lockbox bank after 11:00 A.M. Eastern Time will be credited on the next business day. Notice of the EFT shall simultaneously be mailed to the following:

Docket Clerk (3RC00)
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Christopher A. Day (3RC20)
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029; and

Margaret L. Hutchinson
Assistant United States Attorney
Civil Division Eastern District of Pennsylvania
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106-4476
Re: USAO No. 2003V00437

The transmittal letter forwarding such notice shall include the caption, civil action number and judicial district of this action.

50. Payments to the Commonwealth of Pennsylvania shall be made by tendering to the Pennsylvania Department of Environmental Protection checks made payable to: "Commonwealth of Pennsylvania Clean Water Fund." and sent to Pennsylvania Department of Environmental Protection, 909 Elmerton Ave., Harrisburg, PA 17110-8200, Attn: Lee Yohn, Compliance Specialist.

51. If Defendant fails to tender all or any portion of the civil penalty payment owed to the United States within thirty (30) days of the Date of Entry of this Consent Decree interest on the unpaid amount shall accrue in accordance with the provisions of 28 U.S.C. § 1961 and be paid from the date said payment is due until all amounts owed are paid.

X. SUPPLEMENTAL ENVIRONMENTAL PROJECTS: Angelica Stream Restoration

52. Defendant shall implement Supplemental Environmental Projects ("SEP") in accordance with all provisions set forth in this Consent Decree. The SEPs will consist of the projects as further described in Subparagraphs 52 (a) through 52 (i) below to restore Angelica Creek from Angelica Park to the Schuylkill River, to remove excess sediment, and to create several riparian buffers, functional wetlands and flood plain meadows as well as provide for maintenance. The SEP restoration projects shall be completed within two years of the Entry Date with an additional five years for monitoring and maintenance.

(a) **Background**: Prior to 2001, Angelica Creek meandered through Angelica Park located in the City of Reading, and emptied into Angelica Lake where it was contained by a dam at Route 10. The Lake and Creek were used frequently by the community for recreational purposes for fishing and boating. Both the Lake and Creek are designated as trout stocking waters and supported a diverse aquatic community including trout. In 2001 the Dam was breached and the lake was emptied leaving behind a great deal of sediment and impaired aquatic life conditions. Since that time, the stream has begun forming a natural meandering channel through the lake bed sediments and continues on beneath the newly built bridge at Route 10. The stream through that is heavily degraded and down cutting the lake bed sediment layer due to a lack of vegetation and bank stabilization. A large amount of sediment is being deposited into the stream and contributing to high sediment loads entering the Schuylkill River. The City of Reading has decided not to rebuild the dam.

(b) **Goals of SEPs:** The goals of these SEPs are to restore the recreational and aquatic life uses of Angelica Creek from Angelica Park to the Schuylkill River by removing excess lake bed sediment, restoring the Creek, creating two wetlands and a flowering meadow flood plain. These SEPs are intended to restore the recreational and aquatic life uses of Angelica Creek, they will also substantially reduce the sediment load to the Schuylkill River. These SEPs are consistent with and will further achieving the goals of the Clean Water Act. In addition to the SEPs described below, the City of Reading is also planning to make a number of enhancements to the park including a pedestrian bridge, park benches, and signage to provide information about the Creek, the SEPs and the surrounding ecosystems.

(c) **Removal of excess sediment and soil stabilization SEP:** Within fifteen (15) months of the Entry Date, the Defendant shall remove excess sediments from the Areas marked on the Map attached to this Decree as Exhibit A and stabilize existing soils as necessary to complete the other projects described below. As part of the SEP final plan submission described in Subsection 52 (i) below, Defendant shall identify among other items information on the depth

of sediment and area for this project sufficient to calculate the cubic yards of sediment to be removed from the Area. Defendant estimates expenditure for this SEP at $300,000.

(d) **Angelica Creek Restoration SEP:** Within two years of the Entry Date, Defendant shall complete approximately 1600 linear feet (LF) of stream restoration from the pedestrian bridge in Angelica Park to the Route 10 bridge underpass as indicated on the Exhibit A to the Decree. Defendant shall also restore an additional 400 LF of degraded stream restoration below the Route 10 Bridge to the Schuylkill River. The Stream banks will be graded, stabilized with rock protection and multiple bio-engineering techniques such as erosion control matting and appropriate stream bank plantings. In order to control the flow of stream, multiple structures including constructed riffles, rock deflectors and root wads will be placed along the length of the stream. These structures will contribute to the stabilization of the stream channel reducing the possibility of sediment erosion as well as increase aquatic habitat. As part of the SEP final plan submission described in Subsection 52 (i) below, Defendant shall identify among other items the specific plant species to be used, the density of plantings and where the plants will be used. Defendant shall not spend less than $93,000 for this SEP.

