

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

UNITED STATES OF AMERICA,

and

THE STATE OF INDIANA,

Plaintiffs,

v.

THE CITY OF INDIANAPOLIS,
INDIANA, A Municipal
Corporation,

Defendant.

Civil Action No.

Judge

1:06-cv-1456-DFH-VSS

CONSENT DECREE

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CONSENT DECREE

WHEREAS, concurrent with the lodging of this Consent Decree, Plaintiffs, the United States, on behalf of the United States Environmental Protection Agency ("U.S. EPA"), and Indiana, on behalf of the Indiana Department of Environmental Management ("IDEM"), have filed a complaint (the "Complaint") in this civil action against Defendant, the City of Indianapolis, Indiana ("City"), in connection with the City's operation of its municipal wastewater and sewer system. The Complaint alleges that Indianapolis violated and continues to violate the Clean Water Act, 33 U.S.C. § 1251 et seq. (the "CWA" or "Act"), Title 13 of the Indiana Code, Title 327 of the Indiana Administrative Code, and Indianapolis' National Pollution Discharge Elimination System (NPDES) permits. The United States and Indiana seek civil

penalties and injunctive relief for these violations.

WHEREAS, the City denies any liability to the United States and the State arising out of the transactions or occurrences alleged in the Complaint.

WHEREAS, the City represents that it has taken the following incremental steps to comply with U.S. EPA's Combined Sewer Overflow (CSO) Control Policy:

A. Indianapolis owns and, currently through its contractor United Water (formerly the White River Environmental Partnership), operates the Belmont Advanced Wastewater Treatment Plant ("Belmont AWTP") and the Southport Advanced Wastewater Treatment Plant ("Southport AWTP"), both of which are located in Marion County and are authorized to discharge treated effluent into the White River. Indianapolis also owns and, currently through its contractor United Water, operates the Sewer System leading to the Belmont and Southport AWTPs. That System contains point sources through which pollutants are discharged into the White River, Pogues Run, Pleasant Run, Fall Creek, Little Eagle Creek, State Ditch, Bean Creek, Lick Creek, Union Creek, Blue Creek, Little Buck Creek, Big Eagle Creek and Meadow Brook.

B. Indianapolis' Sewer System serves a population of approximately 860,000, encompasses an area of approximately 277 square miles, and includes approximately 246 miles of interceptor

sewers.

C. Indianapolis' Combined Sewer System was built in the early 1900s. It was designed to carry both stormwater and sanitary waste away from residences and businesses, as was the common engineering practice at the time. The Combined Sewer System encompasses approximately 56 square miles of tributary area, and includes approximately 63 miles of interceptor sewers. Combined Sewer Overflows ("CSOs"), constructed as relief points throughout the Combined Sewer System, were designed to discharge when, among other things, stormwater caused sewer capacity to be exceeded.

D. Since 1993, Indianapolis has conducted a number of studies, modeling and characterization of its Sewer System and the waterways affected by CSOs. In 2000, Indianapolis submitted a Stream Reach Characterization and Evaluation Report and published "Improving Our Streams in the City of Indianapolis: A Report on Options for Controlling Combined Sewer Overflows." In July and August of 2000, Indianapolis hosted public education and input meetings and formed an advisory committee as a means of obtaining public participation in the development of a CSO Long-Term Control Plan ("LTCP"). Indianapolis' Wet Weather Technical Advisory Committee also was consulted during development of the LTCP. In April 2001, Indianapolis submitted a proposed LTCP to U.S. EPA and IDEM for review.

E. In May 2001, the Indianapolis City-County Council approved a 17.8 percent sewer rate increase to fund the design and construction of CSO reduction projects. In October 2005, the City-County Council approved an 87 percent sewer rate increase, phased in over three years, to fund \$400 million in sanitary capital projects for 2005-2008. Indianapolis also began the implementation of several large early action projects to reduce CSOs, and Indianapolis asserts that it has invested \$200 million since 2001 to finance these projects.

F. In response to comments from U.S. EPA, Indianapolis conducted additional stream and combined sewer outfall sampling and analysis to validate the hydraulic and water quality models of the Combined Sewer System and affected waterways. Following agreement by U.S. EPA that Indianapolis' models were suitable for use in long-term control planning, Indianapolis began a re-analysis of CSO control technologies at U.S. EPA's request. This technology analysis began in 2002 with a general screening of available technologies and continued in 2003 with a watershed-based analysis of specific technology options for Pleasant Run and Fall Creek.

G. In 2002, Indianapolis conducted a stream use survey and representatives of the City attended numerous neighborhood meetings, as well as meetings with environmental and recreational organizations, to gather information on how CSO-impacted waterways

have been and currently are used by the public. The stream use information was used by the City to assist in prioritizing a number of early action projects. These projects include: real-time control projects to maximize in-line storage and reduce overflows near three parks, a middle school and a university; a 3-million gallon storage tank along the east bank of the White River in White River State Park; and a tunneling project to reroute overflows on Pogues Run away from several Indianapolis Public Schools and into an underground tunnel.

H. The City met frequently with several advisory committees in 2003 and 2004 to review long-term control plan options and obtain feedback on policy and technical issues. In 2004, the City completed the reevaluation of available system-wide CSO control alternatives, and in October 2004, the City conducted an extensive public outreach program to obtain public feedback on the benefits and costs of these CSO control alternatives. The outreach program included production of an 8-minute educational video, five public meetings throughout the City, presentations to community organizations and elected officials, a 12-page publication that was widely distributed to residents, and an interactive Web site through which comments were accepted. News media coverage appeared in The Indianapolis Star, Indianapolis Recorder, and television and radio stations.

I. Through these outreach activities, the City received public feedback on the level of control, impact on sewer rates, environmental equity and other major issues. Indianapolis believes that the final LTCP is consistent with and directly reflects the public input received through this process.

J. Throughout the development of the LTCP, the City solicited and received input from U.S. EPA and IDEM when planning the various public outreach programs and activities, invited U.S. EPA and IDEM representatives to attend public meetings, and reported to U.S. EPA and IDEM after each public outreach program occurred. The City's public outreach efforts have satisfied the requirement for public participation set forth in U.S. EPA's CSO Policy.

K. The City has submitted to IDEM and U.S. EPA its CSO Operational Plan and CSO Public Notification Program, which set forth the City's ongoing implementation of the Nine Minimum Controls ("NMC"). For purposes of this Consent Decree, the City's CSO Operational Plan and CSO Public Notification Program shall be referred to collectively as the City's "NMC Program." In signing this Consent Decree, IDEM and U.S. EPA are approving the City's NMC Program. The City has been and currently is implementing its NMC Program to comply with the NMC, O&M and Mitigation Requirements of Indianapolis' Current Permits.

L. In 2001, to enhance the operation and maintenance of the City's Sanitary Sewer System and ensure that the City takes appropriate measures to prevent and respond to Sanitary Sewer Discharges and other releases from the Sanitary Sewer System, the City developed a Capacity, Management, Operations and Maintenance Program ("CMOM Program"). The City updated the CMOM Program in 2004, and submitted its CMOM Program to U.S. EPA and IDEM for comment. The City is implementing its CMOM Program and anticipates ongoing updates to further improve the operation and maintenance of its Sanitary Sewer System.

M. The City submitted its final Long Term Control Plan, entitled "Raw Sewage Overflow Long Term Control Plan and Water Quality Improvement Report" ("LTCP"), to IDEM and U.S. EPA on September 11, 2006. The LTCP is attached to this Consent Decree as Exhibit 6. Table 7-5 of Section 7 and Section 8 of the LTCP are attached to this Consent Decree as Exhibits 1 and 2 respectively, and are incorporated into the Consent Decree. U.S. EPA and IDEM acknowledge that, in developing the LTCP, the City has adequately followed the LTCP development process as provided in both the national CSO Policy and Indiana law. As the approving authority for NPDES permits in Indiana, IDEM intends to approve Sections 1 through 8 of the LTCP concurrent with the United States' Motion for Entry of this Consent Decree. Following the requisite comment

period (see Paragraph 102), if the United States moves for entry of the Consent Decree, its motion will constitute concurrence with IDEM's approval of Sections 1 through 8 of the LTCP.

N. Table 7-5 of Section 7 of the LTCP and Section 8 of the LTCP impose enforceable obligations under this Consent Decree, as set forth below. Although all other aspects of the LTCP were developed in consultation with IDEM and U.S. EPA, they are included for informational purposes only, are not stipulations agreed to by the Parties, and do not impose enforceable obligations under this Consent Decree.

WHEREAS, the Parties acknowledge the following regarding the City's CSO Control Measures:

O. The level of CSO control expected to be achieved following implementation of the CSO Control Measures set forth in Exhibit 1 likely will be sufficient to ensure compliance with the water quality based requirements of the Clean Water Act that will be applicable to Indianapolis following implementation of those measures. The Parties' understanding in this regard is premised, in part, upon the fact that, consistent with 33 U.S.C. § 1342(q) and U.S. EPA's "Combined Sewer Overflow (CSO) Control Policy," which was published in the Federal Register on April 19, 1994 (59 Fed. Reg. 18688), IDEM is evaluating the possibility of revising

Indiana's water quality standards, and that relevant revisions to water quality standards, if any are necessary, may be reflected in Indianapolis' future National Pollutant Discharge Elimination System ("NPDES") permits.

P. There is a process set forth in Section 303 of the Clean Water Act, 33 U.S.C. § 1313, and 40 C.F.R. Part 131 for revising water quality standards; a process set forth in Indiana Code § 13-18-3-2.3 and § 13-18-3-2.5 for establishing a CSO wet weather limited use subcategory; and a process set forth in Section 402 of the Clean Water Act, 33 U.S.C. § 1342, and Title 327 of the Indiana Administrative Code, governing NPDES permitting; and these processes include the opportunity for public participation and judicial review.

Q. The City is using the information contained in Section 9 of the LTCP to initiate the water quality standards revision process to establish a CSO wet weather limited use subcategory through a Use Attainability Analysis ("UAA") based upon the level of CSO control expected to be achieved following implementation of the CSO Control Measures set forth in Exhibit 1. IDEM will provide written notice to the City when it deems the UAA and supporting information to be complete. The Parties expect, and it is IDEM's intent, that within a period of two hundred and seventy (270) days thereafter, IDEM will either

initiate the process to revise water quality standards or issue a final agency decision that a water quality standards revision will not be undertaken. The preceding sentence is conditioned on the City timely providing IDEM with any additional information that IDEM reasonably requires to conduct or evaluate the UAA.

R. The question of what water quality based requirements will be applicable to Indianapolis following implementation of the CSO Control Measures will be determined through the water quality standards assessment and, if necessary, revision process. Those requirements ultimately will be imposed through the NPDES permitting process. Subsections VI.B and VI.D. of this Consent Decree set forth provisions that will apply depending on the timing and outcome of the water quality standards revision process.

