

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

UNITED STATES OF AMERICA,)
)
 and)
)
 COMMONWEALTH OF PENNSYLVANIA,)
 DEPARTMENT OF ENVIRONMENTAL)
 PROTECTION)
 Plaintiffs,)
)
 v.)
)
 CITY OF LANCASTER, PENNSYLVANIA,)
)
 Defendant.)

Civil Action No. 17-cv-5684

Judge

CONSENT DECREE

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WHEREAS, the Defendant, City of Lancaster (“Lancaster” or “City”), is a municipality organized under the Third Class City Code, Act of June 23, 1931, P.L. 932, as amended, 53 P.S. §§ 35101 *et seq.*, that owns, operates, and maintains a publicly owned treatment works (“POTW”) that includes a wastewater treatment plant known as the Advanced Wastewater Treatment Plant (“WWTP”) and a collection system (“Collection System”) that collects stormwater and wastewater from residential, commercial, and industrial sources. Certain portions of the Collection System are a Combined Sewer System and other portions are a Sanitary Sewer System. Pursuant to contractual arrangements, Lancaster also treats wastewater at the WWTP that has been collected and conveyed to the WWTP from Tributary Municipalities and Tributary Authorities;

WHEREAS, the Lancaster Collection and Treatment System includes force mains, sewer lines, and other real and personal property and appurtenances thereto designed to collect and convey to the WWTP combined wastewater, including sewage and stormwater;

WHEREAS, Lancaster’s Collection and Treatment System is designed to discharge, under certain conditions specified in NPDES Permit No. PA0026743, through Combined Sewer Overflow (“CSO”) Outfalls, into the Conestoga River, which ultimately flows into the Chesapeake Bay;

WHEREAS, discharges through CSO Outfalls are a source of water pollution to receiving waters;

WHEREAS, pursuant to Section 402(a) of the Clean Water Act, 33 U.S.C. § 1342(a), and Section 202 of the Clean Streams Law, 35 P.S. § 691.202, the Pennsylvania Department of Environmental Protection (“PADEP”) issued to Lancaster NPDES Permit No. PA0026743,

which was most recently re-issued on July 28, 2010, and effective on August 1, 2010 (“NPDES Permit”);

WHEREAS, the NPDES Permit requires Lancaster to implement a Long Term Control Plan (“LTCP”) for the purpose of achieving compliance with the Pennsylvania Water Quality Standards and consistent with the United States Environmental Protection Agency’s (“EPA”) “Combined Sewer Overflows Guidance for Long Term Control Plan” (EPA 832-B-95-002) and CSO Policy, as defined herein;

WHEREAS, on September 5, 2008, EPA issued an Administrative Order and Information Request to the City of Lancaster, In the Matter of City of Lancaster Sewer Authority, Findings of Violation and Order for Compliance, EPA Docket No. CWA-03-2008-0390-DN;

WHEREAS, on July 9, 2009, Lancaster submitted to PADEP and EPA a revised LTCP, and by letter dated April 28, 2010, EPA provided comments to Lancaster on the July 9, 2009 LTCP, and Lancaster responded;

WHEREAS, in October 2010, Lancaster submitted to EPA a status report on Lancaster’s 2009 Amended LTCP, and by letter dated August 31, 2011, EPA provided comments to Lancaster on its October 2010 Amended LTCP Status Report (“2010 Amended LTCP”), and Lancaster responded;

WHEREAS, on June 11, 2011, Lancaster submitted to EPA a Green Infrastructure Plan (“2011 GI Plan”) which planned and implemented projects designed or intended to reduce CSOs. The 2011 GI Plan also evaluated approaches to adding green infrastructure throughout the City within 5-year and 25-year timeframes; estimated the water quality benefits of such green infrastructure; and articulated a series of policy, outreach, and technical recommendations for

implementing green infrastructure in the City. EPA Region III reviewed Lancaster's 2011 GI Plan and provided comments in a February 12, 2012 letter;

WHEREAS, Lancaster was selected to be a recipient of EPA's green infrastructure technical assistance program, intended to advance the adoption of GI in almost 40 communities across the country and develop knowledge and tools for a national audience. The focus of the technical assistance was to estimate the value of several co-benefits associated with Lancaster's GI Plan. The principles, methods, and projects built as a result of Lancaster's 2011 GI Plan served as the basis for the EPA report entitled, "Economic Benefits of Green Infrastructure (EPA 800-R-14-007, February 2014). This report highlights the importance of including the multiple benefits of green infrastructure in cost-benefit assessments;

WHEREAS, Plaintiff United States of America, by the authority of the Attorney General of the United States and through its undersigned counsel, acting at the request and on behalf of the Administrator of the EPA, and PADEP have filed a complaint in this action, seeking injunctive relief and civil penalties pursuant to the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.* ("Clean Water Act" or "Act"), specifically Section 309 of the Clean Water Act, 33 U.S.C. § 1319, and the Clean Streams Law, Act of June 22, 1937, P.L. 1987, as amended ("Clean Streams Law"), specifically Sections 601 and 604 of the Clean Streams Law, 35 P.S. §§ 691.601 and 695.605;

WHEREAS, the United States and PADEP allege that Lancaster has violated and continues to violate Section 301 of the Clean Water Act, 33 U.S.C. § 1311, and Sections 3, 202, and 401 of the Clean Streams Law, 35 P.S. §§ 691.3, 691.202, and 691.401, by failing to comply with the requirements of the NPDES Permit;

WHEREAS, by entering into this Consent Decree, Lancaster does not admit any liability to the Plaintiffs arising out of the transactions or occurrences alleged in the Complaint;

WHEREAS, the measures to be set forth in the Amended LTCP are required to attain compliance with the NPDES Permit, the Clean Water Act, and the Pennsylvania Water Quality Standards, 25 Pa. Code Chapter 93;

WHEREAS, the Parties enter into this Consent Decree to establish, through judicial order, enforceable schedules and requirements for the amendment to the Lancaster LTCP and the implementation of the Amended LTCP and associated tasks necessary to achieve compliance with the Clean Water Act;

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

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law, except as provided in Section I of this Consent Decree, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action and over the parties, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b). This Court has supplemental jurisdiction over the State law claims asserted by PADEP pursuant to 28 U.S.C. § 1367. Venue lies in this District pursuant to Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b), and 29 U.S.C. §§ 1391(b) and 1395(a). Lancaster is

located in this judicial district and the violations alleged in the Complaint are alleged to have occurred in this judicial district. For purposes of this Consent Decree, or any action to enforce this Consent Decree, Lancaster consents to the Court's jurisdiction over this Consent Decree and any such action and over Lancaster and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Lancaster agrees that the Complaint states claims upon which relief may be granted pursuant to Sections 309(b) and 309(d) of the Clean Water Act, 33 U.S.C. § 1319(b), (d). As a co-plaintiff, PADEP has actual notice of commencement of this action.