(e) **Angelica Creek Riparian Buffer SEP:** Within two years of the Entry Date, Defendant shall complete a minimum one hundred foot (100') riparian buffer strip for Angelica Creek (with at least fifty feet of riparian buffer on each side of the Creek) from the pedestrian bridge in Angelica Park to the Route 10 underpass This SEP will filter runoff, slowing flow of storm water, reducing erosion and will provide shade coverage for the stream channel. As part of the SEP final plan submission described in Subsection 52 (i) below, Defendant shall identify among other items the specific plant species to be used, the density of plantings and where the plants will be used. Defendant shall not spend less than $54,000 on this SEP.

(f) **Wetland Creation SEP:** Within two years from the Entry Date, Defendant shall complete construction and planting for two wetlands adjacent to Angelica Creek in the approximate locations as indicated on Exhibit A to this Decree. Each wetland shall be

approximately 1 acre in size. These two wetlands will provide relief for the stream during storm events, reduce erosion and contribute to treatment of water quality. To enhance the contribution of this SEP to aquatic and wildlife uses, each wetland will provide several types of wetland habitat and will include. wildlife structures such as brush piles and deadfall snags. As part of the SEP final plan submission described in Subsection 52 (i) below, Defendant shall identify among other items details of the elevations and area of the proposed wetland, the specific plant species to be used, the density of plantings and where the plants will be used. Defendant shall not spend less than $69,000 on this SEP.

(g) **Flood plain Meadow SEP:** Within two years of the Entry Date, Defendant shall create approximately three (3) acres of flood plain meadow in the general areas adjacent to the wetlands and Angelica Creek as indicated on Exhibit A to the this Decree. Design and construction of these meadows shall be incorporated into the design and creation of the wetlands described above in Subparagraph (f). These meadows will contribute to relief for the stream during storm events, reduce erosion as well as increase the diversity of wildlife habitat and contribute to park aesthetics. As part of the SEP final plan submission described in Subsection 52 (i) below, Defendant shall identify among other items the specific plant species to be used, the density of plantings and where the plants will be used. Defendant shall not spend less than $10,000 on this SEP.

(h) **Annual Maintenance and Access to SEPs:** Defendant shall provide adequate maintenance including replacement of necessary plantings for the SEPs discussed above in Subparagraphs 52 (d) through 52 (g) for no less than five years after EPA approves the completion of each SEP. In order to provide adequate maintenance for the SEPs described above, reduce the threat of invasive species and to facilitate public access to the Angelica Creek, Defendant shall also construct a crushed stone walking trail and adequate landscaping to reduce erosion from that trail and public access. Defendant is encouraged to connect this trail with existing Park trails. Defendant shall spend not less than $32,000 in construction costs for the

trail and associated landscaping. As part of the SEP final plan submission described in Subsection 52 (i) below, Defendant shall identify among other items the specific plant species to be used, the density of plantings and where the plants will be used, and how the associated landscaping and maintenance will prevent the introduction and spread of invasive species. Defendant shall spend no less than $5,000 per year for each year of maintenance of the SEPs identified above in Subparagraphs 52 (d) through 52 (g).

(i) **Design Costs and Final Plan**

Defendant shall provide adequate design and obtain necessary permits and approval for each of the SEPs described above. Defendant estimates that design costs will be no less than $150,000. Within seven (7) months of the Entry Date, Defendant shall submit a final plan to EPA and PADEP for review. This final plan shall include the details of design and completion for each SEP as discussed above in Subparagraphs 52 (c) through 52 (g). Upon approval by EPA in accordance with Paragraph 43 of this Decree, Defendant shall then proceed to implement each SEP according to the schedule contained in each Subparagraph of this Decree.

