

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

THE COMMONWEALTH OF)
KENTUCKY,)

Plaintiff,)

v.)

THE LOUISVILLE AND JEFFERSON)
COUNTY METROPOLITAN SEWER)
DISTRICT,)

Defendant.)

Civil Action No. 3:05cv236-S

UNITED STATES OF AMERICA,)

Plaintiff-Intervener)

v.)

THE LOUISVILLE AND JEFFERSON)
COUNTY METROPOLITAN SEWER)
DISTRICT,)

Defendant.)

SECOND AMENDED CONSENT DECREE

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INTRODUCTION

WHEREAS, the parties to this Second Amended Consent Decree, which amends, supersedes and replaces the Amended Consent Decree entered in this matter by this Court on April 15, 2009 (and all subsequent amendments thereto), the Commonwealth of Kentucky by and through its Environmental and Public Protection Cabinet (hereinafter the “Cabinet”), the United States of America, on behalf of the United States Environmental Protection Agency (hereinafter “EPA”) and the Louisville and Jefferson County Metropolitan Sewer District (hereinafter “MSD”), state as follows:

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

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

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

4. WHEREAS, this Second Amended Consent Decree between the Cabinet, EPA and MSD addresses Sanitary Sewer Overflows (“SSOs”) and Unauthorized Discharges, as those terms are defined herein, from MSD’s SSS, CSS and WWTPs, and discharges from MSD’s

combined sewer overflow (“CSO”) locations identified in the MFWTP Kentucky Pollutant Discharge Elimination System (“KPDES”) permit, and it requires MSD to finalize, develop, submit and implement plans for the continued improvement of MSD’s Sewer System and WWTPs.

5. WHEREAS, the Cabinet initially filed an action against MSD in Franklin Circuit Court, Civil Action Number 04-CI-313, on February 27, 2004. The Cabinet subsequently filed an action in this Court against MSD, Civil Action No. 3:05cv-236-S, on April 25, 2005, pursuant to Section 505 of the Act, 33 U.S.C. § 1365, and KRS Chapter 224. EPA filed its motion to intervene as of right and complaint in intervention under Section 505(c)(2) of the Act, 33 U.S.C. § 1365(c)(2), alleging that MSD violated and continued to violate Section 301 of the Act, 33 U.S.C. §1311. Concurrently with the filing of the original complaints in this Court, an original Consent Decree was lodged concerning SSOs and Unauthorized Discharges from MSD’s SSS, CSS and WWTPs, and discharges from MSD’s CSO locations identified in its MFWTP KPDES permit, alleging violations of the Act and KRS Chapter 224. The Court entered the original Consent Decree on August 12, 2005.

6. WHEREAS, the Cabinet, EPA and MSD entered into the Amended Consent Decree which amended, superseded and replaced the original Consent Decree and was filed concurrently with an amended complaint on November 20, 2008 alleging that MSD has further violated the Act and KRS Chapter 224. The Court entered the Amended Consent Decree on April 15, 2009.

7. WHEREAS, by Order of this Court dated February 12, 2010, the Integrated Overflow Abatement Plan (“2009 IOAP”) designed to control combined sewer overflows (“CSOs”) and eliminate sanitary sewer overflows (“SSOs”) and other unauthorized discharges

from the MSD's Sewer System and WWTPs was incorporated into the Amended Consent Decree as a material change. The 2009 IOAP, approved by the Cabinet and EPA pursuant to the Amended Consent Decree, includes as components the final Sanitary Sewer Discharge Plan ("Final SSDP"), the final Long-Term Control Plan ("Final LTCP"), and the Composite Correction Plan ("CCP") for the Jeffersontown Waste Water Treatment Plant as required by the Amended Consent Decree.

8. WHEREAS, on June 19,, 2014, the Cabinet, EPA and MSD approved a non-material modification to the Amended Consent Decree regarding a number of adjustments to projects in the 2009 IOAP which MSD believed were necessary to achieve approved overflow reduction levels identified in the 2009 IOAP. These adjustments were set forth in a revised IOAP (the "2012 IOAP Modification") submitted by MSD and approved by the Cabinet and EPA.

9. WHEREAS, the parties agree and recognize that the process for MSD under applicable law requiring it to comply with its KPDES permits and upgrade its SSS, CSS and WWTPs to adequately address SSOs and Unauthorized Discharges, and discharges from MSD's CSO locations identified in its MFWTP KPDES permit, is an ongoing and evolving effort from the assessment process, to the design and construction of necessary infrastructure to meet permit conditions. The Cabinet and EPA are charged with the duties of applying applicable state and federal law and regulating MSD in a manner protective of human health and the environment. This process requires efforts that include, but are not limited to, characterizations, modeling, assessments, engineering design studies, implementation of compliance measures, and construction projects that will adequately ensure MSD's compliance with permit conditions under applicable law.

10. WHEREAS, since entry of the Amended Consent Decree, MSD represents that it has already completed many of the requirements of the Amended Consent Decree resulting in improvements to the environment.

11. WHEREAS, MSD represents that to date it has spent approximately \$1 billion since entry of the original Consent Decree; completed construction of 24 of the required 25 LTCP projects reducing CSO discharges to local waterways by approximately 5 billion gallons per Typical Year as such term is defined in the IOAP; completed 19 LTCP green infrastructure demonstration projects; completed construction of 47 of the required 63 SSDP projects eliminating 82% of the modeled SSO volume and 67% of the modeled overflow locations for the 2-year storm, including SSDP projects in the Hikes Point and the Beechwood Village areas and at the Highgate Pump Station and the Southeastern Diversion Structure as required by the Amended Consent Decree; reduced median fecal coliform concentrations by 76% in the Ohio River since 2007 based on data from ORSANCO collected 2001 through 2015; reduced wet weather mean E-Coli concentrations by approximately 70% in Middle Fork Beargrass Creek and in South Fork Beargrass Creek since 2010 based on grab sample data collected by MSD in October 2010, September 2013, July 2014, and June 2017.

12. WHEREAS, pursuant to paragraph 26 of the Amended Consent Decree, MSD implemented a Process Controls Program, Comprehensive Performance Evaluation (“CPE”), and Composite Correction Plan (“CCP”) for its Jeffersontown WWTP which required MSD to either complete upgrades necessary to ensure KDPES permit compliance or WWTP elimination by December 31, 2015. MSD timely submitted all program submittals required by the Amended Consent Decree and the Jeffersontown WWTP was eliminated on December 23, 2015.

13. WHEREAS, pursuant to paragraph 27 of the Amended Consent Decree, MSD

implemented CPEs and CCPs for its Lake Forest and Timberlake WWTPs along with any additional WWTP receiving flow from the eliminated Jeffersontown WWTP. MSD timely submitted all program submittals required by the Amended Consent Decree, and the Timberlake, Hunting Creek South, Ken Carla, and Shadow Wood WWTP were eliminated by December 31, 2015, as required.

14. WHEREAS, pursuant to the original Consent Decree, MSD paid to the Cabinet a civil penalty in the amount of \$1 million to resolve the violations alleged in the Cabinet's and EPA's original complaints up through the date of entry of the original Consent Decree; and pursuant to the Amended Consent Decree, MSD paid to EPA a civil penalty in the amount of \$230,000 to resolve the violations alleged in the Cabinet's and EPA's complaint filed contemporaneously with the Amended Consent Decree.

15. WHEREAS, MSD successfully completed the Supplemental Environmental Projects ("SEPs") as required by the original Consent Decree and the Amended Consent Decree.

16. WHEREAS, MSD completed specific projects totaling approximately \$70 million identified on the Capital Improvement Project List pursuant to the Early Action Plan required by paragraph 24 of the Amended Consent Decree.

17. WHEREAS, MSD represents that, since entry of the Amended Consent Decree and through its implementation of the measures required thereunder, the conditions and circumstances regarding its Sewer System and WWTPs have changed thus necessitating the implementation of additional work and a reprioritization of the existing work currently required under the Amended Consent Decree in order to meet the objectives of the Amended Consent Decree and to achieve the levels of control for CSOs and SSOs set forth in the approved 2012 IOAP Modification and the recently updated 2021 IOAP Modification referenced in paragraph

38.a.(3) below of this Second Amended Consent Decree.