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon Lancaster, its directors, employees, agents, servants, successors, assigns, or any other entities bound by law, and on the United States and PADEP. No transfer of ownership or operation of the Treatment Plant and/or Collection System, or any portion thereof, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Lancaster of its obligation to ensure that the terms of the Consent Decree are implemented. From the date of lodging of this Consent Decree until its termination, at least thirty (30) Days prior to such transfer, Lancaster shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to PADEP, EPA Region III, the United States Attorney for the Eastern District of Pennsylvania, and the United States Department of Justice, in accordance with Section XVII of this Consent Decree (Notices). Any attempt to transfer ownership or operation of the WWTP and/or Collection System, or any portion thereof, without complying with this Paragraph

constitutes a violation of this Consent Decree. In the event of any such transfer of ownership or other interest, Lancaster will not be released from the obligations of this Consent Decree unless:

- (i) the transferee has the technical and financial ability to assume these obligations and liabilities;
- (ii) the United States and PADEP have agreed in writing to release Lancaster from the obligations and liabilities; (iii) the United States, PADEP, and the transferee have jointly moved to substitute the transferee as Lancaster to this Consent Decree; and (iv) the Court has approved the substitution. The transferee shall apply for modification and/or transfer of the NPDES Permit under applicable law.

4. Lancaster shall provide a copy of this Consent Decree to all officers, employees, and agents of Lancaster whose duties might reasonably include compliance with any provision of this Consent Decree, as well as to any contractor retained to perform Work required under this Consent Decree. The foregoing requirement may be satisfied by hard copy, electronic copy, or by providing on-line access with notice to persons identified in this Paragraph 4. Lancaster shall condition any such contract upon performance of the Work in conformity with the terms of this Consent Decree.

5. In any action to enforce this Consent Decree, Lancaster shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree. Nothing in this Paragraph 5 prevents Lancaster from invoking Section XII of this Consent Decree (Force Majeure), provided that the event meets the definition of force majeure included in Paragraph 98 of this Consent Decree.

III. PURPOSE

6. The purpose of the Parties entering into this Consent Decree is to ensure that Lancaster undertakes measures necessary to comply with the Clean Water Act, including, but not limited to, 33 U.S.C. § 1342(q) and the regulations promulgated thereunder, and the Clean Streams Law and the regulations promulgated thereunder. The obligations in this Consent Decree, or resulting from the activities required by this Consent Decree, have the objective of causing Lancaster to achieve and thereafter maintain, full compliance with the terms and conditions of its NPDES Permits, the Clean Water Act, the Clean Streams Law, and to meet the objectives of EPA's April 1994 "Combined Sewer Overflow (CSO) Control Policy," as these terms are defined in Section IV (Definitions) of this Consent Decree.

IV. DEFINITIONS

7. Unless otherwise defined herein, terms used in this Consent Decree shall have the meanings given to those terms in the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, the regulations promulgated thereunder, and EPA's CSO Policy. Terms not defined in the Clean Water Act, its regulations, or EPA's CSO Policy shall have the meanings given in the NPDES Permit. Terms not defined in any of the above shall have the meanings given in the Pennsylvania Clean Streams Law, 35 P.S. §§ 691.1-691.1001. All other words shall be given their ordinary meaning.

Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. "Amended Long Term Control Plan" or "Amended LTCP" shall mean the plan that Lancaster develops and implements pursuant to Section VI (Clean Water Act Compliance Requirements) of this Consent Decree.

b. “Building/Private Property Backup” shall mean a wastewater release or backup into a building or onto private property that is caused by blockages, flow conditions, or other malfunctions in the Lancaster Collection System. A wastewater backup or release that is caused by blockages, flow conditions, or other malfunctions of a Private Lateral is not a Building /Private Property Backup.

c. “Collection Area” shall mean the geographic area contained within the City of Lancaster and the Tributary Authorities and Tributary Municipalities that convey wastewater to the WWTP.

d. “Complaint” shall mean the complaint filed by the United States and PADEP in this action.

e. “Combined Sewer Overflow Control Policy” or “CSO Policy” shall mean the policy issued by EPA regarding combined sewer overflows, entitled “Combined Sewer Overflows (CSO) Control Policy,” 59 Fed. Reg. 18688 (April 19, 1994), and as identified in Section 402(q) of the Clean Water Act, 33 U.S.C. §1342(q).

f. “Combined Sewer Overflow” or “CSO” shall mean a discharge of sanitary wastewater and stormwater from a discharge point located within the Lancaster Collection and Treatment System and identified as a CSO Outfall in the NPDES Permit or from a discharge point located within the Lancaster Collection and Treatment System which has not previously been identified as a CSO Outfall in the NPDES Permit in any previous permit application

g. “Combined Sewer System” shall mean the portion of Lancaster’s Collection System designed to convey municipal sewage and wastewaters (domestic, commercial, and industrial) and stormwater in the same system of pipes to the WWTP or to CSO Outfalls.

h. “Consent Decree” or “Decree” shall mean this Decree and all appendices attached hereto (listed in Section XXVI hereto).

i. “CSO Control Measure” shall mean each long term CSO control selected in Lancaster’s Amended Long Term Control Plan approved pursuant to this Consent Decree, including, but not limited to, construction, control measures, and other activities. The term CSO Control Measure includes Gray Infrastructure Control Measures and Green Infrastructure Control Measures.

j. “CSO Outfall” shall mean an outfall in the Combined Sewer System from which combined sewage and stormwater are discharged and so designated in the applicable NPDES Permit.