(j) **Defendant Certification:** With regard to the SEPs, Defendant certifies the truth and accuracy of each of the following:

1. That all cost information provided to EPA and PADEP in connection with EPA's approval of the SEP is complete and accurate and represents a fair estimate of the costs necessary to implement the SEP;

2. That, as of the date of lodging of this Decree, Defendant is not required to perform or develop the SEP by any federal, Commonwealth, or local law or regulation, or as injunctive relief awarded in any other action in any forum;

3. That Defendant has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action; and

4. That Defendant will not receive any reimbursement for any portion of the SEP from any other person.

(k) **SEP Completion Report**

1. Within 90 days after the date set for completion of each SEP described above in subparagraphs 52 (c) through 52 (g), Defendant shall submit a SEP Completion Report to EPA and PADEP. If appropriate, the Report may combine information on the completion of more than one SEP. The SEP Completion Report shall contain the following information:

a) A detailed description of the SEP as implemented;

b) A description of any problems encountered in completing the SEP and the solutions thereto;

c) An itemized list of all eligible SEP costs;

d) Certification that the SEP has been fully implemented pursuant to the provisions of this Decree; and

e) A description of the environmental and public benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

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

3. After receiving the SEP Completion Report, EPA shall notify Defendant whether or not Defendant has satisfactorily completed the SEP. If the SEP has not been satisfactorily completed in accordance with all schedules, or if the amount expended on performance of each SEP is less than the 90% of amount set forth above, stipulated penalties may be assessed in accordance with Paragraph 55 of this Consent Decree.

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

5. Each submission required under this Section shall be signed by an

official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 41.d. above.

(l) Any public statement, oral or written, in print, film, or other media, made by Defendant making reference to the SEP under this Decree shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action, United States & PADEP v. Defendant City of Reading taken on behalf of the U.S. Environmental Protection Agency under the Clean Water Act and by the Commonwealth of Pennsylvania under the Clean Streams Law."

XI. STIPULATED PENALTIES

53. Upon written demand by EPA, Defendant shall pay stipulated penalties for each failure to comply with the terms of this Consent Decree, including the terms of any plans or schedules developed pursuant to and incorporated into this Consent Decree. The stipulated penalties shall be assessed as follows and paid as set forth in Paragraphs 49 through 51 and 59 through 60 of this Decree.

54. Stipulated Penalties for Remedial Measures

(a) Following written demand by EPA, Defendant shall pay stipulated penalties in the amount set forth below for each day it fails to meet any of the project milestone dates set forth in Section V. Remedial Measures, Paragraphs 9 through 21 and 24 through 39 of this Consent Decree. Stipulated penalties for failure to meet the construction completion milestone set forth in Paragraph 24 is governed by Subsection B below:

Period of Non-Compliance	Penalty per Milestone Date per day of Violation
1st to 15th Day	$500
16th to 30th Day	$1,000
31st to 60th Day	$2,000
After 60 Days	$4,000

(b) Following written demand by EPA, Defendant shall pay stipulated penalties in the amount set forth below for each day it fails to meet the construction completion milestone set forth in Paragraph 23 above.

Period of Non-Compliance	Penalty per Milestone Date per day of Violation
1st to 30th Day	$1000
31st to 60th Day	$3,000
After 60 Days	$6,000

(c) Following written demand by EPA, Defendant shall pay stipulated penalties in the amount set forth below for each day it fails to submit deliverables (including proposed plans, programs or evaluation reports) required under Section V. Remedial Measures, Paragraphs 9 through 21 and 24 through 39 of this Consent Decree, or to timely correct deficiencies in deliverables identified by EPA and/or PADEP, in accordance with the schedules set forth in this Consent Decree or approved by EPA and PADEP and incorporated into this Consent Decree:

Period of Non-Compliance	Penalty per Milestone Date per day of Violation
1st to 15th Day	$500
16th to 30th Day	$1,000
31st to 60th Day	$2,000
After 60 Days	$4,000

(d) Following written demand by EPA, Defendant shall pay stipulated penalties in the amount set forth below for each day it fails to implement any proposed plans or programs developed pursuant to Section V. Remedial Measures, Paragraphs 9 through 21 and 24 through 39 of this Consent Decree, or to complete any other actions, other than submission of deliverables, required under those paragraphs of this Consent Decree, in accordance with the schedules set forth in this Consent Decree or approved by EPA and PADEP and incorporated into this Consent Decree:

Period of Non-Compliance	Penalty per Element per Day of Violation
1st to 15	$500
16th to 30th Day	$1,000
31st to 60th Day	$2,000
After 60 Days	$4,000

(e) Compliance Reporting. Following written demand by EPA Defendant shall pay stipulated penalties in the amount set forth below for each day it fails to submit any progress report or information required to be included within a progress report required to be submitted pursuant to this Consent Decree.