18. WHEREAS, MSD represents that in 2015 it began experiencing changed circumstances that resulted in a reprioritization of capital improvements across MSD's infrastructure, including the wastewater, stormwater and flood protection assets. In April 2015, the MFWTP was struck by lightning and experienced a catastrophic mechanical failure. MSD represented that it has invested \$50 million to repair damage caused by this event. Also, MSD represents that in 2015 the MFWTP began receiving higher solids loading from local distilleries, resulting in a higher level of TSS processed. This increase in solids coupled with substantial grit loading accelerated deterioration of the biosolids processing equipment. Pursuant to an Agreed Order with the Cabinet (DOW 150220), dated May 3, 2018, MSD submitted a Corrective Action Plan ("CAP") for the MFWTP to achieve compliance with the Act, and KRS Chapter 224 and the KPDES permit which MSD estimates will cost approximately \$170 million. The Cabinet approved the CAP on January 26, 2021.

19. WHEREAS, MSD represents that it has partnered with the United States Corp of Engineers ("USACE") to complete a Preliminary Feasibility Study for 16 Ohio River Flood Pump Stations which identifies approximately \$188.1 million in critical projects for ensuring that the flood protection infrastructure meet current standards for both the protection of public health and safety and the protection of the CSS, including new infrastructure constructed as required by the Final LTCP.

20. WHEREAS, since entry of the original Consent Decree and the Amended Consent Decree, MSD has been experiencing an increase in the failures of critical interceptor sewers. MSD represents that most of the failing interceptors were constructed in the late 19th century and therefore the risk of widespread failures demands near term attention. MSD

represents that it has budgeted and intends to spend over the next 5 years at least \$10 million per year in repairs of critical interceptors in addition to the new interceptor project work set forth in paragraph 39.c below of this Second Amended Consent Decree.

21. WHEREAS, in addition the new critical work required at the MFWTP, the flood pump stations and the interceptors, MSD also identified other potential risks to future KPDES permit non-compliance along with potential risks to public health and safety from its Sewer System and WWTPs that could be addressed through an Asset Management Plan providing a long-term maintenance and funding strategy for the rehabilitation and renewal of its aging Sewer System and WWTP infrastructure.

22. WHEREAS, due to these changes circumstances, the Cabinet, EPA and MSD have agreed to enter into this Second Amended Consent Decree which shall continue some of the measures set forth in the Amended Consent Decree, reprioritize some specific remedial projects set forth in the 2012 IOAP Modification and add new measures to further the objectives of the Amended Consent Decree and the achievement of the levels of control for CSOs and SSOs set forth in the 2012 IOAP Modification and the recently updated 2021 IOAP Modification referenced in paragraph 38.a.(3) below of this Second Amended Consent Decree. The parties recognize that it will take MSD several years to achieve full compliance. In the interest of adequately informing the public and allowing full participation by the public in this process, the parties agree that this Second Amended Consent Decree is the appropriate mechanism for achieving these objectives.

23. WHEREAS, MSD is a public body corporate organized pursuant to KRS Chapter 76 of the Kentucky Revised Statutes. MSD represents that pursuant to Louisville/Jefferson County Metro Ordinance Chapter 50.24, whenever MSD net revenues are less than 1.10 times

the debt service on MSD's outstanding revenue bonds for any consecutive six-month period, by order of the Board of MSD, the schedule of wastewater and stormwater service charges shall be amended in order to maintain a 1.10 debt service coverage required by MSD's 1971 bond authorizing resolution which was approved by the City of Louisville Ordinance Number 86, series 1971, and by Ordinance No. 25, Series 1979 as amended by Ordinance No. 32, Series 1986, and Ordinance No. 152, Series 1979 as amended by Ordinance No. 388, Series 1986, provided that the aggregate of such adjustments for any 12-month period shall not generate additional revenue from wastewater service charges in excess of 7%. MSD represents that an explanation of proposed rate increases in excess of 4% must be delivered to the Louisville/Jefferson County Metro Council at least 60 days prior to MSD Board approval and that rate increases in excess of 7% must be approved by the Louisville/Jefferson County Metro Council.

24. WHEREAS, all parties agree that this Court has jurisdiction over this action pursuant to the Act, and under the provisions for supplemental jurisdiction in 28 U.S.C. § 1367 for claims pursuant to KRS Chapter 224. The Cabinet's claims arise under the powers and duties set forth in KRS 224.10-100. EPA's claims arise under the powers and duties set forth in Section 309 of the Act, 33 U.S.C. § 1319.

25. WHEREAS, MSD maintains that it has implemented measures to date in its efforts to achieve compliance under its KPDES permits, including abatement of many SSOs and establishing controls on certain CSOs. This Second Amended Consent Decree includes lists of those items completed and additional work planned for the future to provide the public the information and an opportunity for public notice and comment on additional specific measures being taken or to be taken, in accordance with the provisions of 28 C.F. R. § 50.7. The parties

also anticipate that this Second Amended Consent Decree may be further amended as MSD develops, designs, submits for review and approval, and implements additional compliance measures and projects, including those specified herein.

26. WHEREAS, the parties entered into the original Consent Decree, Amended Consent Decree and this Second Amended Consent Decree to address the claims arising from MSD's alleged violations as set forth in the original complaints and the amended complaint, and to agree to the performance of certain specified projects and to the completion of certain plans, characterizations, modeling, assessments, engineering design studies, implementation of compliance measures and construction projects on or before dates certain regarding SSOs and Unauthorized Discharges from MSD's SSS, CSS and WWTPs, and discharges from MSD's CSO locations identified in its MFWTP KPDES permit, as set forth in this Second Amended Consent Decree.

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

forth in this Second Amended Consent Decree.

28. WHEREAS, MSD neither admits nor denies the alleged violations described above but acknowledges that SSOs and Unauthorized Discharges have occurred and accepts the obligations imposed under this Second Amended Consent Decree.

29. WHEREAS, the parties agree, without adjudication of facts or law, that settlement of the Cabinet's and EPA's claims in accordance with the terms of this Second Amended Consent Decree is in the public interest and have agreed to entry of this Second Amended Consent Decree without trial of any issues, and the parties hereby stipulate that, in order to resolve these claims stated in the Cabinet's and EPA's original complaints and amended complaint, this Second Amended Consent Decree should be entered.

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

JURISDICTION AND VENUE

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

and 1395(a).

APPLICATION AND SCOPE

32. The provisions of this Second Amended Consent Decree shall apply to and be binding upon the parties to this action, and their agents, employees, successors, and assigns, as well as to all persons acting under the direction and/or control of MSD, including firms, corporations, and third parties such as contractors engaged in implementation of this Second Amended Consent Decree. MSD shall provide a copy of this Second Amended Consent Decree to any consultant or contractor selected or retained to perform any activity required by this Second Amended Consent Decree.

AMENDMENT PROVISIONS

33. The parties acknowledge that, when they entered into the original Consent Decree and the Amended Consent Decree, they anticipated that the decrees may be amended. The parties now enter into this Second Amended Consent Decree to amend, reprioritize and expand upon some of the provisions set forth in the Amended Consent Decree. In particular, the parties desire in this Second Amended Consent Decree to set forth specific, additional injunctive relief designed to further the objectives of this Second Amended Consent Decree and to achieve the levels of control for CSOs and SSOs set forth in the approved 2012 IOAP Modification and the recently updated 2021 IOAP Modification referenced in paragraph 38.a.(3) below of this Second Amended Consent Decree. This additional injunctive relief consists of specific projects to remediate the MFWTP, critical interceptors and a pump station and the inclusion of an Asset Management Plan. Because of the inclusion of these new injunctive relief requirements, this Second Amended Consent Decree also modifies schedules for the completion of the few remaining injunctive relief projects currently set forth in the 2012 IOAP Modification. This

Second Amended Consent Decree amends, supersedes and replaces the Amended Consent Decree.

OBJECTIVES

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

DEFINITIONS

35. Unless otherwise defined herein, the terms used in this Second Amended Consent Decree shall have the meaning given to those terms in the Act and the regulations promulgated thereunder. For purposes of this Second Amended Consent Decree, whenever the terms listed below are used in this Second Amended Consent Decree or appendices attached thereto and/or incorporated thereunder, the following definitions shall apply:

- a. "Bypass" shall mean the intentional diversion of waste streams from any portion of a treatment facility as set forth at 40 C.F.R. § 122.41(m)(1) and 401 KAR 5:002, Section 1(36). The practice of bypassing Secondary Treatment units and

recombining the bypass flow with the secondary effluent prior to discharge, known commonly as blending, recombination, or diversion, constitutes a Bypass. For purposes of this Second Amended Consent Decree only, the term Bypass shall specifically exclude (1) practices at MSD's MFWTP that are in accordance with the KPDES permit and the CSO Control Policy and (2) any flow that exceeds the design capacity of a tertiary process at any WWTP in accordance with a KPDES permit.

