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APPENDIX A..... A-1

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WHEREAS, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a complaint in this action concurrently with this Consent Decree, for injunctive relief and civil penalties pursuant to Section 113(b)(2) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(b)(2), alleging that Defendant, the City of Manchester, New Hampshire (“Manchester” or “Defendant”), violated regulations set forth in 40 C.F.R. Part 62, Subpart LLL, promulgated by EPA pursuant to Title I of the CAA, 42 U.S.C. §§ 7411 and 7429, and Section 129(f)(3) of the CAA, 42 U.S.C. § 7429(f)(3);

WHEREAS, the Complaint alleges that Defendant violated the above-listed federal environmental statutes and regulations at Manchester’s sewage sludge incinerator located at 300 Winston Street, Manchester, New Hampshire (the “Facility”). The Facility is designed to treat sewage sludge with a fluidized bed sewage sludge incinerator.

WHEREAS, Defendant does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

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

NOW THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

#### **I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331, 1345, and 1355; Section 113(b) of the CAA, 42 U.S.C. § 7413(b); and over the Parties.

Venue lies in this District under Section 113(b) of the CAA, 42 U.S.C. § 7413(b); and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because the alleged violations took place in this District. For purposes of this Decree, or any action to enforce this Decree, Defendant consents to the Court's jurisdiction over this Consent Decree and any such action, and over Defendant, and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted under Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

3. Notice of commencement of this action has been given to the State of New Hampshire, specifically the New Hampshire Department of Environmental Services ("NHDES"), by the United States.

## II. APPLICABILITY

4. The obligations of this Consent Decree apply to and are binding upon the United States, and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

5. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Decree are implemented. At least 30 Days prior to such transfer, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 1, the United States Attorney for the District of New Hampshire, and the United States Department of Justice in accordance with Section XIII (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree.

6. Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Decree. Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

7. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

### III. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the CAA, or in regulations promulgated pursuant to the CAA, shall have the meanings assigned to them in the CAA or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. "Business Day" shall mean a day other than a Saturday, Sunday, or federal holiday.

b. "Complaint" shall mean the complaint filed by the United States in this action.

c. "Consent Decree" or "Decree" shall mean this Decree and Appendices A and B attached hereto.

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

e. "Defendant" shall mean the City of Manchester, New Hampshire.

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

g. "Effective Date" shall have the definition provided in Section XIV (Effective Date).

h. "Facility" shall mean the sewage sludge incinerator unit owned or operated by Defendant and located at 300 Winston Street, Manchester, New Hampshire.

i. "Interest" shall mean an amount calculated at the rate specified in 28 U.S.C. § 1961.

j. "Paragraph" shall mean a portion of this Decree identified by an Arabic numeral.

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

l. "Section" shall mean a portion of this Decree identified by a Roman numeral.

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

#### IV. CIVIL PENALTY

9. Within 45 Days after the Effective Date of this Consent Decree, Defendant shall pay the sum of \$131,800 as a civil penalty, together with Interest at the rate as of the date of lodging, and accruing from the date on which the Consent Decree is lodged with the Court.

10. Defendant shall pay the civil penalty due by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account, in accordance with written instructions provided to Defendant by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the District of New Hampshire after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System ("CDCS") number, which Defendant shall use to identify all payments required to be made in accordance with this

Consent Decree. The FLU will provide the payment instructions to Kevin A. Sheppard, Public Works Director, City of Manchester, 475 Valley Street, Manchester, N.H. 03103 and ksheppard@manchesternh.gov on behalf of Defendant. Defendant may change the individual to receive payment instructions on its behalf by providing written notice of such change to the United States and EPA in accordance with Section XIII (Notices).

11. At the time of payment, Defendant shall send notice that payment has been made: (i) to EPA via email at cinwd\_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to the United States via email or regular mail in accordance with Section XIII (Notices); and (iii) to EPA in accordance with Section XIII (Notices). Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States v. City of Manchester* and shall reference the civil action number, CDCS Number, and DOJ case number 90-5-1-1-11620/1.

12. Defendant shall not deduct any penalties paid under this Decree pursuant to this Section or Section VII (Stipulated Penalties) in calculating its federal income tax.

#### V. COMPLIANCE REQUIREMENTS

13. Defendant shall comply with the requirements of Appendices A and B of this Consent Decree in accordance with the schedules therein. Appendices A and B are incorporated into and are fully enforceable under this Consent Decree.

14. Approval of Deliverables. After review of any plan, report, or other item that is required to be submitted pursuant to Appendix A of this Consent Decree or Sections V (Compliance Requirements), VI (Reporting Requirements), and VIII (Force Majeure), EPA shall in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission.



15. If the submission is approved under Paragraph 14(a), Defendant shall take all actions required by the plan, report, or other item, in accordance with the schedules and requirements of the plan, report, or other item, as approved. If the submission is conditionally approved or approved only in part pursuant to Paragraph 14(b) or (c), Defendant shall, upon written direction from EPA provided in the conditional or partial approval, take all actions required by the approved plan, report, or other item that EPA determines are technically severable from any disapproved portions, subject to Defendant's right to dispute only the specified conditions or the disapproved portions, under Section IX (Dispute Resolution) of this Consent Decree.

16. If the submission is disapproved in whole or in part under Paragraph 14(c) or (d), Defendant shall, within 45 Days or such longer period of time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, Defendant shall proceed in accordance with the preceding Paragraph:

17. Any stipulated penalties applicable to the original submission, as provided in Section VII (Stipulated Penalties) of this Consent Decree, shall accrue during the 45 Day period or such longer period as the Parties agree to in writing, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Defendant's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

18. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA may again require Defendant to correct any deficiencies in accordance with the preceding Paragraphs, subject to Defendant's right to invoke Dispute Resolution and the right of EPA to seek stipulated penalties as provided in the preceding Paragraphs.

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

## VI. REPORTING REQUIREMENTS

20. Within 15 Days of the close of each month after the date of lodging of this Consent Decree, until termination of this Decree pursuant to Section XVII (Termination), Defendant shall submit to EPA reports as required by 40 C.F.R. § 62.15895, and shall submit to the U.S. Department of Justice and EPA in accordance with Section XIII (Notices) a monthly report for the preceding month that shall include: all compliance measures taken; milestones in Appendix A completed; problems encountered or anticipated (together with solutions implemented or proposed); status of any permit applications; and results of any inspections or tests performed, or any repairs made. In order for the Parties to more easily track Defendant's performance of the actions it is obligated to perform under the terms of this Consent Decree, Defendant shall provide, on a monthly basis with its monthly status reports, the spreadsheet form

attached hereto as Appendix B, in which it shall describe its performance of such actions and its progress, during the previous month, to bring the Facility into compliance.

21. If Defendant violates, or has reason to believe that it may violate, any requirement of this Consent Decree, Defendant shall make a written report to the United States of such violation and its likely duration, within 10 Business Days of the Day Defendant first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent, correct, or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Defendant shall so state in the report. Defendant shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 45 Days of the Day Defendant becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Defendant of its obligation to provide the notice required by Section VIII (Force Majeure).

22. Whenever any violation of this Consent Decree or of the environmental statutes, regulations and permits referenced herein, or any other event affecting Defendant's performance under this Decree, or the operation of the Facility, may pose an immediate threat to the public health or welfare or the environment, Defendant shall notify EPA orally or by electronic mail as soon as possible, but no later than 24 hours after Defendant first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

23. All reports and notifications shall be submitted to the persons designated in Section XIII (Notices) of this Consent Decree.

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