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

l. “Design Criteria” shall mean the numeric and/or narrative specifications included in the Amended Long Term Control Plan that must be met in designing and constructing selected CSO Control Measures as required in this Consent Decree.

m. “Dry Weather Overflow” shall mean a discharge that occurs at a permitted CSO Outfall without an accompanying precipitation event or snowmelt. .

n. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.

o. “Effective Date” shall have the definition provided in Section XVII (Effective Date).

p. “Field Acceptance Testing” shall mean an assessment performed by the contractor to demonstrate that the completed GI Project satisfies the contract’s Design Criteria.

q. “Gray Infrastructure Control Measures” shall mean engineered structural control practices to control CSO discharges that are not Green Infrastructure CSO Control Measures as defined in this Consent Decree. “Gray Infrastructure Control Measures” may include, but are not limited to, tunnel systems, storage tanks, in-line storage facilities, sewer lines, and high rate clarification treatment facilities.

r. “Green Infrastructure Control Measures” shall mean the range of individual stormwater control practices that use plant/soil systems, permeable pavement, stormwater harvest and reuse, or native landscaping to store, infiltrate, and/or evapo-transpire stormwater and reduce flows to the sewer systems or to surface waters. Green Infrastructure Control Measures may include, but are not limited to, bio-retention, extended detention wetland areas, green roofs and permeable pavement. Green Infrastructure Control Measures may also include control measures to harvest and reuse stormwater, such as rain barrels and cisterns.

s. “Green Infrastructure Monitoring” or “GI Monitoring” shall mean those processes and procedures necessary to evaluate the performance of GI Projects over time. Green Infrastructure Monitoring shall include physical testing, data collection, recordation in an asset management system, and long-term analysis to evaluate the infiltration (volume reduction) performance of GI Projects within the City’s Combined Sewer System. Green Infrastructure Monitoring shall include Field Acceptance Testing, Performance Baseline Testing, and Ongoing

Field Performance Testing. Monitoring may also include sample collection, advanced chemical testing, or biological studies

t. “Green Infrastructure Project” (or “GI Project” or “GIP”) shall mean a unique construction project intended to serve a specific site that employs one or more Green Infrastructure Control Measures.

u. “Green Infrastructure Plan” or “GI Plan” shall mean the Green Infrastructure Plan that Lancaster is required to develop and implement pursuant to Section VI of this Consent Decree.

v. “Infiltration” shall have the meaning set forth at 40 C.F.R. § 35.2005(b) (20).

w. “Inflow” shall have the meaning set forth at 40 C.F.R. § 35.2005(b) (21).

x. “Lancaster” or “the City” shall mean Defendant City of Lancaster, Pennsylvania.

y. “Lancaster Collection and Treatment System” or “Lancaster Collection System” shall mean the Wastewater Treatment Plant (“WWTP”) and all force mains, pump stations, sewer lines, and other real and personal property and appurtenances thereto owned and/or operated by Lancaster and designed to collect and convey sanitary wastewater (including sewage) only, or sanitary wastewater (including sewage) and stormwater to the WWTP, excluding any pipes, sewer lines, and/or other real and personal property and appurtenances thereto owned and/or operated by an entity other than Lancaster pursuant to separate permits issued by PADEP.

z. “MGD” shall mean million gallons per Day.

aa. “Nine Minimum Controls” shall have the definition provided in the CSO Control Policy.

bb. “Ongoing Field Performance Testing” shall mean an assessment performed to determine the performance of a GI Project over the service life of the Project.

cc. “PADEP” shall mean the Pennsylvania Department of Environmental Protection.

dd. “Paragraph” shall mean a portion of this Decree identified by an Arabic numeral.

ee. “Parties” shall mean the United States, the Pennsylvania Department of Environmental Protection and Lancaster.

ff. “Pennsylvania Water Quality Standards” shall mean the water quality standards for the Commonwealth of Pennsylvania as set forth in Title 25, Chapter 93, of the Pennsylvania Code, 25 Pa. Code §§ 93.1-93.9.

gg. “Performance Baseline Testing” shall mean the testing to determine the baseline performance of GI Projects upon completion of construction. Lancaster shall perform such tests in accordance with applicable American Society for Testing and Materials (“ASTM”), including but not limited to C1701 (ASTM 2009) and C1781 (ASTM 2013), as soon as reasonably feasible following completion of construction in order to establish a performance baseline against which future performance shall be evaluated.

hh. “Performance Criteria” shall mean the numeric and narrative specifications included in the Amended Long Term Control Plan that must be met to achieve the Purpose of this Consent Decree as described in Section III of the Consent Decree, following Lancaster’s completion of construction of the selected CSO Control Measures.

ii. “Plaintiffs” shall mean the United States and PADEP.

jj. “Private Lateral” shall mean pipes and any other appurtenances not owned or operated by Lancaster or the Tributary Authorities and Tributary Municipalities that are used to convey wastewater from a building or buildings to the Lancaster Collection System.

kk. “Receiving Water(s)” shall mean the portion of a waterbody that receives or is impacted by the discharges from one or more CSOs, including the Conestoga River.

ll. “Sanitary Sewer Overflow” or “SSO” shall mean an overflow, spill, diversion, or release of wastewater from or caused by the Sanitary Sewer System. This term shall include: (i) discharges to waters of the Commonwealth of Pennsylvania or United States from the Sanitary Sewer System and (ii) any release of wastewater from the Sanitary Sewer System to public or private property that does not reach waters of the United States or the Commonwealth of Pennsylvania, including Building/Private Property Backups.

mm. “Sanitary Sewer System” shall mean the current and future portion of the Lancaster Collection and Treatment System designed to convey municipal sewage and wastewaters (domestic, commercial, and industrial) in a conveyance system that is isolated from and operates independently from the stormwater conveyance system.

nn. “Section” shall mean a portion of this Decree identified by a roman numeral.

oo. “Sensitive Areas” shall have the meaning set forth in Section II.C.3 of the CSO Policy, and shall be determined in accordance with Paragraph 15, below.

pp. “State” shall mean the Commonwealth of Pennsylvania.

qq. “Typical Year” shall mean the precipitation volume, frequency, duration, and intensity determined pursuant to Paragraph 16, below.