- b. "Combined Sewer Overflow" or "CSO" shall mean an outfall identified as a combined sewer overflow or CSO in MSD's KPDES permit for the MFWTP from which MSD is authorized to discharge during wet weather.
- c. "Combined Sewer System" or "CSS" shall mean the portion of MSD's Sewer System designed to convey municipal sewage (domestic, commercial and industrial wastewaters) and stormwater runoff through a single-pipe system to MSD's MFWTP or CSOs.
- d. "KPDES permit" shall mean any National Pollutant Discharge Elimination System permit issued to MSD by the Cabinet pursuant to the authority of the Act and KRS Chapter 224 and the regulations promulgated thereunder.
- e. "Sanitary Sewer System" or "SSS" shall mean the portion of MSD's Sewer System designed to convey only municipal sewage (domestic, commercial and industrial wastewaters) to MSD's WWTPs.
- f. "Sanitary Sewer Overflow" or "SSO" shall mean any discharge of wastewater to waters of the United States from MSD's Sewer System through a point source not authorized by a KPDES permit, as well as any release of wastewater from MSD's

Sewer System to public or private property that does not reach waters of the United States, such as a release to a land surface or structure that does not reach waters of the United States; provided, however, that releases or wastewater backups into buildings that are caused by blockages, flow conditions, or malfunctions in a building lateral, or in other piping or conveyance system that is not owned or operationally controlled by MSD are not SSOs.

- g. “Secondary Treatment” is a biological wastewater treatment technology required by the Clean Water Act for discharges from Publicly Owned Treatment Works, as that term is defined at 40 C.F.R. § 403.3(q). The minimum level of effluent quality attainable through the application of secondary treatment is established in 40 C.F.R. § 133.102 in terms of the parameters for 5-day biochemical oxygen demand (“BOD₅”) concentration and percent removal, total suspended solids (“TSS”) concentration and percent removal, and pH.
- h. “Sewer System” shall mean the wastewater collection, retention, and transmission system that MSD owns or operates, that are designed to collect, retain and convey municipal sewage (domestic, commercial and industrial wastewaters) to MSD’s WWTPs or CSOs which is comprised of the CSS and the SSS.
- i. “Unauthorized Discharge” shall mean (a) any discharge of wastewater to waters of the United States from MSD’s Sewer System or WWTPs through a point source not authorized by a KPDES permit and (b) any Bypass at MSD’s WWTPs prohibited pursuant to the provisions of 40 C.F.R. § 122.41(m)(2) and (4) or 401 KAR 5:065, Section 1(13)(a) and (c).
- j. “Wastewater Treatment Plant” or “WWTP” shall mean the devices or systems

used in the storage, treatment, recycling, and reclamation of municipal sewage that MSD owns or operates, and for which KPDES permits have been or will be issued to MSD.

COMPLIANCE PROGRAM AND SCHEDULES

36. **Wet Weather Team.** To effectuate the remedial measures under this Second Amended Consent Decree, MSD has created a directorship-level position (“Director”) who reports directly to MSD’s Executive Director and the Board of MSD; has organized a Wet Weather Team regarding CSOs, SSOs and Unauthorized Discharges; establishes communications, coordination and control procedures for team members and other participants; and identifies and schedules tasks and associated resource needs.

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

The Director has assembled a Wet Weather Team that includes all entities that have a stake in the program outcome, and is sufficiently multidisciplinary to address the myriad of engineering, economic, environmental, and institutional issues that will be raised during the implementation of the remedial measures under this Second Amended Consent Decree. The team will prepare a plan for funding the program and will develop a program for public information, education, and involvement.

The Wet Weather Team assembled by the Director contains MSD personnel such as wastewater treatment plant operators and engineering personnel, local political officials, and the general public, including rate payers and environmental interests. Private consulting resources

are also included. The Wet Weather Team may consult as appropriate with the Cabinet and EPA officials on the progress of MSD's implementation of the requirements of this Second Amended Consent Decree.

37. **Early Action Plan.** In accordance with the original Consent Decree, MSD prepared and submitted an Early Action Plan which the Cabinet/EPA reviewed and jointly approved. The Early Action Plan included the following components:

- a. **Nine Minimum Controls ("NMC") Compliance.** The Early Action Plan contained documentation demonstrating the status of MSD's compliance with the NMC requirements within the CSS as set forth in the CSO Control Policy. The documentation of the compliance status and the proposed activities was consistent with the "Guidance for Nine Minimum Controls", EPA 832-B-95-003, May 1995. The documentation submitted demonstrates compliance with the following controls:
 - (1) Proper operation and regular maintenance programs for the CSS and the CSOs;
 - (2) Maximum use of the collection system for storage;
 - (3) Review and modification of pretreatment requirements to assure CSO impacts are minimized;
 - (4) Maximization of flow to the WWTP for treatment;
 - (5) Prohibition of CSOs during dry weather, including provision for backup power where appropriate (provided, however, those discharges resulting from MSD's compliance with the requirements of the United States Army Corps of Engineers' Ohio River Flood Protection System Pumping

Operations Manual, dated 1954 and revised 1988, shall be addressed under the interim and Final LTCP);

- (6) Control of solid and floatable materials, including installation of devices where appropriate;
- (7) Pollution prevention;
- (8) Public notification to ensure that the public receives adequate notification of CSO occurrences and CSO impacts, including improving the current signage at each CSO location to an easily readable type size and style, and in both English and Spanish; and
- (9) Monitoring to effectively characterize CSO impacts and the efficacy of CSO controls.

The NMC Compliance portion of the Early Action Plan was approved by the Cabinet/EPA on February 22, 2007 and is hereby deemed incorporated into this Second Amended Consent Decree as an enforceable requirement of this Second Amended Consent Decree. Any future modification to the NMC Compliance portion of the Early Action Plan shall be deemed a non-material modification to this Second Amended Consent Decree.

- b. **CMOM (Capacity, Management, Operation and Maintenance) Programs Self-Assessment.** The Early Action Plan included a CMOM Programs Self-Assessment of MSD's combined and separate sewer collection and transmission systems, in accordance with US EPA Region IV methodology which was attached to the original Consent Decree to ensure that MSD has CMOM Programs in place that are effective at eliminating SSOs, including Unauthorized Discharges, within

the CSS and SSS. This Self-Assessment included an evaluation of, and recommendation of improvements to, each CMOM Program to ensure that such Programs contain the following key CMOM elements: written, defined purpose(s); written defined goal(s); documented in writing with specific details; implemented by well trained personnel; established performance measures; and written procedures for periodic review. Recommended improvements include schedules for implementation. Particular emphasis is placed upon the following Programs: Continuous Sewer System Assessment Program; Infrastructure Rehabilitation Program; Collection and Transmission Plans Program; System Capacity Assurance Program; Water Quality Monitoring Program; Pump Station Preventive Maintenance Program; Gravity Line Preventive Maintenance Program; Contingency Plan for Utility Infrastructure (this includes the evaluation of the need for backup power for each pump station); and Sewer Use Ordinance Legal Support Program. The portion of the Early Action Plan containing MSD's CMOM Programs Self-Assessment, the CMOM Programs and recommended improvements and schedules was approved by the Cabinet/EPA on August 21, 2006, and is hereby deemed incorporated into this Second Amended Consent Decree as an enforceable requirement of this Second Amended Consent Decree. Any future modification to MSD's CMOM Programs Self-Assessment and/or the CMOM Programs shall be deemed a non-material modification to this Second Amended Consent Decree.

- c. **Sewer Overflow Response Protocol ("SORP").** The Early Action Plan included a SORP in compliance with 401 KAR 5:015 to establish the timely and effective

methods and means of: (1) responding to, cleaning up, and/or minimizing the impact of SSOs and Unauthorized Discharges; (2) reporting the location, volume, cause and impact of SSOs and Unauthorized Discharges, to the Cabinet and EPA; and (3) notifying the potentially impacted public. The SORP was approved by the Cabinet/EPA on August 21, 2006, and MSD began to implement the SORP within 15 days of receiving the Cabinet's/EPA's approval. MSD shall annually review the SORP and propose changes as appropriate as a component of the Mid-Year Status Report subject to Cabinet/EPA review and approval. A copy of future updates to the SORP shall also be provided to the Louisville Regional Office of the Division of Water within 15 days of incorporation of the update. The SORP, and any subsequently approved changes, shall be deemed incorporated into this Amended Consent Decree as a non-material modification to this Second Amended Consent Decree and be an enforceable requirement of this Second Amended Consent Decree.