S. The City is scheduled to start investing heavily in level of control-dependent CSO controls in the years after the date of the entry of this Consent Decree. Accordingly, all Parties intend that the UAA process described above be completed within five years from the date of the entry of this Consent Decree.

WHEREAS, the Parties agree and the Court, by entering this Consent Decree, finds, that settlement of these matters, without protracted litigation, is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without

any admission by Indianapolis of any facts beyond those that the Parties have explicitly agreed to in this Consent Decree, and with the consent of the Parties, it is hereby ORDERED:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action and over the Parties consenting thereto pursuant to 28 U.S.C. §§ 1331, 1345, 1355 and 1367, and Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b). The Complaint states claims upon which relief can be granted under Section 309 of the Act, 33 U.S.C. § 1319, and Title 327 of the Indiana Administrative Code, Articles 2 and 5. Venue is proper pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and 1395(a).

II. APPLICABILITY

2. The provisions of this Consent Decree shall apply to and be binding upon the United States and Indiana, and Indianapolis and its officers, directors, agents, employees, successors, contractors and assigns and any person having notice of this Consent Decree who is, or will be, acting on behalf of or in concert or participation with Indianapolis. Indianapolis shall provide a copy of this Consent Decree to any successor in interest at least thirty (30) days prior to transfer of that interest, and simultaneously shall verify in writing to U.S. EPA and IDEM that such notice has been given. Any sale or transfer of Indianapolis' interests in or

operating role with respect to the Belmont or Southport AWTPs, or the Sewer System feeding those AWTPs, shall not in any manner relieve Indianapolis of its responsibilities for meeting the terms and conditions of this Consent Decree. In any action to enforce this Consent Decree, Indianapolis shall not raise as a defense the failure by any of its officers, directors, agents, employees, successors, assigns, or contractors to take actions necessary to comply with the Consent Decree.

III. OBJECTIVE

3. All plans, measures, reports, construction, maintenance, operational requirements and other obligations in this Consent Decree or resulting from the activities required by this Consent Decree shall have the objective of causing Indianapolis to achieve and maintain full compliance with the Clean Water Act, applicable state law, and the terms and conditions of Indianapolis' Current Permits.

IV. DEFINITIONS

4. Unless otherwise defined herein, terms used in this Consent Decree that are defined in the CWA or the regulations promulgated thereunder, or in Indianapolis' Current Permits, shall have the meaning ascribed to them by the CWA or the regulations promulgated thereunder or Indianapolis' Current Permits. Whenever the following terms are used in this Consent Decree, the following

definitions shall apply:

(a) "Achievement of Full Operation" shall mean completion of construction and installation of equipment or infrastructure such that the equipment or infrastructure has been placed in full operation, and is expected to both function and perform as designed, plus completion of shakedown and related activities, as well as completion of in-situ modified operations and maintenance manuals. This specifically includes all control systems and instrumentation necessary for normal operations and all residual handling systems. Certain specified CSO Control Measures set forth in Exhibit 1 consist of separate components. For those specified CSO Control Measures, "Achievement of Full Operation" shall not be achieved until the last component is completed.

(b) "Advanced Wastewater Treatment Plants" or "AWTPs" shall mean the Belmont and Southport advanced wastewater treatment plants identified in Indianapolis' Current Permits.

(c) "Approved Extension of Deadline" shall mean any deadline extension approved in accordance with Subsections VI.C. or VI.E. of this Consent Decree, or established through Dispute Resolution pursuant to Section XV of this Consent Decree, Dispute Resolution.

(d) "Approved Report on Revising CSO Control Measures" shall mean any Report on Revising CSO Control Measures approved in

accordance with Subsection VI.B of this Consent Decree, or established through Dispute Resolution pursuant to Section XV of this Consent Decree, Dispute Resolution.

(e) "Approved Revised CSO Control Measures Plan" shall mean any Revised CSO Control Measures Plan included in any Approved Report on Revising CSO Controls approved in accordance with Subsection VI.B of this Consent Decree, or established through Dispute Resolution pursuant to Section XV of this Consent Decree, Dispute Resolution.

(f) "Approved Supplemental Remedial Measures Plan" shall mean any Supplemental Remedial Measures Plan approved in accordance with Subsection VI.E. of this Consent Decree, or established through Dispute Resolution pursuant to Section XV of this Consent Decree, Dispute Resolution.

(g) "Approved Workplan for Revising CSO Control Measures" shall mean any Workplan for Revising CSO Control Measures approved in accordance with Subsection VI.B of this Consent Decree, or established through Dispute Resolution pursuant to Section XV of this Consent Decree, Dispute Resolution.

(h) "CMOM Program" shall mean Indianapolis' Capacity, Management, Operations and Maintenance Program" that was developed in 2001 and updated in 2004, and all updates thereto that (1) have been submitted to U.S. EPA and IDEM and (2) are consistent with

accepted industry practices to properly manage, operate and maintain sewer systems, identify and inventory areas within sewer systems with capacity constraints, implement measures to ensure adequate capacity throughout their sewer system, and respond to SSD events.

(i) "Combined Sewer Overflow" or "CSO" shall mean any discharge from any outfall identified in Attachment A to Indianapolis' Current Permits as a "Combined Sewer Overflow" or "CSO," or any discharge from any outfall that is added to the City's Current Permits as a listed combined sewer overflow within five years of the date of the discovery of the outfall.

(j) "Combined Sewer System" shall mean the portion of Indianapolis' Sewer System originally designed and constructed to collect and convey municipal sewage (domestic, commercial and industrial wastewaters) and stormwater through a single pipe-system to Indianapolis' AWTPs or combined sewer overflow structures. The term "Combined Sewer System" also includes facilities constructed in accordance with Exhibit 1 or any Approved Revised CSO Control Measures Plan.

(k) "Completion of the Bidding Process" shall mean (1) Indianapolis has appropriately allocated funds for a specific CSO Control Measure (or portion thereof) or measure specified in Exhibit 3 (or portion thereof), (2) the bid for the specific CSO

Control Measure or measure specified in Exhibit 3 has been accepted and awarded by the Department of Public Works Board for the construction of the CSO Control Measure, and (3) a notice to proceed has been issued and remains in effect for the CSO Control Measure or measure specified in Exhibit 3. Indianapolis may revoke a notice to proceed for cause if Indianapolis meets the requirements specified in Section VIII and issues a new notice to proceed for the project(s) at issue by the date established in accordance with Section VIII, Revocation of Notices to Proceed, and the new notice to proceed remains in effect.

(l) "CSO Control Measures" shall mean the construction, control measures, actions and other activities set forth in Exhibit 1 or any Approved Revised CSO Control Measures Plan.

(m) "Design Criteria" shall mean the Design Criteria specified in Exhibit 1 or any Approved Revised CSO Control Measures Plan.

(n) "IDEM" means the State of Indiana Department of Environmental Management.

(o) "Indianapolis' Current Permits" or "Current Permits" means Indianapolis' NPDES Permits Nos. 0023183 and 0031950, and any such permits that succeed those permits issued to Indianapolis that are in effect at a particular time in question. A permit or any provision therein shall not be considered to be

"Current" to the extent such permit or provision is stayed in accordance with applicable state law.

(p) "Long Term Control Plan" or "LTCP" means the "Raw Sewage Overflow Long Term Control Plan and Water Quality Improvement Report" prepared by the City. A copy of the LTCP is attached to this Consent Decree as Exhibit 6.

(q) "Monthly Monitoring Report" is defined as any discharge monitoring report or monthly report of operations that Indianapolis is required to submit to IDEM on a monthly basis pursuant to Indianapolis' Current Permits or applicable state law.

(r) "NMC, O&M and Mitigation Requirements of Indianapolis' Current Permits" means the provisions in Indianapolis' Current Permits pertaining to: (1) the City's approved NMC Program, (2) the "Nine Minimum Controls" set forth in U.S. EPA's CSO Policy, (3) operation and maintenance of Indianapolis' Sewer System and AWTPs, and (4) mitigation of the adverse impacts of discharges in violation of Indianapolis' Current Permits. Those provisions presently include, but are not limited to, the provisions in Parts II.A.2 and II.B. of the NPDES Permit for the Belmont AWTP that was signed by the Deputy Commissioner for IDEM on October 26, 2001 (No. 0023183), Sections I.D., III and V of Attachment A to that permit, and Attachment B to that permit; and Parts II.A.2 and II.B. of the NPDES Permit for the Southport AWTP that was signed by the Deputy

Commissioner for IDEM on October 26, 2001 (No. 0031950), and Sections I.E. and III of Attachment A to that permit; which provisions in turn include, but are not limited to, provisions pertaining to implementation of CSO Operational Plans and revisions thereto.

(s) "NMC Program" shall mean Indianapolis' CSO Operational Plan and CSO Public Notification Program.

(t) "Performance Criteria" shall mean the Performance Criteria specified in Exhibit 1 or any Approved Revised CSO Control Measures Plan.

(u) "Post-Construction Monitoring Program" shall mean the Post-Construction Monitoring Program set forth in Exhibit 2, as well as any additional post-construction monitoring or modeling activities included in any Approved Revised CSO Control Measures Plan or Approved Supplemental Remedial Measures Plan.

(v) "Sanitary Sewer Discharge" or "SSD" shall mean any discharge to waters of the State as defined by applicable state law, or to navigable waters of the United States as defined by Section 502(7) of the Clean Water Act, 33 U.S.C. § 1362(7), from Indianapolis' Sanitary Sewer System.

(w) "Sanitary Sewer System" or "Indianapolis' Sanitary Sewer System" shall mean all portions of Indianapolis' Sewer System that are not part of Indianapolis' Combined Sewer System.

(x) "Sewer System" shall mean the wastewater collection and conveyance system owned or operated by Indianapolis that is designed to collect and convey municipal sewage (domestic, commercial or industrial) to Indianapolis' AWTs or to a combined sewer overflow structure.

(y) "Unlisted Combined Sewer Overflow" or "Unlisted CSO" shall mean any discharge to waters of the State or waters of the United States from Indianapolis' Combined Sewer System through any point source that is not a Combined Sewer Overflow.

(z) "U.S. EPA's CSO Policy" shall mean U.S. EPA's "Combined Sewer Overflow (CSO) Control Policy," which was published in the Federal Register on April 19, 1994 (59 Fed. Reg. 18688). Section 402(q) of the Clean Water Act, 33 U.S.C. § 1342(q), provides, "[e]ach permit, order, or decree issued pursuant to this chapter after December 21, 2000 for a discharge from a municipal combined storm and sanitary sewer shall conform to [U.S. EPA's CSO Policy]."