rr. “Tributary Authorities” shall mean the sewer authorities that send sanitary wastewater (including sewage) directly to the WWTP or through the Lancaster Collection and Treatment System for treatment at the WWTP, and shall include the Lancaster Area Sewer Authority, East Lampeter Sewer Authority, Suburban Lancaster Sewer Authority, and Leola Sewer Authority.

ss. “Tributary Municipalities” shall mean the municipalities that, pursuant to contract with Lancaster, send sanitary wastewater (including sewage) directly to the WWTP or to the Lancaster Collection and Treatment System for treatment at the WWTP, and shall include East Hempfield Township, Lancaster Township, Manheim Township, Manor Township, East Lampeter Township, West Lampeter Township, Pequea Township, Upper Leacock Township, West Earl Township, Strasburg Township, and the Borough of Strasburg.

tt. “Unauthorized Release” shall mean any overflow, spill, diversion, or release of wastewater from or caused by the Combined Sewer System at a location other than a CSO Outfall designated in the NPDES Permit. This term shall include any release of wastewater from the Combined Sewer System to public or private property that does not reach waters of the Commonwealth or United States, including Building/Private Property Backups.

uu. “United States” shall mean the United States of America, acting on behalf of EPA.

vv. “WWTP” shall mean the advanced waste water treatment plant owned and operated by the City of Lancaster, located at 1220 New Danville Pike, Lancaster, Pennsylvania 17602.

ww. “Work” shall mean all activities Lancaster is required to perform under this Consent Decree.

V. FUNDING

8. Lancaster’s compliance with the terms of this Consent Decree is not conditioned on the receipt of federal or state grant or loan funds or upon Lancaster’s financial capabilities. In addition, Lancaster’s failure to comply is not excused by the lack of federal or state grant or loan funds, or by the processing of any applications for the same, or by Lancaster’s financial capabilities. Application for construction grants, State revolving loan funds, or any other grants or loans, or delays caused by inadequate facility planning or plans and specifications on the part of Lancaster shall not be cause for extension of any required compliance date in this Consent Decree.

VI. CLEAN WATER ACT COMPLIANCE REQUIREMENTS

A. Obligation to Perform Work

9. Beginning on the Effective Date, Lancaster shall implement the Work pursuant to this Consent Decree. All Work shall be performed using sound engineering practices to ensure that construction, management, operation, and maintenance of the Lancaster Collection System complies with the CWA. Sound engineering practices include applicable provisions of Handbook: Sewer System Infrastructure Analysis and Rehabilitation, EPA/625/6-91/030, 1991; Existing Sewer Evaluation and Rehabilitation, WEF MOP FD-6, 3rd edition, 2009; Recommended Standards for Wastewater Facilities, Health Education Services (a Division of Health Research, Inc.), 2014; Code of Practice for the Hydraulic Modeling of Sewer Systems Version 3.001, December 2002, prepared by The Chartered Institution of Water and

Environmental Management (CIWEM, formerly WaPUG); and Prevention and Control of Sewer System Overflows, Water Environment Federation (WEF) Manual of Practice (MOP) FD-17, 3rd edition, 2011; Guidance: Coordinating CSO Long-Term Planning with Water Quality Standards Reviews, EPA-833-R-01-002, 2001 (“EPA 2001 CSO/WQS Guidance”); Combined Sewer Overflows Guidance for Long-Term Control Plan, EPA 832-B-95-002, August 1995 (“EPA 1995 CSO LTCP Guidance”); Combined Sewer Overflows Guidance for Monitoring and Modeling, EPA 832-B-99-002, January 1999 (EPA 1999 CSO Monitoring and Modeling Guidance”); CSO Post Construction Compliance Monitoring Guidance, May 2012 (“EPA 2012 Post Construction Guidance”); Pennsylvania Stormwater Best Management Practices (BMP) Manual, PADEP, 2006 (“PA BMP Manual”).

B. Continuing System Improvements

10. North Pump Station. To improve wet weather performance of the Combined Sewer System for the North Combined Sewer District, Lancaster has upgraded the North Pump Station. The upgrade included installing a new diversion chamber, screening, and grit removal, and the replacement of flow metering devices. Lancaster completed construction and placed the upgraded pump station into full operation in December 2016.

11. Flow Reduction Projects. Lancaster shall use its best efforts to obtain flow reductions from entities that discharge pumped groundwater flow to the Combined Sewer System and to reduce wet weather flow to the Combined Sewer System from Manheim Township. For purposes of this Paragraph, best efforts shall mean solicitation of cooperation and use of all legal means reasonably available to achieve the objectives of this Paragraph. Lancaster shall include a

description of its efforts in each Semi Annual Report submitted pursuant to Paragraph 70 of this Consent Decree.

C. Amended Long Term Control Plan and Nine Minimum Control Requirements

12. Pre-LTCP Green Infrastructure. Since 2010, the City has implemented, and is continuing to implement, an integrated green infrastructure program through which it has constructed or initiated construction 45 GI Projects throughout Lancaster (“hereinafter “Pre-LTCP Green Infrastructure Program”). The City may continue to implement its Pre-LTCP Green Infrastructure Program in collaboration with other interested local agencies, non-governmental organizations, citizens, and private entities. Within twelve (12) months after the Effective Date, the City shall submit to EPA and PADEP the documents described in Appendix A that relate to the Pre-LTCP Green Infrastructure Program. Pursuant to the requirements of Paragraph 34, below, the City may elect to include Green Infrastructure as part of its Amended LTCP.