38. **Discharge Abatement Plans.** Pursuant to the original Consent Decree and the Amended Consent Decree, MSD prepared and submitted, for Cabinet/EPA review and joint approval, Sanitary Sewer Discharge Plans ("SSDP") designed to eliminate Unauthorized Discharges. MSD also prepared and submitted an interim and Final LTCP, for Cabinet/EPA review and joint approval, pursuant to the CSO Control Policy. MSD developed these Discharge Abatement Plans for the elimination of Unauthorized Discharges, the reduction and control of discharges from CSO locations identified in the MFWTP KPDES permit, and the improvement of water quality in the receiving waters. MSD prepared conventional and innovative or alternative designs as part of each plan, including but not limited to: sewer rehabilitation, sewer

replacement, sewer separation, relief sewers, above ground or below ground storage, high rate Secondary Treatment, illicit connection removal, remote wet weather Secondary Treatment facilities, and other appropriate alternatives. Designs were based on sound engineering judgment and in accordance with generally accepted engineering design criteria and may include interim remedial measures to reduce pollutant loading and improve water quality in the short term while alternatives for final remedial measures are being developed, evaluated and implemented.

a. **Sanitary Sewer Discharge Plan.**

- (1) The Final SSDP required by the Amended Consent Decree is a component of the 2009 IOAP which was incorporated into the Amended Consent Decree as a material change by Order of this Court dated February 12, 2010. The Final SSDP component of the 2009 IOAP was modified pursuant to the 2012 IOAP Modification. The Final SSDP is required to identify remedial measures to eliminate Unauthorized Discharges at locations not already addressed by previous, interim SSDPs. The Final SSDP contains the long term SSDP projects, including schedules, milestones, and deadlines. The Final SSDP also includes the results of an evaluation of WWTP peak flow treatment capacity for any WWTP that will receive additional flow based on any interim or Final SSDP project. Such evaluation is required to be consistent with the EPA publications “Improving POTW Performance Using the Composite Correction Approach,” EPA CERL, October 1984, and “Retrofitting POTWs,” EPA CERL, July 1989. The Final SSDP is required to include the following elements:

- A. A map that shows the location of all known Unauthorized Discharges. The map includes the areas and sewer lines that serve as a tributary to each Unauthorized Discharge. Smaller maps of individual tributary areas also may be included to show the lines involved in more detail.
- B. A description of each Unauthorized Discharge location that includes:
 - (i) The frequency of the Unauthorized Discharge;
 - (ii) The annual volume released of the Unauthorized Discharge;
 - (iii) A description of the type of Unauthorized Discharge location, i.e. manhole, pump station, constructed discharge pipe, etc.;
 - (iv) The receiving stream;
 - (v) The immediate area and downstream land use, including the potential for public health concerns;
 - (vi) A description of any previous, current, or proposed studies to investigate the Unauthorized Discharge; and
 - (vii) A description of any previous, current, or proposed rehabilitation or construction work to remediate or eliminate the Unauthorized Discharge.
- C. A prioritization of the Unauthorized Discharge locations identified above based upon the frequency, volume and impact on the

receiving stream and upon public health, and in coordination with the CMOM programs. Based upon this prioritization, MSD developed remedial measures and expeditious schedules for design, initiation of construction and completion of construction.

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

(2) MSD represents that it has completed construction of 47 of the required 63 SSDP projects eliminating 82% of the modeled SSO volume and 67% of the modeled overflow locations for the 2-year storm, including projects in the Hikes Point and the Beechwood Village areas and at the Highgate Pump Station and the Southeastern Diversion Structure. The parties agree that the schedules for the remaining 16 projects set forth in the Final SSDP component of the 2012 IOAP Modification are revised pursuant to this Second Amended Consent Decree. Specifically, the 16 remaining projects are grouped into three phases with completion of each phase by December 31, 2025; December 31, 2030; and December 31, 2035 respectively. Such projects and deadlines are more particularly described on Exhibit A, attached hereto and incorporated herein.

(3) The 2012 IOAP Modification was updated in 2021 to include the revised schedules for these 16 remaining Final SSDP projects (“2021 IOAP Modification”). The 2021 IOAP Modification was submitted to the Cabinet/EPA for review and approval on [REDACTED], 2021. A copy of the 2021 IOAP Modification can be found on MSD’s website at

<https://www.msdprojectwin.org>. By reference hereto, the 2021 IAOP Modification is incorporated herein as an enforceable requirement of this Second Amended Consent Decree. The Cabinet/EPA approved the 2021 IOAP Modification on [REDACTED], 2021 conditioned and effective upon entry of this Second Amended Consent Decree by the Court. MSD estimates that the cost of the 16 remaining Final SSDP projects will be approximately \$150 million. MSD also estimates that it will eliminate 98% of modeled SSO volume by 2030 for the 2-year storm by constructing the largest remaining Final SSDP project - the Upper Middle Fork Phase 2 Project. Schedules for any Final SSDP project shall not extend beyond December 31, 2035.

b. Long Term Control Plan.

- (1) The Final LTCP required by the Amended Consent Decree is a component of the 2009 IOAP which was incorporated into the Amended Consent Decree as a material change by Order of this Court dated February 12, 2010. The Final LTCP component of the 2009 IOAP was modified pursuant to the 2012 IOAP Modification. The Final LTCP is required to comply with the CSO Control Policy and be consistent with EPA's "Guidance for Long-Term Control Plan," EPA 832-B-95-002, September 1995. The Final LTCP is required to include schedules, deadlines and timetables for remedial measures that achieve full compliance with the criteria listed for the demonstrative approach or the presumptive approach as soon as practicable based on sound engineering judgment.

- A. The Final LTCP is required to meet the following goals:
- (i) Ensure that if CSOs occur, they are only as a result of wet weather (this goal is required to include addressing those discharges resulting from MSD's compliance with the requirements of the United States Army Corps of Engineers' Ohio River Flood Protection System Pumping Operations Manual, dated 1954 and revised 1988);
 - (ii) Bring all wet weather CSO discharge points into compliance with the technology-based and water quality-based requirements of the Act; and
 - (iii) Minimize the impacts of CSOs on water quality, aquatic biota, and human health.
- B. The Final LTCP is required to include, at a minimum, the following elements:
- (i) The results of characterization, monitoring, modeling activities, and design parameters as the basis for selection and design of effective CSO controls (including controls to address those discharges resulting from MSD's compliance with the requirements of the United States Army Corps of Engineers' Ohio River Flood Protection System Pumping Operations Manual, dated 1954 and revised 1988);
 - (ii) The results of an evaluation of WWTP peak flow treatment capacity for any WWTP, other than MFWTP, that will

receive additional flow based on any LTCP project. Such evaluation is required to be consistent with the EPA publications “Improving POTW Performance Using the Composite Correction Approach,” EPA CERI, October 1984, and “Retrofitting POTWs,” EPA CERI, July 1989;

- (iii) A report on the public participation process;
- (iv) Identification of how the Final LTCP addresses sensitive areas as the highest priority for controlling overflows;
- (v) A report on the cost analyses of the alternatives considered;
- (vi) Operational plan revisions to include agreed-upon long-term CSO controls;
- (vii) Maximization of treatment and evaluation of treatment capacity at MFWTP;
- (viii) Identification of and an implementation schedule for the selected CSO controls; and
- (ix) A post-construction compliance monitoring program adequate to verify compliance with water quality-based Clean Water Act requirements and ascertain the effectiveness of CSO controls.

- (2) MSD represents that it has completed construction of 24 of the required 25 LTCP projects reducing CSO discharges to local waterways by approximately 5 billion gallons per typical year. The remaining LTCP project to be completed is the Waterway Protection Tunnel as set forth in

the Final LTCP component of the 2012 IOAP Modification and the 2021 IOAP Modification. Pursuant to this Second Amended Consent and the 2021 IOAP modification, the Waterway Protection Tunnel shall be completed by December 31, 2022. MSD estimates that the remaining cost of the Waterway Protection Tunnel projects will be approximately \$65 million.

- (3) Schedules for any Final LTCP project shall not extend beyond December 31, 2022.