Period of Non-Compliance	Penalty per Element per Day of Violation
1st to 15	$500
16th to 30th Day	$1,000
31st to 60th Day	$2,000
After 60 Days	$3,000

55. Stipulated Penalties for Supplemental Environmental Project

If Defendant fails to comply with the requirements of Section X, Paragraph 52 and following written demand by EPA, Defendant shall pay stipulated penalties as follows:

(a) **General Provisions:** If Defendant does not complete any SEP, but EPA determines that Defendant has made a good faith effort to complete the SEP and Defendant certifies that at least 90 percent of the minimum required amount of money was expended on the SEP, Defendant shall not be liable for any stipulated penalty related to the SEP. If Defendant completes a SEP to EPA's satisfaction and certifies expenditure of at least 90 percent of the minimum required amount of money for the SEP, Defendant shall not be liable for any further stipulated penalty for that SEP. If Defendant completes a SEP to EPA's satisfaction but does not expend at least 90 percent of the minimum required amount of money for the SEP, Defendant shall pay the difference between the amount expended and 90 percent of the minimum amount

required for each SEP as a stipulated penalty.

(b) Except as otherwise provided in Subparagraph (a) above, if Defendant does not complete a SEP, or if EPA determines that the SEP has not been completed satisfactorily, Defendant shall pay up to the maximum stipulated penalty as follows:

Decree Paragraph	SEP	Stipulated Penalty
54.B.	**Removal of excess sediment and soil stabilization SEP**	$ 300,000
54.C	**Angelica Creek Restoration SEP**	$ 95,000
54.D.	**Angelica Creek Riparian Buffer SEP**	$ 55,000
54.E	**Wetland Creation SEP**	$ 75,000
54.F	**Annual Maintenance SEPs**	$ 5,000 per year
54.F	**Access SEP**	$ 32,000
54.G	**SEP Design, Final Plan and Administrative Costs**	$150,000

56. NPDES Effluent Limits Stipulated Penalties

(a) Following written demand by EPA, Defendant shall pay stipulated penalties as described herein for all exceedances of the currently effective NPDES permit effluent limits:

1. Monthly Average Violations	$3000 per parameter for the first calendar month of violation
	$6,000 per parameter for the 2nd and subsequent consecutive calendar month of violation
2. Average Weekly Violations	$1,000 per parameter for the first calendar week of violation
	$2,000 per parameter for the second and any subsequent consecutive calendar week of violation.
3. DO or pH daily average	$500 per parameter per day of violation

(b) Following written demand by EPA, Defendant shall pay up to the stipulated penalties for each SSO event and/or bypass of the Treatment Plant as described herein to EPA and PADEP for each event consistent with this Paragraph:

Less than 100 gallons	$ 250
100 to 2,499 gallons	$ 750
2,500 to 9,999 gallons	$ 2,000
10,000 to 99,999 gallons	$ 5,000
100,000 to 999,999 gallons	$ 20,000
1 million gallons or more	$ 50,000

57. Stipulated Penalties for Pretreatment Program

(a) Beginning with the first calendar quarter within three months after the date of Entry, and following written demand by EPA Defendant shall pay up to $3,000 in stipulated penalties for failure to prevent the percent of SIUs in SNC from exceeding 15% up to 25% of the total number of SIUs for that quarter and each subsequent quarter that have not been addressed consistent with the currently effective Enforcement Response Plan.

(b) Beginning with the first calendar quarter within three months after the date of Entry, and following written demand by EPA Defendant shall pay up to $8,000 in stipulated penalties for failure to prevent the percent of SIUs in SNC from exceeding 25% of the total number of SIUs for that quarter and each subsequent quarter that have not been addressed consistent with the currently effective Enforcement Response Plan.

(c) Following written demand by EPA, Defendant shall pay up to $3,000 in stipulated penalties for each failure to meet other requirements of the pretreatment program specified by this Decree.