13. Amended Long Term Control Plan Development and Submission. If EPA approves the use of the Presumption Approach pursuant to Paragraph 25, below, then by no later than twelve months after the date of EPA’s approval of the Presumption Approach, Lancaster shall complete and submit an Amended LTCP to EPA and PADEP for review, and approval by EPA after consultation with PADEP. In the alternative, if EPA approves the use of the Demonstration Approach pursuant to Paragraph 25, below, then by no later than 12 months after EPA approval of the Water Quality Model Report required by Paragraph 27 of this Consent Decree, Lancaster shall complete and submit an Amended LTCP to EPA and PADEP for review, and approval by EPA after consultation with PADEP. The Amended LTCP required by this Paragraph 13 shall include, at a minimum, a detailed analysis and discussion of each item required by Paragraphs 15

through 38 of this Decree, and shall include proposed schedules, milestones, and deadlines for implementing each component of the Amended LTCP. The Amended LTCP shall conform to the requirements of EPA's CSO Policy and the EPA 1995 CSO LTCP Guidance. The selected CSO Control Measures set forth in the Amended LTCP shall be designed to limit CSOs as required by Section II.C.4.a of the CSO Policy ("Presumption Approach") or to demonstrate that the selected control program is adequate to meet the water quality-based requirements of the Clean Water Act as required by Section II.C.4.b of the CSO Policy ("Demonstration Approach"), as well as to meet the following overarching goals:

- a. bringing all CSO Outfalls into full compliance with the technology-based and water quality-based requirements of the CWA;
- b. minimizing the impacts of CSOs on water quality, aquatic biota, and human health; and
- c. maximizing the benefits to the Receiving Waters and Lancaster through the use of Green Infrastructure, adaptive management, and other innovative practices, in addition to conventional Gray Infrastructure, to achieve the goals of this Paragraph 13.

14. Development of the Amended LTCP required by Paragraph 13, above, shall include each of the requirements listed in this Paragraph 14 and as described in further detail in Paragraphs 15 through 38 of this Consent Decree:

- a. Identification of Sensitive Areas, as required by Section II.C.3 of the CSO Policy, and identification of pollutants and parameters of concern ("PoCs"), consistent with the EPA

1995 CSO LTCP Guidance and the EPA 1999 CSO Monitoring and Modeling Guidance, and in accordance with the requirements of Paragraph 15, below;

b. Identification of a Typical Year rainfall record in accordance with the requirements of Paragraph 16, below;

c. Ongoing updating, validating, and re-calibrating the Hydrologic and Hydraulic Model (“H&H Model”) in accordance with the requirements of Paragraphs 17-22, below;

d. Characterization of the Collection Area and the Receiving Waters as required by the CSO Policy Paragraph II.C.1 and associated guidance, and in accordance with the requirements of Paragraph 23, below;

e. Development and implementation of a Public Participation Plan in accordance with CSO Policy Paragraph II.C.2 and associated guidance, and in accordance with the requirements of Paragraph 24, below;

f. Coordination with EPA and PADEP to determine the approach to Alternatives Evaluation to be used in Lancaster’s Receiving Waters, as required by Paragraph II.C.4 of the CSO Policy, and in accordance with the requirements of Paragraph 25, below;

g. If Lancaster utilizes the Demonstration Approach as provided for in Section II.C.4.b. of the CSO Policy, development and implementation of a Demonstration Approach Water Quality Model Plan, and development of a Water Quality Model Report in accordance with the requirements of Paragraph 26 and 27, below;

h. Development of a Financial Capability Assessment (“FCA”) and an implementation schedule for the proposed CSO controls in accordance with CSO Policy, Paragraph II.C.8 and “Combined Sewer Overflows – Guidance for Financial Capability

Assessment and Schedule Development,” EPA 832-B-97-004, February 1997, and EPA’s Financial Capability Assessment Framework, issued on November 24, 2014, and in accordance with the requirements of Paragraph 28, below;

i. Alternatives Evaluation and selection of proposed CSO long term controls and other CSO control measures as required by CSO Policy, Paragraph II.C.4, and in accordance with the EPA 1995 CSO LTCP Guidance, and the requirements of Paragraphs 29-32, and Paragraph 33, below;

j. Development of Green Infrastructure Documents for the LTCP, as required by Paragraph 34, below;

k. Development of an implementation schedule, in accordance with Paragraph 35, below;

l. If Lancaster’s selected CSO Control Measures include wet weather bypassing of any portion of the WWTP, development of a No Feasible Alternatives Analysis in accordance with CSO Policy, Paragraph II.C.7, 40 CFR Part 122.41(m), and in accordance with the requirements of Paragraph 36, below.

m. Development and implementation of a post-construction monitoring plan in accordance with CSO Policy, Section II.C.9, and the EPA 2012 Post Construction Monitoring Guidance, and in accordance with the requirements of Paragraph 37, below; and

n. Revision of the Lancaster Collection System operation and maintenance plan to reflect the implementation of the CSO Control Measures, as required by CSO Policy, Paragraph II.C.6, and associated guidance, and in accordance with the requirements of Paragraph 38, below.

15. Identification of Sensitive Areas and Pollutants of Concern (“PoCs”). Within ninety (90) Days after the Effective Date, Lancaster shall submit to EPA and PADEP for review and approval by EPA after consultation with PADEP, a report or technical memorandum that identifies all PoCs and Sensitive Areas, as required by Section II.C.3 of the CSO Policy, for its Receiving Waters consistent with the EPA 1995 CSO LTCP Guidance, and the EPA 1999 CSO Monitoring and Modeling Guidance. To identify Sensitive Areas and PoCs, Lancaster shall:

a. Contact appropriate agencies, access available data sources, and collect available data as necessary to identify Sensitive Areas. Lancaster shall document all such contacts and the associated responses, and all additional investigations performed to identify Sensitive Areas. Lancaster shall also identify any additional areas that, while not Sensitive Areas, have been identified by Lancaster as being appropriate for prioritization (“Priority Areas”);

b. Conduct community outreach and studies to determine whether and to what extent primary contact recreation is occurring within the Receiving Waters, and document its outreach and study methods, and its findings; and

c. Review existing water quality data and recent PADEP CWA § 303(d) listings to identify PoCs. Even if a water body has not been formally listed as out of compliance with its water quality standards and designated uses, if available data indicate such impairment exists and such impairment involves pollutants associated with CSOs, Lancaster shall consider the associated pollutants when identifying PoCs.

16. Typical Year Rainfall Record. Lancaster has submitted a June 6, 2013 technical memorandum identifying a Typical Year to be used for Amended LTCP development purposes.

17. Hydrologic and Hydraulic Model ("H&H Model") Ongoing Updates and Recalibration Plan. On January 31, 2017, Lancaster submitted a report entitled "Hydrogeologic & Hydraulic Model – 2016 Calibration & Validation Report ("2016 H&H Model Report") to EPA and PADEP. By letter dated April 27, 2017, EPA approved the H&H Model Report.