39. **Additional Early Action Projects.** Since entry of the Amended Consent Decree, MSD has determined that the conditions and circumstances regarding its Sewer System and WWTPs have changed thus necessitating the implementation of additional work in order to meet the objectives of the Amended Consent Decree and to achieve the levels of control for CSOs and SSOs set forth in the approved 2012 IOAP Modification and 2021 IOAP Modification. Pursuant to this Second Amended Consent Decree and the 2021 IOAP Modification, MSD shall implement the new projects set forth below which are more particularly described in the 2021 IOAP Modification:

- a. Replacement of the Paddy's Run Pump Station by December 31, 2026. MSD estimates that this project will cost approximately \$79 million. The parties acknowledge that the deadline for this project may be dependent upon the participation and cooperation of the USACE and therefore may be extended. Any such change to the deadline for this project shall be considered a non-material modification of this Second Amended Consent Decree.
- b. Replacement of the MFWTP Biosolids Facility by December 31, 2030. MSD

estimates that this project will cost approximately \$198 million.

- c. Repair and replacement by December 31, 2026 of the following 9 critical interceptors: Buechel Trunk Sewer Rehab; Harrods Creek Force Main Repair; Prospect Phase II Rehab; Broadway Interceptor Infrastructure Rehabilitation; I-64 and Grinstead Infrastructure Rehabilitation; Large Diameter Sewer Rehabilitation; Rudd Ave Sewer Infrastructure Rehabilitation; Western Outfall Infrastructure Rehabilitation; and Nightingale Rahab. MSD estimates that these projects will cost approximately \$70 million.

40. **Asset Management Plan.** By June 30, 2021, MSD shall submit to the Cabinet/EPA for review and joint approval an Asset Management Plan providing a long-term maintenance and funding strategy for the rehabilitation and renewal of its aging Sewer System and WWTP infrastructure particularly its aging interceptors and other critical assets.

- a. The Asset Management Plan shall set forth practices and procedures to ensure that planned maintenance can be conducted, and capital assets can be repaired, replaced, or upgraded on time and that there is enough money to pay for it.
- b. Consistent with EPA's *Asset Management: A Best Practices Guide* (EPA 816-F-08-014, April 2008), the Asset Management Plan shall set forth practices, procedures and time frames for MSD to address the 5 core framework questions for asset management:
 - (1) What is the current state of Sewer System and WWTP assets;
 - (2) What is a sustainable level of service;
 - (3) Which assets are critical to sustained performance;
 - (4) What are the minimum life cycle costs for providing the highest level of

service over time; and

- (5) What is the best long term funding strategy.
- c. The Asset Management Plan shall set forth strategic elements and approaches to be used including but not limited to the following:
- (1) Condition assessment evaluation;
 - (2) Operation and maintenance strategies;
 - (3) Level of service and performance metrics;
 - (4) Rehabilitation, repair and replacement strategies;
 - (5) Capital planning and decision making;
 - (6) Information systems and data management; and
 - (7) MSD's organizational framework.
- d. The Asset Management Plan to be submitted to the Cabinet/EPA will include procedures for forecasting and prioritizing asset management related projects rather than defining specific timelines for rehabilitation and renewal for all of MSD's existing assets. The Asset Management Plan submittal will, however, provide a tentative list of Asset Management project candidates for the first 5 years. The parties acknowledge that implementation of the Asset Management Plan will result in the Plan becoming a dynamic document that will be updated over time with greater specificity regarding specific projects for the rehabilitation and renewal of MSD's aging Sewer System and WWTP infrastructure.
- e. MSD shall spend at a minimum \$25 million on average per its fiscal year (July 1 to June 30) on asset management projects under this Second Amended Consent Decree for a total of \$375 million by June 30, 2035. Eligible costs to be counted

towards this spending requirement under the Asset Management Plan include work and/or services associated with planning, inspection, field testing, design, permitting, bidding, construction, commissioning (asset start-up), rehabilitation, replacement, and renewal of MSD's Sewer System and WWTP infrastructure. Costs that are not eligible costs to be counted include work and/or services associated with asset management software, programming, financing, grant or loan applications, or annual operating budget line items (power, chemicals, labor, or services associated with preventative or corrective maintenance).

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

Amended Consent Decree.

REPORTING REQUIREMENTS

41. **Mid-Year Status Report.** MSD shall submit to the Cabinet/EPA for review and joint approval a Mid-Year Status Report summarizing the first 6 months of its fiscal year, July 1 through December 31. The Mid-Year Status Report summarizing the final 6 months of the fiscal year will be captured as a component of the Annual Report as set forth below. The first Mid-Year Status Report shall be submitted by February 28, 2022 (covering the period from July 1, 2021 through December 31, 2021) and will reoccur annually by February 28 of each year. The Mid-Year Status Report shall include the following information, at a minimum:

- a. An accounting of the current period and the cumulative reductions in volume and in number of occurrences of Unauthorized Discharges from the SSS, CSS and WWTPs and discharges from MSD's CSO locations identified in its MFWTP KPDES permit.
- b. An accounting of the Bypasses at MSD's WWTPs prohibited pursuant to the provisions of 40 C.F.R. § 122.41(m)(2) and (4) or 401 KAR 5:065, Section 1(13)(a) and (c) that occurred in the previous 6-month period.
- c. A detailed description of projects and activities conducted to comply with the requirements of this Second Amended Consent Decree, in Gantt chart or similar format, during the previous 6-month period.
- d. The anticipated projects and activities that will be performed during the next 6-month to comply with the requirements of the Second Amended Consent Decree, in Gantt chart or similar format.
- e. Proposed changes to the SORP as result of MSD's annually review conducted

pursuant to paragraph 37.c. of this Second Amended Consent Decree.

Upon review of a Mid-Year Status Report, the Cabinet/EPA may jointly (1) approve, in whole or in part, or (2) provide comments to MSD identifying the deficiencies. Upon receipt of Cabinet/EPA comments, MSD shall have sixty (60) days to revise and resubmit the Mid-Year Status Report for review and approval, subject only to MSD's rights under the dispute resolution provisions of this Second Amended Consent Decree. Upon resubmittal, the Cabinet/EPA may jointly (1) approve or (2) disapprove and provide comments to MSD identifying the deficiencies. Upon such resubmittal, if the Mid-Year Status Report is disapproved, the Cabinet/EPA may jointly deem MSD to be out of compliance with this Second Amended Consent Decree for failure to timely submit the Mid-Year Status Report and may assess stipulated penalties pursuant to this Second Amended Consent Decree, subject only to MSD's rights under the dispute resolution provisions of this Second Amended Consent Decree.

42. **Annual Report.** MSD shall submit to the Cabinet/EPA for review and joint approval an Annual Report for the preceding fiscal year period of July 1 through June 30. The first Annual Report under this Second Amended Consent Decree shall be submitted by September 30, 2021 (covering the period from July 1, 2020 through June 30, 2021) and will reoccur annually by September 30 of each year. The Annual Report shall include the following information, at a minimum, for the time period of July 1 through June 30:

- a. Information required in paragraph 41.a. through d. for the Mid-year Status Report for the full 12 months of the fiscal year.
- b. Documentation to demonstrate that MSD is adequately implementing the NMC, CMOM and SORP components of the Early Action Plan, including a comparison of actual performance with any performance measures that have been established.

- c. Documentation to demonstrate that MSD is adequately implementing the Final SSDP and Final LTCP components of the Discharge Abatement Plans set forth in the 2021 IOAP Modification, including a comparison of actual performance with any performance measures that have been establish.
- d. Documentation to demonstrate that MSD is adequately implementing the Additional Early Action Projects.
- e. Documentation to demonstrate that MSD is adequately implementing the Asset Management Plan including detailed information on specific asset management projects being implemented, or that have been implemented. Such documentation shall also include detailed information on the total eligible costs (as such term is described in paragraph 40.e. of this Second Amended Consent Decree) spent under the Asset Management Plan on such asset management projects during the previous fiscal year. For purposes of the first Annual Report to be filed by September 30, 2021 under this Second Amended Consent Decree and regardless of whether the Cabinet/EPA has approved the Asset Management Plan to be submitted by MSD to the Cabinet/EPA pursuant to paragraph 40 of this Second Amended Consent Decree, MSD may include detailed information on eligible costs spent after June 30, 2020 on asset management projects that are demonstrated in the first Annual Report to be consistent with the Asset Management Plan.