58. Stipulated civil penalties shall automatically begin to accrue on the first day Defendant fails to satisfy any obligation or requirement of this Consent Decree and shall continue to accrue until the violation or deficiency is corrected.

59. Following written demand by EPA, stipulated penalties incurred by Defendant under this Consent Decree, except those stipulated penalties incurred by Defendant under

Paragraph 57 above, shall be paid fifty percent (50%) to the United States and fifty percent (50%) to the Commonwealth of Pennsylvania. Stipulated penalties under Paragraph 57 will be paid exclusively to the United States. All stipulated penalties payable to the United States shall be paid in accordance with the procedures set forth in Paragraph 49, and all stipulated penalties payable to the Commonwealth of Pennsylvania shall be paid in accordance with the procedures set forth in Paragraph 50.

60. Stipulated penalties incurred under this Consent Decree shall be tendered within thirty (30) days of Defendant's receipt of a demand for payment of such penalties by EPA unless Defendant contests the demand in accordance with the dispute resolution provisions of this Consent Decree. If Defendant invokes the dispute resolution provisions in Section XIII of this Consent Decree, it shall deposit any disputed penalty in an interest-bearing escrow account within ten (10) days of invoking dispute resolution. The stipulated penalties that are the subject of the dispute, as well as interest earned thereon, shall be released in a manner consistent with the terms of the resolution of the dispute within sixty (60) days after the dispute is resolved. Stipulated penalties for any continuing violation shall accrue during the resolution of any dispute.

61. The stipulated civil penalties as set forth above shall be in addition to any other rights or remedies which may be available to the United States and the Commonwealth of Pennsylvania or their agencies by reason of Defendant's failure to comply with the requirements of this Consent Decree, and all applicable federal, Commonwealth or local laws, regulations, or permits.

62. In the event that a stipulated civil penalty is not paid when due, the stipulated civil penalty owed to the United States and or PADEP shall be payable with interest from the original due date to the date of payment at the statutory judgment rate set forth at 28 U.S.C. § 1961(a).

63. The United States may, in the unreviewable exercise of discretion, reduce or waive stipulated penalties otherwise due to the United States under this Consent Decree.

XII. FORCE MAJEURE

64. "Force Majeure" for the purposes of this Consent Decree is defined as an event arising from causes beyond the control of Defendant or the control of any entity controlled by Defendant, including its agents, consultants and contractors, which delays or prevents the performance of any obligation under this Consent Decree. Unanticipated or increased costs or expenses associated with implementation of this Consent Decree and changed financial circumstances shall not, in any event, be considered "force majeure" events. In addition, failure 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 Defendant to approve contracts, shall not, in any event, be considered "force majeure" events. Defendant shall adopt all reasonable measures to avoid or minimize such delay.

65. When Defendant knows or if Defendant should have known, by the exercise of due diligence, of an event that might delay completion of any requirement of this Consent Decree, whether or not the event is a "force majeure" event, Defendant shall notify EPA and PADEP, in writing, within twenty (20) business days after Defendant first knew, or in the exercise of reasonable diligence under the circumstances, should have known of such event. The notice shall provide a description of the event and an explanation of the reasons for the delay, the anticipated duration of the delay, all actions taken or to be taken to prevent or mitigate the delay or the effect of the delay, the timetable by which those measures will be implemented, whether Defendant claims that the delay should be excused as a "force majeure" event, and its rationale for attributing such delay to a "force majeure" event if it intends to assert such a claim. Defendant shall include all available documentation supporting its claim that the delay was attributable to a "force majeure" event. Further, where a contractor or subcontractor has not completed a construction project on time, Defendant shall state what steps it is taking to ensure performance by the contractor or subcontractor in question, and shall supply any documentation

available to show the steps it has taken.

66. Failure to provide the required written notice to EPA and PADEP shall render this Section void and of no effect as to the event in question, and shall be a waiver of Defendant's right to obtain an extension of time for its obligations based on such event. Defendant shall be deemed to have notice of any circumstance of which its contractors, or subcontractors had or should have had notice.

67. If EPA and PADEP find that a delay in performance is, or was, caused by a "force majeure" event, the time for performance of the specific obligation(s) under this Consent Decree that are caused by the "force majeure" event shall be extended for a period to compensate for the delay resulting from such event, and stipulated penalties shall not be due for such period. EPA and PADEP will notify Defendant in writing of the length of the extension for performance of the obligation(s) caused by the "force majeure" event. An extension of time for performance of the obligation(s) caused by the "force majeure" event shall not, of itself, extend the time for performance of any other obligation. Defendant shall make an individual showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought.