**V. NINE MINIMUM CONTROLS, OPERATION AND MAINTENANCE AND
MITIGATION REQUIREMENTS**

5. Indianapolis shall comply with its approved NMC Program, its CMOM Program, and the NMC, O&M and Mitigation Requirements of Indianapolis' Current Permits. Indianapolis may update its CMOM Program, provided that any updates (1) have first been submitted to

U.S. EPA and IDEM for review and comment and (2) are consistent with accepted industry practices to properly manage, operate and maintain sewer systems, identify and inventory areas in sewer systems with capacity constraints, implement measures to ensure adequate capacity throughout a sewer system, and respond to SSD events. U.S. EPA's January 2005 "Guide For Evaluating Capacity, Management, Operation and Maintenance (CMOM) Programs at Sanitary Sewer Systems" (EPA 305-B-05-002) ("EPA's January CMOM 2005 Guide") shall be considered in determining what constitutes "accepted industry practices." To the extent Indianapolis updates its CMOM in a manner that is materially inconsistent with EPA's January CMOM 2005 Guide, Indianapolis shall identify the material inconsistency in its submission to U.S. EPA and IDEM, and explain the basis for Indianapolis' belief that the updated CMOM is nevertheless consistent with accepted industry practices, notwithstanding the material inconsistency.

VI. IMPLEMENTATION OF CSO CONTROL MEASURES AND POST-CONSTRUCTION MONITORING

A. Implementation of CSO Control Measures.

6. Indianapolis shall perform the activities and construct the CSO Control Measures in accordance with the descriptions, Design Criteria, and dates for Completion of the Bidding Process and Achievement of Full Operation for each CSO Control Measure set

forth in Exhibit 1, any Approved Revised CSO Control Measures Plan, any Approved Supplemental Remedial Measures Plan, or any Approved Extension of Deadlines.

7. Indianapolis shall perform the Post-Construction Monitoring Program set forth in Exhibit 2, any Approved Revised CSO Control Measures Plan, or any Approved Supplemental Remedial Measures Plan in accordance with the provisions and schedule set forth therein

B. Revision of CSO Control Measures.

8. Indianapolis shall submit to U.S. EPA and IDEM for approval, a workplan (the "Workplan for Revising CSO Control Measures" or "Workplan") for developing a Revised CSO Control Measures Plan consistent with Paragraph 10 of the Consent Decree if any of the following occurs:

(a) The State of Indiana fails to submit to U.S. EPA any new or revised water quality standards in accordance with 33 U.S.C. § 1313(c)(2)(A) resulting from Indianapolis' request as set forth in Section 9 of the LTCP, for revision to water quality standards within five years of the date of lodging of this Consent Decree; and U.S. EPA, in its discretion not subject to judicial review, provides Indianapolis with written notice directing Indianapolis to submit a Workplan;

(b) The State of Indiana submits to U.S. EPA a proposed

new or revised water quality standard in accordance with 33 U.S.C. § 1313(c)(2)(A) resulting from Indianapolis' request as set forth in Section 9 of the LTCP and:

(1) In response to the State's submission, U.S. EPA takes final action to approve, disapprove, or promulgate in accordance with 33 U.S.C. § 1313(c)(3) & (4), and U.S. EPA's final action is inconsistent with the request that Indianapolis had submitted to IDEM; and

(2) as a result of U.S. EPA's final action, the level of control to be achieved upon completion of the CSO Control Measures will likely not be sufficient to ensure compliance with the requirements specified in Paragraph 26; or

(c) Indianapolis chooses to submit a Workplan.

9. Indianapolis shall submit the Workplan required pursuant to Paragraph 8, above:

(a) within 90 days of Indianapolis' receipt of U.S. EPA's notification under Subparagraph 8(a); or

(b) with regard to Workplans required under Subparagraph 8(b): (i) within 90 days following U.S. EPA's actions under 33 U.S.C. § 1313(c)(3) & (4) if a judicial appeal has not been brought challenging U.S. EPA's action within 90 days of U.S. EPA's action; or (ii) within 90 days after a final decision no longer subject to judicial appeal has been rendered if a judicial appeal has been

brought challenging U.S. EPA's actions.

10. The purpose of the Workplan for Revising CSO Control Measures shall be for Indianapolis to develop a Revised CSO Control Measures Plan that contains measures necessary to ensure that the requirements specified in Paragraph 26 will be met. The Workplan shall contain the following:

(a) a description of how Indianapolis will utilize the information and models that Indianapolis utilized in developing the LTCP to develop a Revised CSO Control Measures Plan, and a description of the additional actions that Indianapolis will take to update that information and those models to develop the Revised CSO Control Measures Plan;

(b) a description of the actions that Indianapolis will take to provide for public participation in the development of a Revised CSO Control Measures Plan;

(c) a description of all other actions that Indianapolis must take to develop a Revised CSO Control Measures Plan in a manner consistent with any applicable provisions of U.S. EPA's CSO Control Policy;

(d) a schedule for completing development of the Revised CSO Control Measures Plan as expeditiously as possible, but in no event later than one year after U.S. EPA and IDEM approval of the Workplan for Revising CSO Control Measures; and

(e) identification of any CSO Control Measures set forth in Exhibit 1 or in any previously Approved Revised CSO Control Measures Plan, in addition to the Phase I CSO Control Measures, that are likely to be consistent with the Revised CSO Control Measures Plan.

11. Upon receipt of U.S. EPA and IDEM's approval of the Workplan, for Revising CSO Control Measures, or upon resolution of any disputes pertaining to the Workplan in accordance with Section XV of this Consent Decree, Dispute Resolution, Indianapolis shall implement the Workplan in accordance with the schedule and terms set forth in the approved Workplan.

12. Within 90 days after implementation of the Workplan for Revising CSO Control Measures, Indianapolis shall submit to U.S. EPA and IDEM for approval a report (the "Report on Revising CSO Controls"), that contains the following:

(a) a Revised CSO Control Measures Plan consisting of those measures that are necessary to insure that the requirements identified in Paragraph 26 will be met. The overall level of control expected to be achieved by the Revised CSO Control Measures Plan for each watershed shall be no less stringent in terms of reducing CSO discharge occurrences and CSO discharge volumes than the overall level of control expected to be achieved for the watershed at issue by the CSO Control Measures set forth in Exhibit 1;

(b) a schedule that is as expeditious as possible for design, construction and implementation of the measures described in Subparagraph 12(a). If it is not possible for Indianapolis to design and construct all control measures simultaneously, Indianapolis shall develop a phased schedule based on appropriate sequencing of activities to allow for efficient integration of the Revised CSO Control Measures Plan into the LTCP, engineering needs of each Revised CSO Control Measure (e.g., magnitude of the project, special equipment and/or procurement needs), and upon the relative importance of each measure, with highest priority being given to those projects that provide the greatest public health or environmental benefits and then to eliminating discharges to sensitive areas to the extent such areas are addressed in the Revised CSO Control Measures Plan. The schedule shall specify milestones for each specific measure, including, at a minimum, milestone dates for (1) Completion of the Bidding Process; and (2) Achievement of Full Operation;

(c) a plan and schedule for performing any additional post-construction monitoring and modeling, in addition to that specified in the Post-Construction Monitoring Program included as Exhibit 2 or any previously Approved Revised CSO Control Measures Plan, necessary to assess whether the requirements specified in Paragraphs 21 and 26 have been or will be met upon completion of

the Revised CSO Control Measures Plan, and a plan and schedule for submitting supplemental milestone reports resulting from such additional monitoring and modeling; and

(d) information demonstrating that the provisions of the Approved Workplan for Revising CSO Control Measures have been complied with, including the provisions pertaining to public participation.

13. Except as provided in Paragraph 14 with respect to Workplans required under Subparagraphs 8(a) and 8(b), Indianapolis shall perform the activities and construct the CSO Control Measures as required by Subsection VI.A of this Consent Decree until Indianapolis' receipt of U.S. EPA and IDEM's approval of any Report on Revising CSO Control Measures, or upon resolution of any disputes pursuant to Section XV of this Consent Decree, Dispute Resolution. Upon Indianapolis' receipt of such approval or upon such resolution of any disputes, Indianapolis shall implement the Approved CSO Control Measures Plan contained in the Approved Report on Revising CSO Control Measures as required by Paragraph 15.

14. If Indianapolis was required to submit a Workplan under Subparagraphs 8(a) and 8(b) of this Consent Decree, then, upon receipt of U.S. EPA and IDEM's approval of the Workplan for Revising CSO Control Measures, or upon resolution of any disputes pursuant to Section XV of this Consent Decree, Dispute Resolution,

and until Indianapolis' receipt of U.S. EPA and IDEM's approval of any Report on Revising CSO Control Measures, or upon resolution of any disputes pursuant to Section XV of this Consent Decree (at which time Indianapolis shall be required to implement the Approved CSO Control Measures Plan contained in the Approved Report on Revising CSO Control Measures as required by Paragraph 15):

(a) Indianapolis shall only be required to implement the CSO Control Measures identified in Exhibit 1 or any previously Approved Revised CSO Control Measures Plan as being "Phase I Projects," and all additional projects identified by the Workplan as likely to be consistent with the Revised CSO Control Measures Plan; and

(b) Indianapolis shall implement the measures specified above in Subparagraph 14(a) in accordance with the descriptions, Design Criteria, and dates for Completion of the Bidding Process and Achievement of Full Operation for each such project set forth in Exhibit 1 or any previously Approved Revised CSO Control Measures Plan.

15. Upon Indianapolis' receipt of U.S. EPA and IDEM's approval of any Report on Revising CSO Control Measures, or upon resolution of any disputes pursuant to Section XV of this Consent Decree, Dispute Resolution, the Revised CSO Control Measures Plan (including any additional post-construction monitoring and

modeling) included in the Approved Report on Revising CSO Control Measures shall supercede Exhibit 1, any previously-Approved Revised CSO Control Measures Plan, or any previously-Approved Extension of Deadlines, and Indianapolis shall implement the Revised CSO Control Measures Plan (including any additional post-construction monitoring and modeling) included in the Approved Report on Revising CSO Control Measures in accordance with the schedule in the Approved Revised CSO Control Measures Plan.

C. Extension of Deadlines Due to Increased Costs.

16. Indianapolis currently estimates that the costs of the measures necessary to comply with Sections VI and VII of this Consent Decree will be \$1,868,000,000 (in 2005 dollars). At least every five years, Indianapolis shall report on the actual costs compared to the estimated costs for the measures completed since the last report, and Indianapolis shall reevaluate the estimated costs of the remaining measures. If one of these reports shows that the costs to Indianapolis of implementing the measures required to comply with Sections VI and VII of this Consent Decree will exceed \$2,325,000,000 (in 2005 dollars), then Indianapolis may seek an extension of the date for Completion of the Bidding Process and/or Achievement of Full Operation for one or more CSO Control Measure set forth in Exhibit 1 or any Approved Revised CSO Control Measures Plan in accordance with Paragraph 17.