Upon review of an Annual Report, the Cabinet/EPA may jointly (1) approve, in whole or in part, or (2) provide comments to MSD identifying the deficiencies. Upon receipt of Cabinet/EPA comments, MSD shall have sixty (60) days to revise and resubmit the Annual

Report for review and approval, subject only to MSD's rights under the dispute resolution provisions of this Second Amended Consent Decree. Upon resubmittal, the Cabinet/EPA may jointly (1) approve or (2) disapprove and provide comments to MSD identifying the deficiencies. Upon such resubmittal, if the Annual Report is disapproved, the Cabinet/EPA may jointly deem MSD to be out of compliance with this Second Amended Consent Decree for failure to timely submit the Annual Report and may assess stipulated penalties pursuant to this Second Amended Consent Decree, subject only to MSD's rights under the dispute resolution provisions of this Second Amended Consent Decree.

STIPULATED PENALTIES

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

44. In the event MSD fails to comply with the advance notice requirements for any anticipated Bypass pursuant to 40 C.F.R. § 122.41(m)(3)(i) or 401 KAR 5:065, Section 1(13)(b)1, EPA may assess against MSD a stipulated penalty in the amount of \$2,000 for each failure. This penalty is in addition to, and not in lieu of, any other penalty that could be assessed.

45. In the event MSD fails to comply with the twenty-four hour reporting requirements for any unanticipated Bypass pursuant to 40 C.F.R. § 122.41(m)(3)(ii) or 401 KAR 5:065, Section 1(13)(b)(2), EPA may assess against MSD a stipulated penalty in the amount of \$2,000 for each failure. This penalty is in addition to, and not in lieu of, any other penalty that

could be assessed.

46. For failure to timely submit a Mid-Year Status Report or an Annual Report, the Cabinet/EPA may jointly assess against MSD a stipulated penalty in the amount of \$1,000. For each day that MSD remains out of compliance for failure to timely submit a Mid-Year Status Report and/or Annual Report, the Cabinet/EPA may jointly assess against MSD a stipulated penalty of an additional one hundred dollars (\$100) per day. This penalty is in addition to, and not in lieu of, any other penalty that could be assessed.

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

- a. For any dry weather discharge at a CSO occurring after September 30, 2006, \$2,000 per discharge (provided, however, the Cabinet/EPA shall not assess stipulated penalties for those discharges resulting from MSD's compliance with the requirements of the United States Army Corps of Engineers' Ohio River Flood Protection System Pumping Operations Manual, dated 1954 and revised 1988, which shall be addressed under the interim and final LTCP). This penalty is in addition to, and not in lieu of, any other penalty that could be assessed.
- b. For any Unauthorized Discharge (not including any effluent limitation violation of a WWTP KPDES permit and those Unauthorized Discharges described in paragraphs 47.c and d below) occurring after August 12, 2007, \$500 per Unauthorized Discharge. This penalty is in addition to, and not in lieu of, any other penalty that could be assessed.
- c. For any Bypass at MSD's WWTPs prohibited pursuant to the provisions of 40 C.F.R. § 122.41(m)(2) and (4) or 401 KAR 5:065, Section 1(13)(a) and (c), \$500

per Bypass occurring after December 31, 2008. This penalty is in addition to, and not in lieu of, any other penalty that could be assessed.

- d. For any Unauthorized Discharge within the Beechwood Village Area and at the Southeast Diversion at Fountain Court, \$5,000 per Unauthorized Discharge occurring after December 31, 2011. For any Unauthorized Discharge within the Hikes Point Area and at the Highgate Springs Pump Station, \$5,000 per Unauthorized Discharge occurring after December 31, 2013. This penalty is in addition to, and not in lieu of, any other penalty that could be assessed.

48. For each day that MSD fails to timely complete the Additional Early Action Projects and/or approved projects under the Final SSDP, the Final LTCP, or any approved amendments thereto, the Cabinet/EPA may jointly assess against MSD stipulated penalties for each such project as follows:

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

49. For the circumstances described below regarding MSD's implementation of the Asset Management Plan, the Cabinet/EPA may jointly assess against MSD stipulated penalties as follows:

- a. In the event MSD fails to provide in its first 5 Annual Reports submitted pursuant to paragraph 42.e. of this Second Amended Consent Decree detailed information demonstrating that at least \$112.5 million of eligible costs (as such term is

described in paragraph 40.e. of this Second Amended Consent Decree) have been spent on asset management projects under the Asset Management Plan during the period from July 1, 2020 through June 30, 2025, the Cabinet/EPA may jointly assess \$5,000 for every \$1 million, or portion thereof, in spending below \$112.5 million. For example, if MSD demonstrates that it has spent \$110.3 million of eligible costs during this first 5-year period, then the Cabinet/EPA may assess a stipulated penalty in the amount of \$15,000 ($5,000 \times 3$).

- b. In the event MSD fails to provide in its first 10 Annual Reports submitted pursuant to paragraph 42.e. of this Second Amended Consent Decree detailed information demonstrating that at least \$237.5 million of eligible costs (as such term is described in paragraph 40.e. of this Second Amended Consent Decree) have been spent on asset management projects under the Asset Management Plan during the period from July 1, 2020 through June 30, 2030, the Cabinet/EPA may jointly assess \$10,000 for every \$1 million, or portion thereof, in spending below \$237.55 million. For example, if MSD demonstrates that it has spent \$233.7 million during this 10-year period, then the Cabinet/EPA may assess a stipulated penalty in the amount of \$40,000 ($\$10,000 \times 4$).

- c. In the event MSD fails to provide in its first 15 Annual Reports submitted pursuant to paragraph 42.e. of this Second Amended Consent Decree detailed information demonstrating that at least \$375 million of eligible costs (as such term is described in paragraph 40.e. of this Second Amended Consent Decree) have been spent on asset management projects under the Asset Management Plan during the period from July 1, 2020 through June 30, 2035, the Cabinet/EPA may

jointly assess \$20,000 for every \$1 million, or portion thereof, in spending below \$375 million. For example, if MSD demonstrates that it has spent \$373.1 million during this 15-year period, then the Cabinet/EPA may assess a stipulated penalty in the amount of \$40,000 ($\$20,000 \times 2$).

- d. For each full calendar month after MSD fails to provide in its first 15 Annual Reports submitted pursuant to paragraph 42.e. of this Second Amended Consent Decree detailed information demonstrating that at least \$375 million of eligible costs (as such term is described in paragraph 40.e. of this Second Amended Consent Decree) have been spent on asset management projects under the Asset Management Plan during the period from July 1, 2020 through June 30, 2035, the Cabinet/EPA may jointly assess against MSD a stipulated penalty of an additional \$10,000 per month until MSD submits to the Cabinet/EPA detailed information demonstrating that at least \$375 million of eligible costs have been spent on asset management projects under the Asset Management Plan.

50. The Cabinet/EPA may jointly in the unreviewable exercise of its discretion, reduce or waive any stipulated penalties otherwise due under this Second Amended Consent Decree. MSD shall tender all stipulated penalty payments specified above within 10 days of receipt of written notice that such penalty has been assessed. 50% of each payment due shall be paid to the Cabinet and 50% shall be paid to EPA. MSD shall tender all penalty payments due to the Cabinet by certified check, cashier's check or money order, payable to the KENTUCKY STATE TREASURER. Payment shall be tendered to the Kentucky Division of Enforcement, 300 Fair Oaks Lane, Frankfort, Kentucky 40601; note Case No. DOW-32604-056. MSD shall tender all penalty payments due to EPA by electronic funds transfer, in accordance with written

instructions to be provided by EPA after entry of this Second Amended Consent Decree. The costs of such electronic transfer shall be the responsibility of MSD. Notice of such payment shall be provided under the Form of Notice provision in this Second Amended Consent Decree.

FORM OF NOTICE

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

As to the Commonwealth of Kentucky:

Director, Division of Enforcement
Department of Environmental Protection
300 Sower Blvd., 3rd Floor
Frankfort, Kentucky 40601

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

As to EPA:

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

Chief, Water Enforcement Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency,
Region 4
Atlanta Federal Center

61 Forsyth Street, S.W.
Atlanta, Georgia 30303

For verbal notifications: Mary Jo Bragan, Chief, Water Enforcement Branch, (404) 562-9275 (subject to change on written notice to MSD).

As to MSD:

James A. Parrott
MSD Executive Director

Jacquelyn A. Quarles
MSD Deputy General Counsel

Louisville and Jefferson County Metropolitan Sewer District
700 West Liberty Street
Louisville, Kentucky 40203

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

COSTS OF SUIT

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

REVIEW OF SUBMITTALS

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

CERTIFICATION OF SUBMISSIONS

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

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

RIGHT OF ENTRY

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

- a. Monitor the work required by this Second Amended Consent Decree;
- b. Verify any data or information submitted to the Cabinet or EPA;
- c. Obtain samples from any portion of the SSS, CSS or WWTPs;
- d. Inspect and evaluate any portions of the SSS, CSS or WWTPs;
- e. Inspect and review any records required to be kept under the terms and conditions of this Second Amended Consent Decree or any KPDES permit, the Act and KRS Chapter 224; and
- f. Otherwise assess MSD's compliance with state and federal environmental laws and this Second Amended Consent Decree.