18. If Lancaster recalibrates or revalidates its H&H Model, then the City shall do so in accordance with Code of Practice for the Hydraulic Modeling of Sewer Systems Version 3.001, December 2002, CIWEM and WEF MOP 17 Table 5.2. Within thirty (30) Days of completion of the H&H Model recalibration/revalidation, Lancaster shall submit to EPA and PADEP, an update of its 2016 H&H Model Report identifying the wastewater collection system physical characteristics and flowrate/rainfall data that prompted the H&H Model update, including, but not limited to:

- a. additional flow data assessment and additional rainfall and flow monitoring performed after October 1, 2016;
- b. updated dry weather flow calibration, including quantitative and qualitative calibration criteria;
- c. updated wet weather flow calibration, including quantitative and qualitative calibration criteria; and
- d. updated model validation, where the allowable variation between modeled and measured flow rates and volumes shall conform to the tolerances presented in WEF MOP FD-17 Table 5.2 as closely as is practicable.

19. The updated H&H Model shall specifically include hydrologic representation of all areas tributary to the Lancaster Collection System, as well as all areas tributary to all municipal

wastewater collection and transmission systems that are hydraulically connected to, or that directly or indirectly influence flow to, the CSOs and/or the WWTP, regardless of who owns or operates the system.

20. The updated H&H Model shall accurately represent the response of the Collection Area to wet weather events, including the flows that result from wet weather events to and from Lancaster's CSOs and to the WWTP. To accomplish this, the updated H&H Model shall explicitly include all interceptors, diversion structures, CSOs, pump stations, and major trunk sewers within the Lancaster Collection System, as well as such pipes and appurtenances within the areas outside the Lancaster Collection System that are needed to ensure adequate H&H Model accuracy. The average Combined Sewer System sub-catchment area represented in the H&H Model shall not exceed 8.5 acres and the maximum Combined Sewer System sub-catchment area represented in the H&H Model shall not exceed 13 acres for those areas where Green Infrastructure is planned to be implemented.

21. Lancaster shall perform any rainfall and flow monitoring in accordance with current industry practice, including the EPA 1999 CSO Monitoring and Modeling Guidance and the Code of Practice for the Hydraulic Modeling of Sewer Systems Version 3.001, December 2002, prepared by The Chartered Institution of Water and Environmental Management (CIWEM, formerly WAPUG).

22. For additional rainfall and flow monitoring performed in support of efforts to update and recalibrate/revalidate the H&H Model, Lancaster shall submit to EPA and PADEP semiannual technical memoranda documenting the results and quality of the rainfall and flow monitoring

data. The semiannual technical memoranda required by this Paragraph 22 shall be submitted with the Semi Annual Reports required by Paragraph 70 of this Consent Decree.

23. Existing Collection Area Characterization. No later than ninety (90) Days after EPA approves in writing the report or technical memorandum required to be submitted pursuant to Paragraph 15, above (Identification of Sensitive Areas and Pollutants of Concern), Lancaster shall submit a characterization of its Collection Area to EPA and PADEP for review and comment. The characterization required by this Paragraph 23, shall be consistent with Section II.C.1 of the CSO Policy, and with the EPA 1995 CSO LTCP Guidance, particularly Chapter 2 of aforesaid Guidance, and shall include all of the information required by Section II.C.1 of the CSO Policy. The characterization submitted pursuant to this Paragraph 23 shall include the Collection Area, including the hydrology (i.e. runoff) from and within the Collection Area. The characterization required by this Paragraph 23 shall also include, but not be limited to, the following:

- a. use of the H&H Model, to characterize the expected volume, frequency, and duration of CSO discharge events from each CSO during the Typical Year, based on an inter-event period of twenty four (24) hours;
- b. incorporation of the results of the identification of Sensitive Areas required by Paragraph 15, above; and
- c. characterization of current water quality in Receiving Waters, based upon all available data, and Lancaster's efforts to identify PoCs. The characterization may include water quality modeling as a tool for predicting Combined Sewer System response to various wet weather events and assessing water quality impacts of

CSOs on Receiving Water quality. The Collection Area characterization required by this Paragraph 23 shall be consistent with Section II.C.1 of the CSO Policy, the EPA 1995 CSO LTCP Guidance and the EPA 1999 CSO Monitoring and Modeling Guidance.

24. Public Participation Plan. Within three (3) months after submittal of the Existing Collection Area Characterization under Paragraph 23, above, Lancaster shall submit a Public Participation Plan to EPA and PADEP for review, and approval by EPA after consultation with PADEP. The Public Participation Plan shall include, at a minimum, the following elements:

- a. The means by which Lancaster will make information pertaining to the development of the Amended LTCP available to the public. These means may include website development, neighborhood meetings, newsletters, media outreach, and special events;
- b. The means by which the City will solicit comments from the public on development of the Amended LTCP, including efforts to reach, at a minimum, homeowners, commercial businesses, industrial businesses, community groups and neighborhood associations, civic organizations and clubs, business and trade associations, schools, service organizations, and the media; and
- c. A program for consideration of comments provided by the public during the City's development of the Amended LTCP and for providing the public with the City's response to comments from the public.

25. Identification of Lancaster's Proposed Alternatives Evaluation Approach. No later than thirty (30) Days after its submits the Existing Collection Area Characterization required by

Paragraph 23, above, Lancaster shall, in accordance with Section II.C.4 of the CSO Policy, submit to EPA and PADEP, for approval by EPA after consultation with PADEP, a written explanation, supporting Lancaster's proposal to use either the Demonstration or Presumption approach to controlling CSOs in Receiving Waters. Use of the Presumption Approach will be allowed only if EPA, after consultation with PADEP, agrees in writing that the specific presumption(s) to be used for the Receiving Waters are reasonable pursuant to Section II.C.4.a of the CSO Policy. If EPA, after consultation with PADEP, determines that the City's presumptions are not reasonable, Lancaster shall use the Demonstration Approach identified in Section II.C.4.b of the CSO Policy.