68. In the event of a dispute regarding application of these provisions to a delay in performance, the dispute resolution provisions of Section XIII (Dispute Resolution) shall apply, and Defendant shall have the burden of proving that the delay is, or was, caused by a "force majeure" event, and that the amount of additional time requested is necessary to compensate for that event. Defendant shall not be liable for stipulated penalties for any period of delay which was excused by the Court or EPA and PADEP pursuant to this "Force Majeure" Section. However, pending resolution of a "force majeure" dispute, stipulated penalties will continue to accrue, and shall be due and payable if the Court determines that the event in question was not a "force majeure" event, that the Defendant did not undertake reasonable measures to limit the effect of the event, or that the "force majeure" event occurred for a shorter period of time than

that alleged by Defendant.

XIII. DISPUTE RESOLUTION

69. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes between Defendant and EPA/PADEP arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States and the Commonwealth of Pennsylvania to enforce obligations of Defendant that have not been disputed in accordance with this Section.

70. Informal Dispute Resolution. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between Defendant, EPA and PADEP. The period for informal negotiations shall not exceed twenty (20) days from the time Defendant sends EPA and PADEP a written Notice of Dispute, unless that period is modified by written agreement of Defendant, EPA and PADEP. The Notice of Dispute shall clearly describe the matter in dispute. In the event the parties cannot resolve their dispute within the informal negotiation period, then the position advanced by EPA and PADEP shall be considered binding unless, within 30 days of the conclusion of the informal negotiation period, Defendant invokes the formal dispute resolution procedures as set forth below.

71. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by filing with the Court and serving on EPA and PADEP a motion requesting judicial resolution of the dispute. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

72. The United States and Pennsylvania shall respond to Defendant's motion within

the time period provided in the Local Rules of this Court, unless the Parties stipulate otherwise. Defendant may file a reply memorandum, to the extent permitted by the Local Rules or the Parties' stipulation, as applicable.

73. In any dispute under this Paragraph, Defendant shall bear the burden of demonstrating that Defendant's position best complies with the terms and conditions of, and furthers the objectives of, this Consent Decree, the Clean Water Act, and the Pennsylvania water pollution control laws. The position of the United States and Pennsylvania is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law.

74. Submission of any matter to the Court for resolution shall not extend any of the deadlines set forth in this Consent Decree unless the Parties agree to such extension in writing or the Court grants an order extending such deadline. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph XI. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XI (Stipulated Penalties) and consistent with the Court's ruling.

XIV. EFFECT OF SETTLEMENT

75. Compliance with this Consent Decree, including the payment of all civil and stipulated penalties and interest accrued thereon, and the completion of all injunctive relief, shall resolve the United States' and the Commonwealth of Pennsylvania's civil claims for violations of the Clean Water Act and the Clean Streams Law as alleged in the Complaint filed in this matter, through the Date of Lodging of this Consent Decree.

XV. NON-WAIVER PROVISIONS

76. The Parties agree that Defendant is responsible for achieving and maintaining complete compliance with all applicable federal and Commonwealth laws, regulations, and permits, and that compliance with this Consent Decree shall be no defense to any actions commenced pursuant to said laws, regulations, or permits, except as otherwise expressly specified in the Consent Decree.

77. The United States and Commonwealth of Pennsylvania, do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's complete compliance with this Consent Decree will result in compliance with the provisions of the Clean Water Act, 33 U.S.C. §§ 1251 et seq. or with Pennsylvania's water pollution control laws. Notwithstanding EPA's and PADEP's review or approval of any plans, reports, policies, or procedures formulated pursuant to this Consent Decree, Defendant shall remain solely responsible for any non-compliance with the terms of this Consent Decree, the Clean Water Act and regulations promulgated under that Act, and Pennsylvania's Environment Article and implementing regulations.

78. The Parties reserve any and all legal and equitable remedies available to enforce the provisions of this Consent Decree.

79. This Consent Decree shall not limit any authority of EPA and PADEP under the Clean Water Act or any applicable statute, including the authority to seek information from Defendant or to seek access to the property of Defendant.