The rights created by this paragraph are in addition to, and in no way limit or otherwise affect, the authority of the Cabinet or EPA to conduct inspections, to require monitoring and to obtain information from MSD as authorized by law.

RECORD RETENTION

56. MSD shall retain all data, documents, plans, records and reports that relate to MSD's performance under this Second Amended Consent Decree which are in the possession, custody, or control of MSD or its consultants or contractors. MSD shall retain all such materials for 5 years from the date of origination. Drafts of final documents, plans, records, or reports do not need to be retained. This paragraph does not limit or affect any duty or obligation of MSD to maintain records or information required by any KPDES permit. At the conclusion of this

retention period MSD shall notify the Cabinet and EPA at least one-hundred and 120 days prior to the destruction of any such materials, and upon request by any of these parties, MSD shall deliver any such materials to that party.

MISCELLANEOUS PROVISIONS

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

58. MSD shall also use its best efforts to seek and obtain the approval of Louisville/Jefferson County Metro Council of all rate increases greater than 7% that MSD determines are necessary to enable MSD to comply with this Second Amended Consent Decree. MSD's best efforts shall include a thorough and good faith presentation to the Louisville/Jefferson County Metro Council of information with respect to what rate increases

greater than 7% are required to comply with this Second Amended Consent Decree and what rate increases greater than 7% MSD is proposing to undertake to comply with this Second Amended Consent Decree, including a detailed financial analysis of the costs of such rate increases that MSD determines to be necessary.

In the event that the Louisville/Jefferson County Metro Council does not approve rate increases greater than 7% that the MSD determines to be necessary to enable MSD to comply with this Second Amended Consent Decree (hereinafter “Denied Rate Action”), MSD, shall, within 15 days after such Denied Rate Action, notify the Cabinet and EPA of such Denied Rate Action pursuant to paragraph 51 of this Second Amended Consent Decree. In this notice, the MSD shall set forth the circumstances surrounding the Denied Rate Action, an explanation for why such Denied Rate Action was necessary to enable it to comply with this Second Amended Consent Decree, and a description of the best efforts it took to seek the approval of the Denied Rate Action by the Louisville/Jefferson County Metro Council.

In the event of a Denied Rate Action, despite MSD using its best efforts to seek and obtain such approval, the Cabinet and EPA shall not seek to hold individual MSD officers, directors, or employees in contempt of Court and shall not seek stipulated penalties against MSD to the extent MSD is unable to comply with this Second Amended Consent Decree as a direct result of the Denied Rate Action. MSD shall, however, continue to perform obligations under this Second Amended Consent Decree to the extent possible with any other rate increase approved by the Louisville/Jefferson County Metro Council. While the occurrence of a Denied Rate Action may affect MSD’s ability to comply with this Second Amended Consent Decree, MSD shall remain obligated to perform all requirements of this Second Amended Consent Decree.

In the event of a Denied Rate Action, despite MSD using its best efforts to seek and obtain such approval, the Cabinet and EPA may move the Court to exercise its inherent authority under the CWA and other laws to ensure compliance with the Court's order and the protection of public health and the environment by ordering such actions as may be necessary, including the imposition of rate increases that MSD determined are necessary to enable MSD to comply with this Second Amended Consent Decree and including ordering the Louisville/Jefferson County Metro Council to approve all necessary rate increases. MSD shall not take any action that could reasonably be construed to be in opposition to such a motion by the Cabinet and EPA. The Cabinet and EPA hereby reserve all of their rights to take any other action under the law so as to ensure compliance with the CWA, KRS Chapter 224 and this Second Amended Consent Decree that are not inconsistent with this paragraph.

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

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

and the regulations promulgated pursuant thereto.

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

62. It is the intention of the parties to this Second Amended Consent Decree that MSD shall have the opportunity, consistent with applicable law, to conform compliance with this Second Amended Consent Decree to any modifications in EPA's regulations or national policies governing Bypasses that may occur after lodging of this Second Amended Consent Decree. Consequently, upon issuance of any new EPA final regulation (as promulgated in the Federal Register) or national policy governing Bypasses, MSD may request modification of this Second Amended Consent Decree (including requests for extensions of time) from the Cabinet/EPA to conform this Consent Decree to such regulation or national policy. For the purposes of this paragraph, "national policy" refers to a formal written policy statement issued by EPA's Assistant Administrator for the Office of Water and EPA's Assistant Administrator for the Office of Enforcement and Compliance Assurance. Upon MSD's request, the parties shall discuss the matter. If the parties agree on a proposed modification to this Second Amended Consent Decree, they shall prepare a joint motion to the Court requesting such modification. If the parties do not agree, and MSD still believes modification of this Second Amended Consent Decree is appropriate, it may file a motion seeking such modification in accordance with Federal

Rule of Civil Procedure 60(b); provided, however, that nothing in this paragraph is intended to waive the Cabinet's and EPA's rights to oppose such motion and to argue that such modification is unwarranted. Following the filing of a motion under Rule 60(b), any stipulated penalties that may be assessed shall accrue due to MSD's failure, if any, to continue performance of obligations under this Second Amended Decree that are necessarily the subject of the Rule 60(b) motion; provided, however, that such penalties need not be paid unless the Court resolves the Rule 60(b) motion in the Cabinet/EPA's favor. If the Court resolves the motion in MSD's favor, MSD shall comply with this Second Amended Consent Decree as modified.

63. The Cabinet and EPA do not, by consent to the entry of this Second Amended Consent Decree, warrant or aver in any manner that MSD's complete compliance with this Second Amended Consent Decree will result in compliance with the provisions of the Act or KRS Chapter 224, and the regulations promulgated pursuant thereto, nor with any permit. Notwithstanding the Cabinet's and EPA's review and approval of any plans formulated pursuant to this Second Amended Consent Decree, MSD shall remain solely responsible for compliance with the terms of the Act and KRS Chapter 224, and the regulations promulgated pursuant thereto, this Second Amended Consent Decree and any permit and compliance schedule requirements. This Second Amended Consent Decree is not and shall not be construed as a permit, nor a modification of any existing permit, issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, nor shall it in any way relieve MSD of its obligations to obtain permits for its WWTPs and related operations or facilities and to comply with the requirements of any KPDES permit or with any other applicable state or federal law or regulation. Any new permit, or modification of existing permits, must be complied with in accordance with applicable state or federal laws and regulations.

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

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

PUBLIC COMMENTS

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

FORCE MAJEURE

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

68. MSD shall notify the Cabinet's Director of the Enforcement Division and EPA's Chief of the Water Enforcement Branch by telephone by the end of the next business day and in writing 10 business days after it becomes aware of events which it knows or should know constitute a force majeure. The notice shall estimate the anticipated length of delay, including necessary demobilization and remobilization, its cause, measures taken or to be taken to minimize the delay and an estimated timetable for implementation of these measures. Failure to comply with the notice provision of this paragraph shall be grounds for the Cabinet and EPA to deny an extension of time for performance. If an event is anticipated to occur which may cause a delay in meeting the requirements of this Second Amended Consent Decree, MSD shall notify the Cabinet's Director of the Enforcement Division and EPA's Chief of the Water Enforcement Branch by telephone by the end of the next business day and in writing 10 business days of learning of the possibility of a force majeure event, if the event has not already occurred. The

Cabinet or EPA will respond in writing to any written notice received.

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

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

**CONTINUING JURISDICTION, TERMINATION AND
AMENDMENTS TO CONSENT DECREE**

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

72. This Second Amended Consent Decree is subject to termination on the date that MSD certifies that it has:

- a. Paid all stipulated penalties due,
- b. Submitted and received approval of the Asset Management Plan pursuant to paragraph 40 of this Second Amended Consent Decree, and
- c. Completed all work and implemented all the requirements in the Early Action Plan, the Final SSDP, the Final LTCP, the Additional Early Action Projects and the Asset Management Plan as required under this Second Amended Consent

Decree or any additional amendments to this Second Amended Consent Decree.

The Cabinet/EPA's determination that this Second Amended Consent Decree and any subsequent amendment to this Second Amended Consent Decree should be terminated shall be based on a consideration of whether all 3 requirements listed above have occurred.