26. Demonstration Approach Water Quality Model Plan. Within ninety (90) Days after EPA approves an Alternatives Evaluation Approach pursuant to Paragraph 25, above, if Lancaster will be using the Demonstration Approach identified in Section II.C.4.b of the CSO Policy, Lancaster shall submit to EPA and PADEP a Water Quality Model Plan for review, and approval by EPA after consultation with PADEP. Lancaster shall commence implementation of the approved Water Quality Model Plan within thirty (30) Days of receipt of EPA's written approval. For the Receiving Waters in which the Demonstration Approach is to be used, the Water Quality Model Plan shall be developed in accordance with the EPA 1999 CSO Monitoring and Modeling Guidance, and Appendix C to this Consent Decree.

27. Water Quality Model Report. Within sixty (60) Days after Lancaster completes all requirements of the Water Quality Model Plan approved pursuant to Paragraph 26, above, Lancaster shall submit to EPA and PADEP a Water Quality Model Report for review, and approval by EPA after consultation with PADEP, which shall report the results of Lancaster's

water quality modeling and shall specifically address each item set forth in Paragraph 26 and Appendix C of this Consent Decree.

28. Financial Capability Assessment. Within three (3) months after the Effective Date, Lancaster shall submit to EPA and PADEP for review and comment, a draft Financial Capability Assessment ("FCA") that assesses Lancaster's baseline financial condition and capability in accordance with CSO Policy Section II.C.8, "Combined Sewer Overflows - Guidance for Financial Capability Assessment and Schedule Development," EPA 832-B-97-004, February 1997 ("FCA Guidance"), and EPA's Financial Capability Assessment Framework, issued on November 24, 2014 ("Financial Capability Assessment Framework"), https://www.epa.gov/sites/production/files/2015-10/documents/municipal_fca_framework.pdf, including but not limited to information on sewer rate setting and median household income and number of households in the Collection Area, as well as information on all other financial resources available to Lancaster. Concurrent with the submission of the Amended LTCP required by Paragraph 13 of this Consent Decree, Lancaster shall submit to EPA and PADEP for review and approval, a proposed final FCA, including an implementation schedule for the proposed CSO control measures in accordance with CSO Policy Section II.C.8 and the FCA Guidance and the Financial Capability Assessment Framework.

29. Alternatives Evaluation. If EPA approves use of the Presumption Approach pursuant to Paragraph 25, above, then no later than six (6) months after EPA's written approval, Lancaster shall complete and submit to EPA and PADEP for review and comment an Alternatives Evaluation that complies with the requirements of the CSO Policy Section II.C.4, and that is consistent with the EPA1995CSO LTCP Guidance. In the alternative, if EPA approves use of

the Demonstration Approach, pursuant Paragraph 25, above, then no later than 6 months after EPA approves the Water Quality Model Report required by Paragraph 27, above, Lancaster shall complete and submit to EPA and PADEP for review and comment an Alternatives Evaluation that complies with the requirements of the CSO Policy Section II.C.4, and that is consistent with the EPA1995CSO LTCP Guidance. The Alternatives Evaluation shall consist of:

- a. a technology screening process as provided for in Paragraph 30, below;
- b. a detailed evaluation of specific CSO control alternatives, as provided for in Paragraphs 31 and 32, below; and
- c. the selection of an appropriate range of proposed Gray Infrastructure and Green Infrastructure CSO control technologies to achieve compliance with the Clean Water Act as provided in Paragraph 33, below.

Lancaster shall also evaluate the feasibility of eliminating or relocating all CSO Outfalls that discharge to Sensitive Areas. Lancaster shall give priority to the control of those CSO Outfalls that discharge to Priority Areas (as defined in Paragraph 15.a, above), and those that have the highest frequency or greatest volume of discharge of wastewater.

30. Screening of Available CSO Control Technologies. Lancaster shall assess the technical feasibility of the use of a wide range of demonstrated CSO control technologies consistent with the CSO Policy and associated guidance, and shall provide descriptions of the following types of CSO control technology - source controls (e.g., Green Infrastructure), collection system controls, storage technologies, and treatment technologies. Lancaster shall also assess the feasibility of applying each technology type for long-term CSO control in the Collection Area, based on existing and anticipated future conditions affecting the Collection Area. This evaluation is not

intended to consider cost or cost effectiveness, but rather to exclude control technologies that are not technically or physically applicable to the Collection Area. Partial and complete separation of sewers in each CSO Outfall tributary area, near-surface inline storage, near-surface off-line storage, and deep tunnel storage, shall be considered feasible technologies for this purpose and shall be considered for further evaluation. Expansion of the primary and secondary capacity of the WWTP shall also be considered feasible technologies for this purpose and be considered for further evaluation, as required by Section II.C.4 of the CSO Policy.

31. Development of CSO Control Alternatives. Applying sound engineering practices and its knowledge of the Collection Area, Lancaster shall, based upon the results of the CSO technology screening required by the preceding Paragraph 30, above, identify a wide range of technically feasible CSO controls for detailed evaluation, regardless of the cost of each technically feasible CSO control. Based on the characteristics of the Collection Area, these CSO controls shall be CSO-specific, specific to clusters of CSOs, and specific to larger portions of the Collection Area, including system-wide controls (e.g., all CSOs located along one bank of a water body).

Lancaster may apply engineering judgment to limit its evaluation of functionally equivalent CSO controls.

32. Evaluation of CSO Control Alternatives. Where two CSO controls provide identical benefits (e.g., same sized surface and near-surface storage units, or consolidated storage that is the same volume as multiple storage units), and there is a clear cost difference between the two options, Lancaster may evaluate the lower cost option. For each technically feasible CSO control, Lancaster shall evaluate:

- a. the size of each CSO control necessary to reduce the number of untreated CSOs in a Typical Year on an annual basis to the following frequencies: 0, 2, 4, 6, and 8;
- b. the estimated capital costs and annual O&M costs, expressed in present value, consistent, year-specific dollars, used to determine the total "project costs," as that term is described in Section 3.4.1 of the EPA CSO LTCP Guidance;
- c. "knee of the curve" cost-performance for each CSO control that will allow for the comparison of the costs to: a) the reduction in volume of the CSOs; b) the reduction in the frequency of CSOs; c) the reduction in PoC loading from CSOs; and (d) allow for the optimization of costs, benefits, and risks;
- d. for CSO controls applied to CSOs that discharge to Receiving Waters for which Lancaster has selected the Demonstration Approach pursuant to Paragraph 25, above, Lancaster shall utilize its calibrated H&H Model and Demonstration Approach Water Quality Model to assess the impact of each CSO control alternative on compliance with water quality standards within the Typical Year;
- e. for CSO controls applied to CSOs that discharge to Receiving Waters for which the Presumption Approach was determined by EPA pursuant to Paragraph 25, above, to be appropriate, Lancaster shall evaluate a range of sizes for those controls;
- f. in analyzing the selection of CSO controls, the Amended LTCP shall include an analysis of the Amended LTCP's impact on communities that have historically borne a disproportionate share of the negative environmental consequences resulting from Lancaster's CSOs, including an explanation of how the Amended LTCP ensures that the selected CSO Control Measures will mitigate those historical consequences and will not impose a

disproportionate share of negative environmental consequences on such communities in the future.