80. Performance of the terms of this Consent Decree by Defendant is not conditioned on the receipt of any federal, Commonwealth or local funds. Application for construction grants, Commonwealth revolving loan funds, or any other grants or loans, or delays caused by inadequate facility planning or plans and specifications on the part of Defendant shall not be cause for extension of any required compliance date in this Consent Decree.

81. It is the intent of the Parties hereto that the clauses hereof are severable, and

should any clause(s) be declared by a court of competent jurisdiction to be invalid and unenforceable, the remaining clauses shall remain in full force and effect.

82. The United States and the Commonwealth of Pennsylvania reserve all remedies available to them for violations of the Clean Water Act and the Pennsylvania water pollution control laws by Defendant which are not alleged in the Complaint or which occur after the Date of Lodging of this Consent Decree.

83. This Consent Decree does not resolve criminal liability, if any, that any person might have for violations of the Clean Water Act.

84. Nothing in this Consent Decree shall be construed to limit the authority of the United States or the Commonwealth of Pennsylvania to undertake any action against any person, including Defendant, in response to conditions that may present an imminent and substantial endangerment to the environment or to the public health or welfare.

XVI. NOT A PERMIT/COMPLIANCE WITH OTHER STATUTES/REGULATIONS

85. This Consent Decree is not and shall not be construed as a permit issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342, nor as a modification of any existing permit so issued, nor shall it in any way relieve Defendant of its obligations to comply with permits, if any, otherwise required for any portion of its Collection System or related sanitary sewage treatment facilities, and with any other applicable federal or Commonwealth law or regulation. Defendant must comply with any new permit, or modification of existing permits, in accordance with applicable federal and Commonwealth laws and regulations.

86. Nothing herein shall be construed as relieving Defendant of the duty to comply with the Clean Water Act and the Pennsylvania water pollution control laws, the regulations promulgated under those acts, and all applicable permits issued under those acts and regulations.

XVII. COSTS OF SUIT

87. Each party shall bear its own costs and attorney's fees with respect to matters resolved by this Consent Decree.

XVIII. RECORD KEEPING

88. (a) Defendant shall maintain copies of any reports, plans, permits and documents, submitted to EPA and PADEP pursuant to this Consent Decree, including any underlying research and data, for a period of five (5) years from date of submission. Defendant shall require any independent contractor operating any portion of the Defendant Collection System or implementing any portion of this Consent Decree to also retain such materials for a period of five (5) years from date of submission. Defendant shall submit such supporting documents to EPA and PADEP upon request.

(b) In addition to the reports and documentation required to be provided by Defendant under the terms of this Consent Decree, Defendant shall also provide, upon demand, any analytical data or any other documents requested by the United States to review work done, or to be done, by Defendant or to determine Defendant's compliance with the terms of this Consent Decree.

89. Defendant shall notify EPA and PADEP thirty (30) days prior to the disposal or destruction of such records at the end of this five year period and shall, upon EPA's and PADEP's request, make such records available to EPA and PADEP prior to such disposal or destruction.

XIX. FORM OF NOTICE

90. Unless otherwise specified, 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 United States:

Margaret L. Hutchinson
Assistant United States Attorney
Civil Division Eastern District of Pennsylvania
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106-4476
Re: USAO No. 2003V00437

As to EPA:

Christopher A. Day (3RC20)
Senior Assistant Regional Counsel
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

Anthony Meadows (3WP31)
Water Protection Division
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

As to Commonwealth of Pennsylvania:

Regional Water Management Program Manager
Pennsylvania Department of Environmental Protection,
909 Elmerton Ave.
Harrisburg, PA 17110-8200

As to Defendant:

Charles M. Jones, P.E.
Director of Public Works
815 Washington Street
Reading, PA 19601-3690

Notifications to or communications with EPA, PADEP and the United States Department of Justice ("DOJ") shall be deemed submitted on the date they are received.

XX. MODIFICATION

91. This Consent Decree contains the entire agreement of the Parties and shall not be modified by any prior written agreement, representation or understanding. The Consent Decree

may be modified by written consent of all of the Parties or, if the Parties cannot agree, by written Order of this Court. All modifications, with the exception of modifications deemed non-material by mutual agreement of EPA, PADEP, and Defendant, shall be in writing and must be filed with the Court before such modification will be deemed effective.