73. MSD may request that the Cabinet/EPA make a determination that this Second Amended Consent Decree and any subsequent amendment thereto be terminated. Any such request shall be in writing and shall include a certification that the 3 requirements listed above have been met. MSD shall serve a copy of any such request on the Cabinet through the office of its Secretary and EPA through the Director of the EPA Region 4 Enforcement and Compliance Assurance Division.

74. If the Cabinet/EPA agree that MSD has met all 3 requirements listed above, the Cabinet/EPA and MSD shall file a joint motion with the Court seeking an order terminating the Second Amended Consent Decree and any subsequent amendment thereto. If the Cabinet/EPA determine not to seek termination of this Second Amended Consent Decree and any subsequent amendment thereto because they determine all 3 requirements listed above were not met, they shall so notify MSD in writing. The Cabinet/EPA's notice shall summarize the basis for its decision and describe the actions necessary to achieve final compliance. If MSD disagrees with any such determination by the Cabinet/EPA, it must invoke the dispute resolution procedures described in paragraphs 75 and 76 below before filing any motion with the Court regarding the disagreement.

DISPUTE RESOLUTION

75. Any dispute that arises under or with respect to this Second Amended Consent Decree shall in the first instance be the subject of informal negotiations between the parties. MSD shall invoke the informal dispute resolution procedures by notifying all other parties in writing of the matter(s) in dispute and of MSD's intention to resolve the dispute under these

paragraphs 75 and 76. The notice shall:

- a. Outline the nature and basis of the dispute;
- b. Include MSD's proposed resolution;
- c. Include all information or data relating to the dispute and the proposed resolution;
and
- d. Request negotiations pursuant to this paragraph to informally resolve the dispute.

The parties shall then attempt to resolve the dispute informally for a period of 30 days from the date of the notice with the goal of resolving the dispute in good faith, without further proceedings. The period for informal negotiations shall not exceed 30 days from the date of the original notice of this dispute, unless the parties otherwise agree in writing to extend that period.

76. If informal negotiations are unsuccessful, the position of the Cabinet and EPA shall control unless, within 30 days after the conclusion of the informal negotiation period, MSD seeks judicial review of the dispute by filing with the Court and serving on the Cabinet and EPA a motion requesting judicial resolution of the dispute. The motion shall contain a written statement of MSD's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of this Second Amended Consent Decree. The Cabinet and EPA shall respond to MSD's motion within 30 days. Either party may request an evidentiary hearing for good cause. The burden of proof is on MSD to demonstrate that its position on the matter in dispute meets the objectives of this Second Amended Consent Decree, any subsequent amendment thereto, the Act and KRS Chapter 224. If the dispute is not resolved within the schedule identified for orderly implementation of this Second Amended Consent Decree in MSD's motion, MSD may request additional time beyond

compliance schedules or deadlines in this Second Amended Consent Decree that are dependent upon the duration and/or resolution of the dispute.

SIGNATORIES

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

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

So ORDERED, this _____ day of _____, 2021.

UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED Party consents to entry of this Second Amended Consent Decree in the Commonwealth of Kentucky and the United States v. the Louisville and Jefferson County Metropolitan Sewer District, subject to the public notice requirements of 28 C.F.R. §50.7:

FOR THE COMMONWEALTH OF KENTUCKY,
ENERGY AND ENVIRONMENT CABINET



LIZ NATTER
Executive Director
Office of the Secretary
Energy and Environment Cabinet



REBECCA GOODMAN
Secretary
Energy and Environment Cabinet

THE UNDERSIGNED Party consents to entry of this Second Amended Consent Decree in the Commonwealth of Kentucky and the United States v. the Louisville and Jefferson County Metropolitan Sewer District, subject to the public notice requirements of 28 C.F.R. §50.7:

FOR THE UNITED STATES OF AMERICA

JEAN E. WILLIAMS

Acting Assistant Attorney General

Environment and Natural Resources Division

United States Department of Justice

/s/ William A. Weinischke

WILLIAM A. WEINISCHKE

Senior Counsel

Environment and Enforcement Section

Environment and Natural Resources Division

United States Department of Justice

Post Office Box 7611

Washington, D.C. 20044

(202) 514-4592

MICHAEL A. BENNETT

Acting United States Attorney

WILLIAM F. CAMPBELL

Assistant United States Attorney

Western District of Kentucky

510 W. Broadway, 10th Floor

Louisville, Kentucky 40402

(502) 582-523-4164

THE UNDERSIGNED Party consents to entry of this Second Amended Consent Decree in the Commonwealth of Kentucky and the United States v. the Louisville and Jefferson County Metropolitan Sewer District, subject to the public notice requirements of 28 C.F.R. §50.7:

THE UNDERSIGNED Party consents to entry of this Second Amended Consent Decree in the Commonwealth of Kentucky and the United States v. the Louisville and Jefferson County Metropolitan Sewer District, subject to the public notice requirements of 28 C.F.R. §50.7:

Nathan
Mark Pollins

Digitally signed by
Nathan Mark Pollins
Date: 2021.07.07
18:00:50 -04'00'

MARK POLLINS

Director, Water Enforcement Division

Office of Civil Enforcement

Office of Enforcement and Compliance Assurance

United States Environmental Protection Agency

THE UNDERSIGNED Party consents to entry of this Second Amended Consent Decree in the Commonwealth of Kentucky and the United States v. the Louisville and Jefferson County Metropolitan Sewer District, subject to the public notice requirements of 28 C.F.R. §50.7:

LEIF PALMER Digitally signed by LEIF
PALMER
Date: 2021.06.01 15:54:38
-04'00'

LEIF PALMER
Regional Counsel
United States Environmental Protection Agency
Region 4
61 Forsyth Street
Atlanta, Georgia 30303
(404) 562-9542

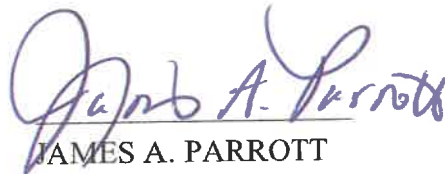
THE UNDERSIGNED Party consents to entry of this Second Amended Consent Decree in the Commonwealth of Kentucky and the United States v. the Louisville and Jefferson County Metropolitan Sewer District, subject to the public notice requirements of 28 C.F.R. §50.7:

FOR LOUISVILLE AND JEFFERSON COUNTY
METROPOLITAN SEWER DISTRICT



MARITA WILLIS

Chairman of the Board



JAMES A. PARROTT

Executive Director



PAULA M. PURIFOY

General Counsel

700 West Liberty Street

Louisville, Kentucky 40203

(502) 540-6622

EXHIBIT A

REMAINING FINAL SSDP PROJECTS

The remaining Final SSDP projects and deadlines, as set forth in the 2021 IOAP Modification, are listed below:

A. The following remaining Final SSDP projects shall be completed by December 31, 2025:

- 1) Raintree & Marian Ct Phase 1 (S_JT_JT_NB03_M_01_C)
- 2) Idlewood Inline Storage (S_CC_CC_70158_M_09A_C)
- 3) Monticello PS Elimination (S_JT_JT_NB04_M_01_A)
- 4) Kavanaugh Road Pump Station (S_HC_HC_MSD1085_S_03_A)
- 5) Leven Pump Station Elimination (S_PO_WC_PC10_M_01_C)
- 6) Cinderella PS Elimination (S_PO_WC_PC04_M_01_C)
- 7) Gunpowder Pump Station ILS (S_HC_HN_NB02_S_09A_C_B)
- 8) Little Cedar Creek Interceptor (S_CC_CC_67997_M_01_C)

B. The following remaining Final SSDP projects shall be completed by December 31, 2030:

- 9) Bardstown Road PS (S_CC_CC_MSD1025_S_03_B)
- 10) Raintree & Marian Ct Phase 2 (S_JT_JT_NB03_M_01_C)
- 11) Dell Road & Charlane Pkwy Int.(S_JT_JT_NB02_M_01_C)
- 12) Upper Middle Fork #2 PS (S_MISF_MF_NB01_M_01_C_A1)
- 13) Mellwood System Improvements (S_OR_MF_NB01_M_01_B)
- 14) Sutherland Interceptor (S_SD_MF_NB05_M_01_A)

C. The following remaining Final SSDP projects shall be completed by December 31, 2035:

- 15) Camp Taylor Phase 4 (S_SF_MF_30917_M_09_A)
- 16) Goose Creek PS & Storage (S_MI_MF_NB04_M_03_B)