17. In the event Indianapolis seeks an extension of any of the dates for Completion of the Bidding Process and/or Achievement of Full Operation, Indianapolis shall provide U.S. EPA and IDEM with a written submission that: demonstrates that costs will exceed \$2,325,000,000 (in 2005 dollars); explains why Indianapolis believes that, because of the increased costs, it is not practicable to complete the CSO Control Measures within the schedules set forth in Exhibit 1 or any Approved Revised CSO Control Measures Plan; demonstrates that the new dates are as expeditious as possible; includes all information that Indianapolis believes supports the requested modification; and includes all additional information that U.S. EPA or IDEM reasonably request to assist in evaluating Indianapolis' extension request.

18. Upon Indianapolis' receipt of U.S. EPA and IDEM's approval of the requested date extensions(s), or upon resolution of any disputes pursuant to Section XV of this Consent Decree, Dispute Resolution, Indianapolis shall implement the CSO Control Measures in accordance with the Approved Extension of Deadline.

D. Modifications to Reflect Significant Adverse Changes to Financial Circumstances, NPDES Permit Proceedings, or Inaction on Revising Water Quality Standards.

19. If: (a) Indianapolis experiences significant adverse changes to its financial circumstances; (b) proceedings concerning issuance, reissuance, or modification of an NPDES permit warrant;

(c) Indiana does not submit any new or revised water quality standards resulting from Indianapolis' request to U.S. EPA in accordance with 33 U.S.C. § 1313(c)(2) within five years of the date of lodging of this Consent Decree; or (d) Indiana submits to U.S. EPA proposed revisions to its water quality standards pertaining to Indianapolis' CSOs but U.S. EPA fails to take action in accordance with 33 U.S.C. § 1313(c)(3)&(4) on such submission within 90 days, Indianapolis may request that the United States and the State of Indiana agree to modification of this Consent Decree. If the Parties agree on a proposed modification to the Consent Decree, they shall prepare a joint motion to the Court requesting such modification in accordance with Section XXIV, Modification.

20. If the Parties do not agree that a modification proposal under Paragraph 19 is warranted, and Indianapolis believes modification of this Consent Decree is appropriate, Indianapolis reserves the right to file a motion pursuant to Federal Rule of Civil Procedure 60(b) seeking modification of the CSO Control Measures and/or compliance dates in this Consent Decree; provided, however, that the United States and Indiana reserve their rights to oppose any such motion and to argue that such modification is unwarranted. Such a motion for modification by Indianapolis shall not relieve Indianapolis of its obligations pursuant to this Section VI, unless the Court orders otherwise, and Indianapolis

shall continue with timely implementation of the CSO Control Measures until the Court rules on any motion described in this Paragraph or Paragraph 19 in a manner that modifies Indianapolis' obligations under this Decree. Nothing precludes Indianapolis from asserting that a failure by Indiana to submit new or revised water quality standards resulting from Indianapolis' request for revisions to water quality standards to U.S. EPA in accordance with 33 U.S.C. § 1313(c)(2) within five years of the date of lodging of this Consent Decree constitutes a force majeure event in accordance with Section XIV, Force Majeure.

E. Achievement of Performance Criteria.

21. By the specified date for Achievement of Full Operation for each specific control measure set forth in Exhibit 1, any Approved Revised CSO Control Measures Plan, or any Approved Extension of Deadline, Indianapolis shall achieve the Performance Criteria specified in Exhibit 1 or any Approved Revised CSO Control Measures Plan for the specific control measure. The procedure set forth in Subsection 8.4 of Exhibit 2 shall be used to determine whether Indianapolis has achieved the Performance Criteria.

22. If, following Achievement of Full Operation of any specific CSO Control Measure or CSO Control Measures, Indianapolis needs additional time to implement additional remedial measures necessary to achieve the Performance Criteria pertaining to the

specific CSO Control Measure or Measures, Indianapolis may submit to U.S. EPA and IDEM, for approval, (1) a request for an extension of the previously applicable deadline for Achievement of Full Operation for the CSO Control Measure or CSO Control Measures at issue to allow for implementation of additional remedial measures, and (2) a plan for performing supplemental remedial measures and additional post-construction monitoring and modeling ("Supplemental Remedial Measures Plan"). The Supplemental Remedial Measures Plan shall include a description of the remedial measures that Indianapolis will take to insure that the Performance Criteria will be achieved, and a schedule that is as expeditious as possible for design, construction and implementation of the measures; and a description of additional post-construction monitoring and modeling needed to assess whether Indianapolis has achieved the Performance Criteria, and a schedule for performing such monitoring and modeling.

23. Upon receipt of U.S. EPA and IDEM's approval of the request for extension of time and Supplemental Remedial Measures Plan, or upon resolution of any disputes in accordance with Section XV of this Consent Decree, Dispute Resolution, Indianapolis shall implement the Approved Supplemental Remedial Measures Plan (including additional monitoring and modeling) in accordance with the schedule and terms set forth therein.

F. Modification of Performance Criteria.

24. (a) Should Indianapolis determine, following Achievement of Full Operation of all specific CSO Control Measures required under Paragraph 6, and upon completion of the Post-Construction Monitoring required under Paragraph 7, that the City has not achieved the Performance Criteria in the manner set forth in Subsection 8.4 of Exhibit 2, and cannot achieve the Performance Criteria in the absence of additional remedial measures the City maintains would be cost prohibitive, infeasible or otherwise inappropriate, Indianapolis may propose to the Director of the Water Division, U.S. EPA Region 5 ("Director"), and to the Assistant Commissioner, Office of Water Quality, IDEM ("Assistant Commissioner") a modification of the Performance Criteria using the process set forth in this Paragraph. The Performance Criteria review process set forth in this Paragraph does not apply to nor does it modify the Dispute Resolution Provisions set forth in Section XV of this Consent Decree.

(b) Any proposal by the City to modify the Performance Criteria under subparagraph (a) of this Paragraph shall be in writing and shall include:

(1) a certification by the City's engineer that the City has properly designed and constructed the CSO Control Measures to achieve the Performance Criteria consistent with

accepted industry standards;

(2) the Post-Construction Monitoring Report prepared consistent with Section 8.6 of Exhibit 2 which demonstrates that the City has not achieved the Performance Criteria;

(3) a detailed description of the additional remedial measures that would be required to enable Indianapolis to achieve the Performance Criteria, including the projected cost of such remedial work;

(4) a detailed discussion of the reasons the City believes that additional remedial work would be cost prohibitive, infeasible or otherwise inappropriate; and

(5) the text of the proposed modification of the Performance Criteria;

(c) The Director and the Assistant Commissioner or their designees shall meet in person to review the City's proposal. EPA and IDEM may each retain an independent technical consultant to assist them in their evaluation of the City's proposal. The Director or the Assistant Commissioner, at their discretion, may request one or more representatives of the City to attend the meeting to provide additional information.

(d) (1) Following the meeting described in subparagraph (c) of this Paragraph, the Director and the Assistant

Commissioner shall issue a written initial determination recommending approval, disapproval, or approval subject to conditions or revisions of the City's proposal, and shall immediately transmit such determination to the Regional Administrator, the Commissioner, and the City.

(2) Indianapolis may appeal the initial determination within 30 days to the Regional Administrator and the Commissioner by submitting to those individuals any documents that the City deems relevant and appropriate. During the pendency of any such appeal, the Parties shall seek to reach agreement on any issues upon which they disagree.

(3) The Regional Administrator and the Commissioner may approve or disapprove, or approve upon conditions or in a revised form the proposed modification of the Performance Criteria. The determination of the Regional Administrator and the Commissioner shall be in their discretion and shall not be subject to judicial review.

(e) Any modification of the Performance Criteria shall be deemed a material modification of the Consent Decree under Section XXIV (Modification) and shall be subject to agreement by the United States and the State, public notice and comment pursuant to 28 C.F.R. § 50.7, and approval of the Court. The United States and the State reserve the right to withdraw or withhold their

consent to the proposed modification if public comments received disclose facts or consideration which indicate that the modified Consent Decree would be inappropriate, improper or inadequate.

25. If the Parties do not agree that a modification proposal under Paragraph 24 is warranted, or if the Parties disagree as to the terms of the proposed modification, Indianapolis reserves the right to file a motion pursuant to Federal Rule of Civil Procedure 60(b) seeking modification of this Consent Decree; provided, however, that the United States and Indiana reserve their rights to oppose any such motion and to argue that such modification is unwarranted.

G. Compliance Following Implementation.

26. By the specified date for Achievement of Full Operation of all CSO Control Measures set forth in Exhibit 1, any Approved Revised CSO Control Measures Plan, or any Approved Extension of Deadline, (a) Indianapolis shall have no Unlisted CSOs (either because Indianapolis has eliminated discharges from Unlisted CSOs and/or because Indianapolis has turned Unlisted CSOs into "CSOs" by having them included as Combined Sewer Overflows in Indianapolis' Current NPDES Permits); (b) Indianapolis' remaining CSOs, if any, shall comply with Indianapolis' Current Permits; and (c) Indianapolis shall have eliminated bypasses at the AWTPs or any remaining bypasses shall comply with Indianapolis' Current Permits.

Indianapolis may utilize the information contained in the LTCP, as well as any subsequently developed information, in attempting to establish compliance with Indianapolis' Current Permits.

VII. ELIMINATION OF SSDs

27. Indianapolis shall construct the Sanitary Sewer System Capital Improvement Projects ("SSS CIPs") consistent with the descriptions set forth in Exhibit 3 and in accordance with the dates for Completion of the Bidding Process and Achievement of Full Operation for each project set forth in Exhibit 3.

28. For each SSD location specified in Exhibit 3, Indianapolis shall not have any SSDs from that location following the date for Achievement of Full Operation specified in Exhibit 3 for that specific location.

VIII. REVOCATION OF NOTICES TO PROCEED

29. If Indianapolis revokes the notice to proceed for any CSO Control Measure or measures specified in Exhibit 3 then, within 14 days of the date the notice to proceed was revoked, Indianapolis shall submit to U.S. EPA and IDEM for approval a plan (the "Notice To Proceed Plan"). The Notice to Proceed Plan shall: (a) explain why the notice to proceed was revoked; (b) describe the steps that Indianapolis will take to issue a new notice to proceed; and (c) contain a schedule for issuing the new notice to proceed that includes a final date for issuance of the notice to proceed that is

as expeditious as possible.

30. Upon Indianapolis' receipt of U.S. EPA's and IDEM's approval of the Notice to Proceed Plan, or upon resolution of any disputes in accordance with Section XV of this Consent Decree, Dispute Resolution, Indianapolis shall implement the approved Notice To Proceed Plan in accordance with the schedule set forth therein, including the final date for issuance of a new notice to proceed.