XXI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

92. This Consent Decree shall be lodged with the Court for a period of thirty (30) days for public notice and comment, pursuant to the requirements of 28 C.F.R. § 50.7. The United States and the Commonwealth reserve the right to withdraw or withhold their consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Defendant consents to the entry of this Consent Decree without further notice.

93. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXII. RETENTION OF JURISDICTION

94. This Court shall retain jurisdiction of this matter for the purposes of implementing and enforcing the terms and conditions of this Consent Decree and for the purpose of adjudicating all disputes among the Parties that may arise under the provisions of this Consent Decree, to the extent that this Consent Decree provides for resolution of disputes by the Court. Such jurisdiction shall not terminate until all requirements of this Consent Decree have been fulfilled and all disputes arising under this Consent Decree have been resolved.

XXIII. TERMINATION

95. The Consent Decree shall terminate when all of the following events have occurred:

(a) Defendant certifies that it has completed all obligations under Section V (Remedial Measures) of this Consent Decree, and that it has maintained compliance with all other requirements of the Consent Decree for a period of one year following completion of its obligations under Section V.

(b) Defendant has paid all civil penalties, costs, damages, stipulated penalties, and other sums due under this Consent Decree; and

(c) the Parties file a Joint Motion to Terminate the Consent Decree with the Court and the Court grants the Motion.

96. The Consent Decree shall not terminate if, following certification by Defendant of compliance pursuant to Paragraph 95 (a) above, the United States or the Commonwealth of Pennsylvania assert in writing that full compliance has not been achieved. If the United States or the Commonwealth of Pennsylvania dispute Defendant's full compliance, this Consent Decree shall remain in effect pending resolution of the dispute by the Parties or the Court in accordance with the Dispute Resolution provisions of this Consent Decree.

XXIV. SIGNATORIES/SERVICE

97. The United States Attorney on behalf of the United States and the undersigned representatives of Defendant and the Commonwealth of Pennsylvania certify that they are fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

98. Defendant 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 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.

XXV. INTEGRATION/APPENDICES

99. This Consent Decree and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supercede all prior agreements and understandings, whether oral or written. Other than the Appendices, which are attached to and incorporated into this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

Dated and entered this _____ day of _____ 200 .

_____
Judge

FOR THE UNITED STATES OF AMERICA:

PATRICK L. MEEHAN
United States Attorney

DATE 12/7/04

VIRGINIA A. GIBSON
Assistant United States Attorney
Chief, Civil Division

DATE 12/7/04

MARGARET L. HUTCHINSON
Assistant United States Attorney
U.S. Attorney's Office
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106
(215) 861-8282

DATE 12/7/04

W. BENJAMIN FISHEROW
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20530
(202) 514-2750

DATE 11/29/04

FOR THE CITY OF READING:

11/10/04

THOMAS M. McMAHON, Mayor
City of Reading
815 Washington Street
Reading, PA 19601

DATE

Attest:

11-10-04

LINDA A. KELLEHER, City Clerk
City of Reading
815 Washington Street
Reading, PA 19601

DATE

11/10/04

DAVID A. BINDER, ESQUIRE
226 North 6th Street
Reading, PA 19601
Counsel for the City of Reading

DATE

FOR THE COMMONWEALTH OF PENNSYLVANIA:

Rachel S. Diamond

RACHEL S. DIAMOND
Regional Director
Pennsylvania Department of Environmental Protection
Southcentral Regional Office
909 Elmerton Ave.
Harrisburg, PA 17110-8200

11-9-04
DATE

Gary L Hepford

GARY L HEPFORD
Assisant Counsel
Pennsylvania Department of Environmental Protection
Southcentral Regional Office
909 Elmerton Ave.
Harrisburg, PA 17110-8200

11/9/04
DATE

US DEPARTMENT OF JUSTICE
US ATTORNEY E.D. OF PA
2004 NOV 10 A 11: 42

FOR THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY:

Donald S. Welsh

DONALD S. WELSH
Regional Administrator
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

NOV 3 0 2004
DATE

William C. Early

WILLIAM C. EARLY
Regional Counsel
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

11/24/04
DATE

Christopher A. Day

CHRISTOPHER A. DAY
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

November 18, 2004
DATE

US DEPARTMENT OF JUSTICE
US ATTORNEY E.D. OF PA
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