**IX. U.S. EPA AND IDEM APPROVAL OF SUBMISSIONS IN ACCORDANCE
WITH SECTIONS VI-VIII**

31. For all workplans, reports and other documents submitted by Indianapolis to U.S. EPA and IDEM for approval in accordance with Sections VI - VIII, above, U.S. EPA and IDEM shall, in writing, (a) approve the submission, in whole or in part; (b) approve the submission, in whole or in part, upon specified conditions; (c) disapprove the submission, in whole or in part, providing comments identifying deficiencies and directing that Indianapolis modify its submission and/or provide additional information; or (d) any combination of the above. Within 45 days following receipt of a notice of an action disapproving, partially approving, or conditionally approving a submission (or within such longer time set forth in such notice), Indianapolis shall submit a modified submission to U.S. EPA and IDEM for approval, in

accordance with U.S. EPA and IDEM's directions. Any stipulated penalties applicable to the original submission shall accrue during the 45-day or otherwise specified period but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Indianapolis' obligations under this Consent Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

32. U.S. EPA and IDEM may take any of the actions described in Paragraph 31 with respect to any resubmitted document.

33. Indianapolis shall proceed, if directed by U.S. EPA and IDEM, to take any action required by any approved portion of Indianapolis' submission or resubmission under Paragraph 31, unless such action is directly dependent upon any unapproved portion of the submission or resubmission and Indianapolis invokes its right to dispute resolution under Section XV, Dispute Resolution. Implementation of any approved portion of a submission shall not relieve Indianapolis of any liability for stipulated penalties.

34. U.S. EPA/IDEM agree to use best efforts to expeditiously review and comment on submittals that Indianapolis is required to submit for approval pursuant to the terms and conditions of this Consent Decree. If U.S. EPA/IDEM fail to act on

the submittal within sixty (60) days or such other time period provided in this Consent Decree, any subsequent milestone date dependent upon such action by U.S. EPA/IDEM shall be extended by the number of days beyond the applicable review period that U.S. EPA/IDEM use to act on the submittal; provided that Indianapolis has notified U.S. EPA/IDEM in writing of any specific milestone dates that Indianapolis believes have been extended under this Paragraph. This Paragraph does not apply to U.S. EPA/IDEM review of, or actions taken with regard to, revisions to water quality standards, permits, or any matters other than submittals that Indianapolis is specifically required to submit for approval pursuant to the terms and conditions of this Consent Decree.

X. FUNDING

35. Indianapolis intends to seek federal and state grant funding assistance. However, compliance with the terms of this Consent Decree by Indianapolis is not conditioned on the receipt of federal or state funds. In addition, failure to comply is not excused by the lack of federal or state funds, or by the processing of any applications for the same.

XI. REPORTING

36. Beginning with the end of the next full calendar quarter after entry of this Consent Decree and for every six months thereafter until this Consent Decree terminates in accordance with

Section XXVI, Termination, Indianapolis shall submit written status reports to U.S. EPA and IDEM. The written status reports may be provided either as paper documents or in electronic or digitized format, provided that the electronic or digitized format is compatible with U.S. EPA and IDEM software and accompanied by a written certification on paper in accordance with Section XIX, Certification, and the electronic or digitized format is also sent via United States Mail in accordance with Section XII, Communications. In each report, Indianapolis shall provide the following:

(a) a statement setting forth the deadlines and other terms that Indianapolis has been required by this Consent Decree to meet since the date of the last statement, whether and to what extent Indianapolis has met these requirements, and the reasons for any noncompliance. Notification to U.S. EPA and IDEM of any anticipated delay shall not, by itself, excuse the delay;

(b) a general description of the work completed within the prior six-month period and, to the extent known, a statement as to whether the work completed in that period meets applicable Design Criteria; and a projection of work to be performed pursuant to this Consent Decree during the next six-month period;

(c) a statement as to Indianapolis' understanding regarding the status of IDEM's response to the City's request for a revision to water quality standards in accordance with Section 9

of the City's Long Term Control Plan;

(d) copies (to U.S. EPA only) of all Monthly Monitoring Reports and other reports pertaining to CSOs, SSDs and bypassing that Indianapolis submitted to IDEM in accordance with Indianapolis' Current Permits in the previous six months;

(e) (1) copies of any plan that Indianapolis has developed for its contractor United Water (or United Water's successor) with respect to operation and maintenance of the Sewer System during the prior six-month period (e.g., the "Collection System Maintenance Plan"), and any reports that United Water (or its successor) submitted to Indianapolis regarding its implementation of such plan during the prior six month period (e.g., the "Collection System Maintenance Report"), (2) a statement as to whether Indianapolis believes that United Water (or United Water's successor) has complied with any such plan, and (3) a statement as to whether United Water's (or United Water's successor) failure to comply with such plan caused any CSO, Unlisted CSO, SSD or bypass; and

(f) a description of any notices to proceed for any CSO Control Measure or measures specified in Exhibit 3 that Indianapolis has revoked in the prior six-month period, and a description of the status of Indianapolis' compliance with Section VIII with regard to issuance of a new notice to proceed.

37. If Indianapolis fails to meet any date specified for Completion of the Bidding Process or Achievement of Full Operation in Exhibit 1, any Approved Revised CSO Control Measures Plan, any Approved Extension of Deadline, or Exhibit 3, Indianapolis shall notify U.S. EPA and IDEM in writing of Indianapolis' failure within fourteen (14) days from the applicable date for Completion of the Bidding Process or Achievement of Full Operation that has not been met. The notice shall reference the specific project at issue, describe in detail the anticipated length of time that Indianapolis anticipates it will take to achieve Completion of the Bidding Process or Achievement of Full Operation for the project at issue, the precise cause or causes of the failure to meet the specified dates, the measures taken or to be taken by Indianapolis to prevent or minimize the delay, the timetable by which those measures will be implemented, and the extent (if any) to which the failure to meet the specified date at issue may impact Indianapolis' ability to meet other specified dates for Completion of the Bidding Process or Achievement of Full Operation. If Indianapolis has revoked a notice to proceed for a specific project and has not complied with Section VIII, Revocation of Notices to Proceed, Indianapolis' failure to comply with Section VIII shall be deemed to be a failure to meet a date for Completion of the Bidding Process for purposes of this Paragraph, thereby triggering the reporting obligations

specified in this Paragraph.

38. If, during the design of the facilities listed in Exhibit 1, Indianapolis decides to design a specific facility so that its size, flow rate, capacity, treatment rate, pumping rate, volume, or other applicable measure will be less than 90% of the "approximate" design number specified for that facility in the Design Criteria portion of Exhibit 1 (i.e., the design deviates from the "approximate" design number by 10% or more), Indianapolis shall notify U.S. EPA and IDEM in writing within fourteen (14) days of the date it has made that decision. The notice shall reference the specific facility at issue and the design number that Indianapolis has decided should be used in lieu of the "approximate" design number specified in the Design Criteria for that facility. The notice shall also describe the basis for Indianapolis' selection of the lower design number, including an explanation as to why use of the lower design number will ensure that the corresponding facility-specific, watershed-wide, and system-wide Performance Criteria specified in Exhibit 1 will be achieved. Indianapolis is required by this Consent Decree to ensure that all facilities are designed in accordance with good engineering practices to ensure that corresponding facility-specific, watershed-wide, and system-wide Performance Criteria will be achieved. Plaintiffs reserve their rights to argue that

Indianapolis has not complied with this requirement, notwithstanding any notice that Indianapolis provides in accordance with this Paragraph.

XII. COMMUNICATIONS

39. Except as specified otherwise, when written notification (including all reports) or communication with the United States, the State of Indiana, IDEM, or Indianapolis is required by the terms of this Consent Decree, it shall be addressed as follows:

As to the United States Department of Justice:

By U.S. Mail:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Post Office Box 7611
Washington, D.C. 20044-7611
Reference Case No. 90-5-1-1-07292

By Courier:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
ENRD Mail Room, Room 2121
601 D. Street, NW
Washington, D.C. 20004
Reference Case No. 90-5-1-1-07292

As to U.S. EPA:

Chief
Water Enforcement and Compliance Assurance Branch
Water Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd
Chicago, Illinois 60604

As to the State:

Office of the Attorney General

Steve Griffin
Deputy Attorney General
Office of the Attorney General
100 North Senate Avenue
MC60-01IGCN1307
Indianapolis, Indiana 46204-2251

Indiana Department of Environmental Management

Chief, Compliance Branch
Office of Water Quality
Indiana Department of Environmental Management
100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206

and

Chief, Enforcement Section
Office of Legal Counsel
Indiana Department of Environmental Management
100 North Senate Street
P.O. Box 6015
Indianapolis, Indiana 46206

As to Indianapolis:

Director
Department of Public Works
2460 City County Building
200 East Washington Street
Indianapolis, Indiana 46204

and

Corporation Counsel
Office of Corporation Counsel
1600 City County Building
200 East Washington Street
Indianapolis, Indiana 46204

All notifications or communications shall be deemed submitted on the date they are postmarked and sent by first class mail or certified mail, return receipt requested.

XIII.. STIPULATED PENALTIES

40. Indianapolis shall pay stipulated penalties in the amounts set forth in this Section upon demand by the United States or the State of Indiana if Indianapolis should fail to comply with the requirements of this Consent Decree specified below, unless excused under Section XIV, Force Majeure, and subject to Indianapolis' right to invoke dispute resolution under Section XV, Dispute Resolution. "Compliance" by Indianapolis means satisfaction of all requirements of this Consent Decree, including, but not limited to, completion of the activities required under this Consent Decree or any work plan or other plan attached to or approved pursuant to this Consent Decree within the specified time schedules and deadlines established by this Consent Decree or any work plan or other plan attached to or approved pursuant to this Consent Decree.

41. For each failure to timely submit an adequate Post-Construction Monitoring Report (required pursuant to Paragraph 7 and Exhibit 2), Workplan for Revising CSO Control Measures (required pursuant to Subsection VI.B), or Report on Revising CSO Controls (required pursuant to Subsection VI.B), Indianapolis shall

pay the following stipulated penalties per violation per day:

<u>Period of Noncompliance With Requirement</u>	<u>Penalty Per Day</u>
1st day to 30th day	\$500/day
31st day to 60th day	\$1,000/day
Each day beyond 60 days	\$2,000/day

Stipulated penalties under this Paragraph for failure to timely submit a submission shall begin to accrue on the day following the date that the submission was due. Subject to Paragraph 31, stipulated penalties under this Paragraph for failure to submit an adequate submission shall begin to accrue on the date that Indianapolis receives written notice from U.S. EPA or IDEM that the submission or resubmission is not adequate, in whole or in part, and shall continue to accrue until Indianapolis submits a revised document to U.S. EPA and IDEM which U.S. EPA and IDEM ultimately approve.

42. For each failure to submit timely and adequate reports or other documents required by this Consent Decree, but not included in Paragraph 41, Indianapolis shall pay the following stipulated penalties per violation per day:

<u>Period of Noncompliance With Requirement</u>	<u>Penalty Per Day</u>
1st day to 30th day	\$500/day
31st day to 60th day	\$1,000/day
Each day beyond 60 days	\$1,500/day

Stipulated penalties under this Paragraph for failure to timely

submit a submission shall begin to accrue on the day following the date that the submission was due. Subject to Paragraph 31, stipulated penalties under this Paragraph for submitting an inadequate plan or other document shall begin to accrue on the date that Indianapolis receives written notice from U.S. EPA or IDEM that the submission or resubmission is not adequate, in whole or in part, and shall continue to accrue until Indianapolis submits a document to U.S. EPA and IDEM which U.S. EPA and IDEM ultimately approve.

43. For each failure to adequately implement the measures specified and/or meet the dates for Completion of Bidding Process and Achievement of Full Operation included in Exhibit 1 (as required by Subsection VI.A), any Approved Workplan for Revising CSO Control Measures (required by Subsection VI.B), any Approved Revised CSO Control Measures Plan (as required by Subsections VI.A and VI.B); any Approved Extension of Deadline (as required by Subsections VI.A., VI.C. and VI.E.), any Approved Supplemental Remedial Measures Plan (as required by Subsection VI.E.), or Exhibit 3 (as required by Section VII), Indianapolis shall pay the following stipulated penalties per violation per day:

<u>Period of Noncompliance With Requirement</u>	<u>Penalty Per Day</u>
1st day to 30th day	\$1,000/day
31st day to 60th day	\$2,000/day

Each day beyond 60 days \$5,000/day

Indianapolis shall be deemed to have not met a date for Completion of the Bidding Process, and therefore shall be liable for stipulated penalties under this Paragraph, if Indianapolis revokes a notice to proceed for a specific project and does not comply with Section VIII, Revocation of Notices to Proceed, or issue a new notice to proceed in accordance with Section VIII, in which case stipulated penalties shall begin to accrue starting on the date that the prior notice to proceed was revoked, and shall continue to accrue until the date a new notice to proceed has been issued.

44. For each day that Indianapolis fails to comply with the its approved NMC Program, its CMOM Program, or the NMC, O&M and Mitigation Requirements of Indianapolis' Current Permits (as required by Section V, Nine Minimum Controls, Operation and Maintenance and Mitigation Requirements), Indianapolis shall pay the following stipulated penalties per violation per day:

<u>Period of Noncompliance With Requirement</u>	<u>Penalty Per Day</u>
1st day to 30th day	\$1,500/day
31st day to 60th day	\$2,000/day
Each day beyond 60 days	\$5,000/day

45. For each day that a CSO, Unlisted CSO or bypass occurs that was caused by Indianapolis' failure to comply with Indianapolis' approved NMC Program, its CMOM Program, or the NMC,

O&M and Mitigation Requirements of Indianapolis' Current Permits Exhibit 1, Indianapolis shall pay stipulated penalties of \$1,000 per day for each day of each CSO, Unlisted CSO or bypass. These stipulated penalties shall be in addition to any stipulated penalties that are applicable under Paragraph 44 of this Consent Decree.

46. For each day that an SSD occurs from any of the SSD locations specified in Exhibit 3 prior to the date for Achievement of Full Operation for the SSD location that was caused by Indianapolis' failure to comply with Indianapolis' approved NMC Program, its CMOM Program, or the NMC, O&M and Mitigation Requirements of Indianapolis' Current Permits, Indianapolis shall pay stipulated penalties in the amounts set forth below per day for each day of each SSD. These stipulated penalties shall be in addition to any stipulated penalties that are applicable under Paragraph 44 of this Consent Decree:

<u>Volume of SSD</u>	<u>Penalty Per SSD</u>
500 gallons or less	\$500
More than 500 gallons	\$1,000

47. For each day that an SSD occurs from any of the SSD locations specified in Exhibit 3 on or after the date for Achievement of Full Operation for the SSD location specified in Exhibit 3, and from any other location on or after the date of

entry of this Consent Decree, and for each day that an Unlisted CSO occurs from any location on or after the date of entry of this Consent Decree, Indianapolis shall pay stipulated penalties in the amounts set forth below per day per location for each day of each SSD or Unlisted CSO:

<u>Volume of SSD</u>	<u>Penalty Per SSD</u>
500 gallons or less	\$500
501 to 10,000 gallons	\$1,000
More than 10,000 gallons	\$3,000

48. Indianapolis shall be subject to the following stipulated penalties for failure to meet the milestones set forth in the SEP Plan (Exhibit 5), revisions to the SEP Plan, or in submittals subsequently approved by U.S. EPA and IDEM pursuant to the provisions of this Consent Decree, or failure to timely submit the SEP Completion Report, required by Paragraph 80:

<u>Period of Noncompliance With Requirement</u>	<u>Penalty Per Day</u>
1st day to 30th day	\$1,000
31st day to 60th day	\$1,500
Each day beyond 60 days	\$2,250

In addition, if the total amount expended on implementing the SEPs is less than \$2,000,000, Indianapolis shall be subject to a stipulated penalty equal to the difference between the amount spent and \$2,000,000. Penalties under this paragraph shall be paid, upon demand, 50% to the United States and 50% to the State of Indiana, in accordance with the provisions of Paragraph 53.

49. For each failure to comply with any other requirement of this Consent Decree not specified in Paragraphs 41-48 above, Indianapolis shall pay the following stipulated penalties:

<u>Period of Noncompliance With Requirement</u>	<u>Penalty Per Day</u>
1st day to 30th day	\$500
31st day to 60th day	\$1,000
Each day beyond 60 days	\$2,000.

50. Multiple penalties may accrue on any one day for different violations of different requirements of this Consent Decree even if such violations are caused by the same set of circumstances.

51. Except as described in Paragraphs 41-42, above, all penalties shall begin to accrue on the day after complete performance is due or the day a violation occurs, and shall continue to accrue until complete performance occurs.

52. Following U.S. EPA or IDEM's determination that Indianapolis has failed to comply with a requirement of this Consent Decree, U.S. EPA or IDEM may give Indianapolis written notification of the same and describe the noncompliance. U.S. EPA or IDEM may send Indianapolis a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether U.S. EPA or IDEM has notified Indianapolis of a violation.

53. Any stipulated penalties incurred by Indianapolis shall be paid within thirty (30) days of the date of any written demand for same by U.S. EPA or IDEM, subject to Indianapolis' right to invoke dispute resolution in accordance with Section XV, Dispute Resolution, as follows: Fifty percent (50%) of the penalty shall be paid to the United States by submitting a cashier's or certified check payable to "Treasurer of the United States," and shall be tendered to U.S. EPA Region V, Post Office Box 70753, Chicago, Illinois 60637. The transmittal letter accompanying the check shall specify the caption and docket number of this action, DOJ Reference Number 90-5-1-1-07292, and a description of the basis for the penalties. A copy of the letter and the check shall simultaneously be sent to U.S. EPA Region V, Water Compliance Branch, Compliance Section, WC-15J, 77 West Jackson Boulevard, Chicago, Illinois 60604, and to Chief, Environmental Enforcement Section, United States Department of Justice, Post Office Box 7611, Washington, D.C. 20044-7611. Fifty percent (50%) of the penalty shall be paid to the State of Indiana by check in the amount due, payable to the "Indiana Department of Environmental Management Special Fund" and delivered to:

Cashier
Indiana Department of Environmental Management
P.O. Box 7060
Indianapolis, IN 46207-7060

A copy of the check and transmittal letter or other evidence of payment (which should reference the caption number and docket number) shall be sent to IDEM at the addresses set forth in Paragraph 39, above.

54. The stipulated penalties herein shall be in addition to other remedies or sanctions available to the United States and the State of Indiana by reason of Indianapolis' failure to comply with the requirements of this Consent Decree, applicable state law, or the Clean Water Act. The payment of such stipulated penalties shall not be construed so as to relieve Indianapolis from specific compliance with this Consent Decree or federal or state law, or to limit the authority of U.S. EPA or IDEM to require compliance with such laws. The United States and State of Indiana are specifically authorized to seek injunctive relief in this Civil Action to address any violation of this Consent Decree. Where an act or omission that constitutes a violation of this Consent Decree also constitutes a violation of a statute or regulation, the United States, U.S. EPA or Indiana may elect, in their sole discretion, to seek civil penalties under the statute or regulation. However, in an action for civil penalties based upon a violation of a statute, the Parties stipulate that evidence that Indianapolis has paid a stipulated penalty to the United States, U.S. EPA, and/or the State of Indiana for the same violation for the same day in

issue is admissible and shall be considered as a factor in mitigation of a penalty.

55. If Indianapolis invokes dispute resolution as provided in Section XV, below, penalties shall continue to accrue as provided in Paragraphs 41, 42 and 51 during such dispute resolution period, but need not be paid until the following:

(a) If the dispute is resolved by agreement or by a decision of U.S. EPA or IDEM that is not appealed to this Court, accrued penalties determined to be owing shall be paid to the United States and the State of Indiana within 60 days of the agreement or the receipt of U.S. EPA and IDEM's decision or order;

(b) If the dispute is appealed to this Court and the United States and Indiana prevail in whole or in part, Indianapolis shall pay all accrued penalties determined by the Court to be owed to the United States and Indiana within 60 days of receipt of the Court's decision or order, except as provided in Paragraph 55(c) below;

(c) If the District Court's decision is appealed by any Party, Indianapolis shall pay all accrued penalties determined by the District Court to be owing to the United States and Indiana into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days.

Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to the United States, Indiana or Indianapolis to the extent that such party(ies) prevail(s).

56. If Indianapolis fails to pay stipulated penalties when due, the United States or Indiana may institute proceedings in this action to collect the penalties, as well as interest.

57. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or the State of Indiana to seek any other remedies or sanctions available by virtue of Indianapolis' violation of this Consent Decree or of Indianapolis' Current Permits or of the Clean Water Act or of applicable state law.

XIV. FORCE MAJEURE

58. If any event occurs that causes or may cause Indianapolis to violate any provision or requirement of this Consent Decree, Indianapolis shall notify U.S. EPA and IDEM in writing within fourteen (14) days from the date Indianapolis first knew, or in the exercise of reasonable diligence should have known, that compliance with the Consent Decree would be prevented or delayed. The notice shall reference this Section of the Consent Decree and shall describe in detail the anticipated length of time the violation may persist, the precise cause or causes of the

violation, the measures taken or to be taken by Indianapolis to prevent or minimize the violation and the timetable by which those measures will be implemented. Indianapolis shall adopt all reasonable measures to avoid or minimize any such violation. Indianapolis shall make all reasonable efforts to identify events that cause or may cause a violation of this Consent Decree. Failure by Indianapolis to comply with the notice requirements of this Paragraph shall constitute a waiver of Indianapolis' rights to obtain an extension of time or other relief under this Section based on such incident.

59. If U.S. EPA and IDEM agree that the violation has been or will be caused by circumstances beyond the control of Indianapolis or any entity controlled by it, including its consultants and contractors, and that Indianapolis could not have prevented such violation, the time for performance of the requirement in question shall be extended for a period not to exceed the actual delay resulting from such circumstance, and stipulated penalties shall not be due for such delay or non-compliance. In the event U.S. EPA or IDEM do not agree that the violation was caused by circumstances beyond the control of Indianapolis and notifies Indianapolis of such determination, Indianapolis may invoke the dispute resolution provisions in Section XV of this Consent Decree, Dispute Resolution.

60. If Indianapolis invokes dispute resolution and U.S. EPA and IDEM or the Court determines that the violation was caused by circumstances beyond the control of Indianapolis or any entity controlled by it, and that Indianapolis could not have prevented such violation, Indianapolis shall be excused as to that violation, but only for the period of time the violation continues due to such circumstances.

61. Indianapolis shall bear the burden of proving that any delay or violation has been or will be caused by circumstances beyond its control, and that Indianapolis could not have prevented such violation, as set forth above. Indianapolis shall also bear the burden of establishing the duration and extent of any delay or violation attributable to such circumstances, that such duration or extent is or was warranted under the circumstances and that, as a result of the delay, a particular extension period is appropriate. An extension of one compliance date based on a particular circumstance beyond Indianapolis' control shall not automatically extend any subsequent compliance date or dates.

62. Changed financial circumstances or unanticipated or increased costs or expenses associated with implementation of this Consent Decree shall not serve as a basis for excusing violations of or granting extensions of time under this Consent Decree, except as expressly provided in Subsections VI.C. and VI.D. of this

Consent Decree.

63. Failure to apply for a required permit or approval or to provide in a timely manner all information required to obtain a permit or approval that is necessary to meet the requirements of this Consent Decree shall not, in any event, serve as a basis for excusing violations of or granting extensions of time under this Consent Decree. However, a permitting authority's failure to act in a timely manner on an approveable permit application may serve as a basis for an extension under the force majeure provisions of this Consent Decree.

64. Indianapolis shall make a showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought. Indianapolis may petition for the extension of more than one compliance date in a single request.

XV. DISPUTE RESOLUTION

65. This Court shall retain jurisdiction of this matter for the purposes of implementing and enforcing the terms and conditions of this Consent Decree and for the purpose of adjudicating all disputes among the Parties that may arise under the provisions of this Consent Decree, to the extent that Paragraph 66, below, provides for resolution of disputes by the Court. IDEM and/or U.S. EPA actions with regard to issuance, modification or review of NPDES permits or water quality standards pursuant to 33 U.S.C.

§ 1313(c), 33 U.S.C. § 1342, and state law are not subject to dispute resolution under this Consent Decree.

66. Any dispute that arises with respect to the meaning, application, implementation, interpretation, amendment or modification of this Consent Decree, or with respect to Indianapolis' compliance herewith (including the adequacy of Indianapolis' performance of the control measures and adequacy of the submittals required by this Consent Decree) or any delay hereunder, the resolution of which is not otherwise expressly provided for in this Consent Decree, shall in the first instance be the subject of informal negotiations. If any Party believes it has a dispute with any other Party, it shall notify all the other Parties in writing, including notice to the U.S. Department of Justice and the Indiana Attorney General, setting forth the matter(s) in dispute, and the Parties will proceed initially to resolve the matter in dispute by informal means. Such period of informal negotiations shall not exceed thirty (30) days from the date the notice was sent, unless the Parties agree otherwise.

67. If the informal negotiations are unsuccessful, the position of the Plaintiffs shall control unless, within twenty (20) days after the conclusion of the informal negotiation period, Indianapolis invokes the formal dispute resolution procedures of this Section by serving on the United States and the State a

written statement of position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation. For purposes of this Section XV, Dispute Resolution, "Plaintiffs" shall mean both the United States and the State, unless the dispute is only with one plaintiff, in which case "Plaintiffs" shall mean only the plaintiff with whom there is a dispute.

68. Within thirty (30) days of receiving Indianapolis' statement of position under Paragraph 67, the Plaintiffs will serve on Indianapolis their written statement of position, including any supporting factual data, analysis, opinion, or documentation.

69. An administrative record of the dispute shall be maintained by U.S. EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to Paragraphs 67-68.

70. The Plaintiffs' statement of position shall be binding upon Indianapolis unless Indianapolis files a petition with the Court describing the nature of the dispute and a proposal for its resolution. Indianapolis' petition must be filed no more than twenty (20) days after receipt of the Plaintiffs' statement of position. The Plaintiffs shall then have 30 days to file a response setting forth their position and proposal for resolution.

71. In any such dispute, the petitioner shall have the burden of proof, and the standard of review shall be that provided by

applicable law.

72. Submission of any matter to the Court for resolution shall not extend any of the deadlines set forth in this Consent Decree, unless the Parties agree to such extension in writing or the Court allows the extension upon motion.

73. Stipulated penalties with respect to any disputed matter (and interest thereon) shall accrue in accordance with Paragraphs 41, 42 and 51; however, payment of stipulated penalties, and any accrued interest, shall be stayed pending resolution of the dispute, as follows:

(a) If the dispute is resolved by informal agreement before appeal to this Court, accrued penalties (and interest), if any, determined to be owing shall be paid within 60 days of the agreement or the receipt of the Plaintiffs' final position in writing.

(b) If the dispute is appealed to this Court and the Plaintiffs prevail in whole or in part, Indianapolis shall pay all accrued penalties (and interest) determined to be owed within 60 days of the Court's decision or order.

(c) In the event of an appeal, Indianapolis shall pay all accrued penalties (and interest) determined to be owed within 60 days after a final decision no longer subject to judicial review has been rendered.

XVI. CIVIL PENALTY

74. Within 30 days after the date of entry of this Consent Decree, Indianapolis shall pay the sum of \$588,900 to the United States and \$588,900 to the State of Indiana, as a civil penalty. The civil penalty shall be paid in accordance with Paragraph 75, below.

75. The civil penalty shall be paid as follows:

(a) Payment to the United States shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with instructions to be provided to Indianapolis following lodging of the Consent Decree by the Financial Litigation Unit of the U.S. Attorney's Office for the Southern District of Indiana. At the time of payment, Indianapolis shall simultaneously send written notice of payment and a copy of any transmittal documentation (which should reference the civil action number and DOJ number 90-5-1-1-07292) to the United States in accordance with Paragraph 53, above.

(b) Payment to Indiana shall be made by check in the amount due, payable to the "Indiana Department of Environmental Management Special Fund" and delivered to:

Cashier
Indiana Department of Environmental Management
P.O. Box 7060
Indianapolis, IN 46207-7060

A copy of the check and transmittal letter or other evidence of payment (which should reference the caption number and docket number) shall be sent to Indiana and IDEM at the addresses set forth in Paragraph 39, above.

In lieu of payment of \$530,010 of the \$588,900 civil penalty to Indiana, Indianapolis may instead (i) pay the sum of \$58,890 to the State of Indiana as a civil penalty in accordance with this Paragraph 75 within 30 days after the date of entry of this Consent Decree and (ii) perform a State Supplemental Environmental Project ("State SEP") in accordance with Exhibit 4, consisting of Septic System Abatement. An offset ratio of 2:1 will be applied to this State SEP, i.e. Indianapolis must expend two dollars in order to offset one dollar of the civil penalty. Therefore, Indianapolis must expend a minimum of \$1,060,020 in order to offset 90% of a civil penalty totaling \$588,900. Indianapolis estimates the total cost of the State SEP to be at least \$1,510,000.

Indianapolis shall complete the State SEP by December 31, 2010. In performing the State SEP, Indianapolis shall comply with all applicable federal, state, and local laws and regulations, and shall obtain and comply with any necessary licenses or permits. Within 30 days of completion of the State SEP, Indianapolis shall submit to IDEM an itemized list, along with supporting documentation, of costs incurred in performing the State SEP. In

the event that the State SEP cost is less than \$1,060,020, Indianapolis shall pay the balance of the civil penalty that is not offset by the State SEP, to be calculated utilizing the 2:1 offset ratio described above, plus interest at the rate established by IC 24-4.6-1-101. Interest on the balance of the civil penalty shall be paid from the Effective Date of this Consent Decree. Payment shall be made to the Environmental Management Special Fund, within 15 days of receipt of notice from IDEM that payment is due.

In the event that Indianapolis fails to complete the State SEP by December 31, 2010, Indianapolis shall pay the entire balance of the civil penalty, totaling \$588,900, plus interest at the rate established by IC 24-4.6-1-101. Interest on the balance of the civil penalty shall be paid from the entry date of this Consent Decree. Payment shall be made to the Environmental Management Special Fund, within 15 days of receipt of notice from IDEM that payment is due.

76. In the event of late payment of the civil penalty required to be paid under this Section, Indianapolis shall pay the civil penalty, together with interest accruing from the 31st day after the date of entry of this Consent Decree, at the rate specified in 28 U.S.C. § 1961. In addition, Indianapolis shall pay a stipulated penalty of \$200.00 per day for each day that the payment is late. Stipulated penalties shall, as directed by the

United States, be paid by EFT, or by certified or cashier's check in the amount due payable to the "U.S. Department of Justice," referencing DOJ No.90-5-1-1-07292 and the civil action number and delivered to the office of the United States Attorney, Southern District of Indiana. All transmittal correspondence shall state that any such payment tendered is for late payment of the civil penalty or for stipulated penalties for late payment, as applicable, and shall include the identifying information set forth in Paragraph 75(a), above. The United States shall be entitled to collect the costs (including attorneys fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties for late payment of the civil penalty.

XVII. SUPPLEMENTAL ENVIRONMENTAL PROJECT

77. Indianapolis shall complete a Supplemental Environmental Project ("SEP"), in accordance with the Supplemental Environmental Projects Plan ("SEP Plan") attached to this Consent Decree as Exhibit 5, which the Parties agree is intended to secure significant environmental protection and improvements that are not otherwise required by law.

78. Indianapolis shall complete the SEP pursuant to the plans and the time schedules set forth in the SEP Plan.

79. Indianapolis shall spend at least \$2,000,000 implementing the SEP identified in the SEP Plan. No part of this expen-

diture shall include federal or state funds, including federal or state low interest loans, contracts, or grants. Indianapolis shall include documentation of expenditures made in connection with the SEPs as part of the SEP Completion Report required by Paragraph 80, below.

80. Indianapolis shall submit to U.S. EPA and IDEM a SEP Completion Report for the SEP described in the SEP Plan no later than 120 days from the date for completion of the SEP set forth in the SEP Plan. The Report shall contain the following information for the SEPs:

- (a) a detailed description of the SEP as implemented;
- (b) a description of any operating problems encountered and the solutions thereto;
- (c) itemized costs;
- (d) certification that the SEP has been fully implemented in accordance with the SEP Plan and the provisions of this Consent Decree; and
- (e) a description of the environmental and public health benefits resulting from implementation of the SEP.

81. Indianapolis hereby certifies that it is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Indianapolis required to perform or develop the SEP by agreement, grant or injunctive relief in this or any other

case or in compliance with state or local requirements. Indianapolis further certifies that it has not received, and is not presently negotiating to receive, credit for the SEP in any other enforcement action or proceeding involving the U.S. EPA or IDEM.

XVIII. RIGHT OF ENTRY

82. U.S. EPA and IDEM, and their representatives, contractors, consultants, and attorneys shall have the right of entry into and upon Indianapolis' AWTs and Sewer System, at all reasonable times, upon proper presentation of credentials, for the purposes of:

- (a) Monitoring the progress of activities required by this Consent Decree;
- (b) Verifying any data or information required to be submitted pursuant to this Consent Decree;
- (c) Obtaining samples and, upon request, splits of any samples taken by Indianapolis or its consultants. Upon request, Indianapolis will be provided with splits of all samples taken by the United States or Indiana; and
- (d) Otherwise assessing Indianapolis' compliance with this Consent Decree, Indianapolis' Current Permits, the Clean Water Act or applicable state law.

83. This Section XVIII, Right of Entry, in no way limits or affects any right of entry and inspection held by the United

States, U.S. EPA, Indiana, and IDEM pursuant to applicable federal or state laws, regulations, or permits.

XIX. CERTIFICATION

84. Any report, plan, or other submission that Indianapolis is required by this Consent Decree to submit, including reports, plans or other submissions that Indianapolis is also required to submit by its Current Permits, shall be signed by an official or authorized agent of Indianapolis and shall include the following certification:

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

85. Indianapolis shall not object to the admissibility into evidence of any report, plan, or other submission prepared in accordance with this Paragraph or the information contained in said reports in any proceeding initiated by any of the Parties to this Consent Decree to enforce this Consent Decree. Notwithstanding the

above, Indianapolis may seek in accordance with applicable law to submit any contradictory or other evidence as to any matter affected by the evidence referred to in the preceding section in any proceeding to enforce this Consent Decree.

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

86. This Consent Decree is not and shall not be construed as a permit, or a modification of any existing permit, issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342, or state law, nor shall it in any way relieve Indianapolis of its obligations to obtain permits for its wastewater treatment facilities, sewer system, or modifications thereto, and to comply with the requirements of any NPDES permit or with any other applicable federal or state law or regulation, including the obligation to obtain facility construction permits pursuant to Title 327 of the Indiana Administrative Code, Article 3. Any new permit, or modification of existing permits, must be complied with in accordance with applicable federal and state laws and regulations.

87. Nothing herein, including the incorporation of the CSO Control Measures specified in Exhibit 1 into this Consent Decree, or the United States' and the State's review or approval of any plans, reports, policies or procedures formulated pursuant to this Consent Decree (including any Revised CSO Control Measures Plan),

shall be construed as relieving Indianapolis of the duty to comply with the Clean Water Act, the regulations promulgated thereunder, and all applicable permits issued thereunder, or as relieving Indianapolis of its duty to comply with applicable state law.

XXI. EFFECT OF COMPLIANCE

88. The United States and the State do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Indianapolis' complete compliance with this Consent Decree will result in compliance with the provisions of the Clean Water Act, 33 U.S.C. §§ 1251 et seq., applicable state law, or Indianapolis' NPDES permits.

XXII. EFFECT OF CONSENT DECREE AND NON-WAIVER PROVISIONS

89. Nothing contained in this Consent Decree shall be construed to prevent or limit the United States' or the State's rights to obtain penalties or further or additional injunctive relief under the Clean Water Act or other federal statutes or regulations, including, but not limited to, criminal punishment under Section 309(c) of the Act, 33 U.S.C. § 1319(c), or applicable state laws and regulations respectively except as expressly specified herein.

90. This Consent Decree resolves the civil claims of the United States and the State for civil penalties and injunctive relief for the violations alleged in the Complaint filed herein

through the date of lodging of this Consent Decree.

91. The United States and the State further reserve all rights against Indianapolis with respect to any violations by Indianapolis that occur after the date of lodging of this Consent Decree, and/or for any violations of the Clean Water Act or applicable state law not specifically alleged in the Complaint filed herein, whether they occurred before or after the date of lodging of this Consent Decree.

92. The Parties agree that Indianapolis is responsible for achieving and maintaining complete compliance with all applicable federal and state laws, regulations, and permits, and that compliance with this Consent Decree shall be no defense to any actions commenced by the United States and the State pursuant to said laws, regulations, or permits, except as set forth herein.

93. This Consent Decree does not limit or affect the rights of the Parties as against any third parties that are not Parties to this Consent Decree. The Parties recognize that this Consent Decree resolves only matters between Plaintiffs and Indianapolis and that its execution does not preclude Indianapolis from asserting any legal or factual position in any action brought against it by any person or entity not a Party to this Consent Decree.

94. The United States and the State reserve any and all legal

and equitable remedies available to enforce the provisions of this Consent Decree.

95. This Consent Decree shall not limit any authority of the United States or the State under any applicable statute or regulation, including the authority to seek information from Indianapolis, to require monitoring, to conduct inspections, or to seek access to the property of Indianapolis; nor shall anything in this Consent Decree be construed to limit the authority of the United States or the State to undertake any action against any person, including Indianapolis, in response to conditions that may present an imminent and substantial endangerment to the environment or to the public health or welfare.

96. Obligations of Indianapolis under the provisions of this Consent Decree to perform duties scheduled to occur after the signing, but prior to the date of entry, shall be legally enforceable from the date this Consent Decree is signed by Indianapolis. Liability for stipulated penalties, if applicable, shall accrue for violation of such obligations and payment of such stipulated penalties may be demanded by the Plaintiffs as provided in this Consent Decree. The contempt authority of this Court shall also extend to violations of such obligations.

XXIII. COSTS OF SUIT

97. Each Party shall bear its own costs and attorneys' fees.

with respect to matters related to this Consent Decree.

XXIV. MODIFICATION

98. Except as provided below, there shall be no material modification of this Consent Decree, Exhibits attached to this Consent Decree, or the submittals approved under this Consent Decree without written approval by all of the Parties and the Court. Any non-material modification of this Consent Decree, its Exhibits, or approved submittals shall be in writing and signed by the Parties. Any modifications to the attached Exhibits or subsequently approved submittals that are specifically allowed under the terms of those Exhibits or submittals may be made in accordance with the terms of those Exhibits or approved submittals. All modifications, whether material or non-material, shall be deemed an enforceable part of this Consent Decree.

XXV. CONTINUING JURISDICTION

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

XXVI. TERMINATION

100. Upon motion filed with the Court by the United States, Indiana or Indianapolis, the Court may terminate the terms of this

Consent Decree after each of the following has occurred:

(a) Indianapolis has achieved compliance with all provisions contained in this Consent Decree, and subsequently has maintained satisfactory compliance with each and every provision for twelve consecutive months;

(b) Indianapolis has paid all penalties and other monetary obligations due hereunder and no penalties or other monetary obligations due hereunder are outstanding or owed to the United States or Indiana; and

(c) At least 120 days prior to filing the motion, Indianapolis has certified to U.S. EPA and IDEM that it has complied with the requirements of Subparagraphs 100(a) and (b), above and has provided sufficient documentation to U.S. EPA and IDEM to support its certification.

101. The United States or Indiana may dispute whether Indianapolis has complied with the requirements of Paragraph 100, above, in which case this Consent Decree shall remain in effect pending resolution of the dispute by the Parties or the Court in accordance with Section XV of this Consent Decree.

XXVII. PUBLIC COMMENT

102. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days, for public notice and comment in accordance with the provisions of 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its

consent if the comments received disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper or inadequate. Indianapolis hereby agrees not to withdraw from, oppose entry of, or to challenge any provision of this Consent Decree, unless the United States has notified Indianapolis in writing that it no longer supports entry of the Consent Decree.

XXVIII. SIGNATORIES/SERVICE

103. The Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice, on behalf of the United States, the Indiana Assistant Attorney General signing this Consent Decree, on behalf of Indiana, and the undersigned representative of Indianapolis each certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

104. Indianapolis shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of Indianapolis with respect to all matters arising under or relating to this Consent Decree. Indianapolis hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree that Indianapolis need not file an answer to the

Complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXIX. FINAL JUDGMENT

105. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment of the Court between and among the United States, Indiana, and Indianapolis.

The Court finds there is no just reason for delay and therefore enters this Consent Decree as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED this _____ day of _____, 2006.

United States District Judge
Southern District of Indiana

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States and State of Indiana v. City of Indianapolis.

FOR THE UNITED STATES OF AMERICA

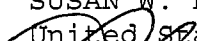
DATE: 9/25/06

SUE ELLEN WOOLDRIDGE
Assistant Attorney General
Environmental and Natural Resources
Division

GREGORY L. SUKYS
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-2068

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States and State of Indiana v. City of Indianapolis.

SUSAN W. BROOKS

 United States Attorney

DATE: 9/29/06

By: 

THOMAS E. KIEPER

Assistant United States Attorney

Southern District of Indiana

10 West Market Street, Suite 2100

Indianapolis, Indiana 46204

(317) 229-2415

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States and State of Indiana v. City of Indianapolis.

FOR UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY

GRANTA Y. NAKAYAMA

Assistant Administrator of Enforcement
and Compliance Assurance
United States Environmental Protection
Agency

1200 Pennsylvania Avenue

Washington, D.C. 20460

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States and State of Indiana v. City of Indianapolis.

DATED: 8-21-06

BHARAT MATHUR
Acting Regional Administrator
United States Environmental
Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

DATED: August 18, 2006

BERTRAM C. FREY
Acting Regional Counsel
United States Environmental
Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States and State of Indiana v. City of Indianapolis.

FOR THE STATE OF INDIANA

STEVE CARTER
Attorney General of Indiana

DATED: 9/1/2006

THOMAS W. EASTERLY
Commissioner
Indiana Department of Environmental
Management
100 North Senate Avenue
IGCN 1301
Indianapolis, Indiana 46204

DATED: 9-15-06

CHARLES J. TODD
Chief Operating Officer
Office of the Attorney General
Indiana Government Center South
5th Floor
402 West Washington Street
Indianapolis, IN 46204

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States and State of Indiana v. City of Indianapolis.

FOR THE CITY OF INDIANAPOLIS

By: _____

KUMAR MENON
Director
Department of Public Works
City of Indianapolis
200 East Washington Street
Suite 2460
Indianapolis, Indiana 46204

DATED: 9/20/06

By: _____

KOBI M. WRIGHT
Corporation Counsel
City of Indianapolis
200 East Washington Street
Suite 1601
Indianapolis, Indiana 46204

DATED: 9/26/06