33. Selection of CSO Control Measures. Lancaster shall select specific Gray Infrastructure and/or Green Infrastructure CSO Control Measures that:

a. will result in its remaining CSOs complying with the CWA as demonstrated by its water quality modeling activities (in Demonstration Approach Receiving Waters); and as demonstrated by its H&H Modeling activities (in Presumption Approach Receiving Waters); and

b. are technically implementable; and

c. are cost effective.

34. Requirements for Inclusion of GI Projects as Selected CSO Control Measures in the

Amended LTCP. If Lancaster evaluates Green Infrastructure as part of the Alternatives Evaluation required by Paragraph 29, above, and includes GI Projects in the selected CSO Control Measures in the Amended LTCP (“LTCP GI Projects”), then Lancaster shall submit as part of the Amended LTCP, updated versions of the green infrastructure documents required by Appendix A to this Consent Decree. The documents required by this Paragraph shall include an explanation of how the selected LTCP GI Projects will contribute toward compliance with the criteria set forth in Paragraph 33, above, of the Consent Decree (Selection of CSO Control Measures), including but not limited to:

a. an estimate of the cumulative retention and storage volume of the LTCP GI Projects (both identified and future projects);

- b. the anticipated cumulative effect of the LTCP GI Projects (both identified and future) on frequency and volume of CSOs; and
- c. a description of the location and sizing of identified LTCP GI projects.

Lancaster shall also include documentation describing the process by which Lancaster will evaluate and monitor LTCP GI Projects not constructed by the City to demonstrate the initial and continued performance of such Projects. The documents required by this Paragraph and Appendix A of this Consent Decree shall be consistent with “Greening CSO Plans: Planning and Modeling Green Infrastructure for Combined Sewer Overflow (CSO) Control,” EPA 832-R-14-001, March 2014.

35. Schedule. The Amended LTCP shall include a schedule for implementation of the Amended LTCP with interim milestones, including, for each CSO Control Measure, deadlines for:

- a. initiating design;
- b. commencement of construction;
- c. commencement of full operation.

All CSO Control Measures shall be constructed and commence operation as soon as possible, but in no event later than twenty (20) years after the date of lodging.

36. No Feasible Alternatives Analysis. If Lancaster's proposed CSO Control Measures include bypassing at the WWTP, Lancaster shall perform a No Feasible Alternatives Analysis in accordance with Section II.C.7 of the CSO Policy and shall include such analysis in the Amended LTCP required by Paragraph 13 of this Consent Decree.

37. Post Construction Compliance Monitoring Plan. The Amended LTCP required by Paragraph 13 of this Consent Decree shall include a Post-Construction Compliance Monitoring Plan to: (a) evaluate the effectiveness of the CSO Control Measures; and (b) to verify Lancaster's compliance with water quality-based CWA requirements and consistency with CSO Policy, Paragraph II.C.9, and the EPA 2012 Post Construction Guidance. Lancaster shall implement the Post Construction Compliance Monitoring Plan upon completion of construction of all CSO Control Measures and shall report the results of post construction monitoring in the Semi Annual Reports required by Paragraph 70 of this Consent Decree.

38. Revision of Operation and Maintenance Plans. The Amended LTCP required by Paragraph 13 of this Consent Decree shall identify any CSO Control Measures that require a revised operation and maintenance plan ("O&M Plan"). The revised O&M Plan required by this Paragraph 38 need not include Green Infrastructure Control Measures that are covered by the GI Operation and Maintenance Plan required by Paragraph 34 and Appendix A of this Consent Decree. The Amended LTCP shall also include a procedure for the revision and dissemination of such O&M Plans within sixty (60) Days of the date each CSO Control Measure commences operation consistent with its design parameters. Each revised O&M Plan shall be consistent with Paragraph II.C.6 of the CSO Policy and associated guidance, and shall be provided to EPA and PADEP upon written request.

39. Incorporation and Implementation of Amended LTCP. After approval by EPA of the Amended LTCP and associated schedules required to be submitted pursuant to Paragraph 13, above, pursuant to Section IX (Review and Approval of Submissions), the approved Amended LTCP, including all of its component parts required by this Consent Decree in Paragraphs 15

through 38, shall be incorporated by reference into this Consent Decree. Lancaster shall immediately commence implementation of the approved Amended LTCP and, within thirty (30) Days of EPA approval of the Amended LTCP, Lancaster shall seek any required modifications to its NPDES Permit that are necessary to implement the Amended LTCP.

40. Nine Minimum Controls. No later than twelve (12) months after the Effective Date, Lancaster shall submit to EPA and PADEP for review, and approval by EPA after consultation with PADEP, a revised and updated Nine Minimum Controls Plan (“NMC Plan”). The NMC Plan shall evaluate and document the current level of implementation of the NMCs within the Combined Sewer System, and shall identify actions necessary for achieving compliance with the CSO Policy for all NMCs and include an implementation schedule for completing those actions. The identified actions shall be in accordance with the CSO Policy and the “Guidance for Nine Minimum Controls,” EPA 832-13-95-003, May 1995. At a minimum, Lancaster shall include in its NMC Plan a specific plan to control Fats, Oil, and Grease (“FOG Plan”) within the Lancaster Collection System. Lancaster shall also include solids and floatable controls for all CSO outfalls, in accordance with the Guidance for Nine Minimum Controls,” EPA 832-13-95-003, May 1995. Such controls may include baffles, screens, catch basin modifications, nets and racks, booms, and skimmer boats.

D. General Clean Water Act Compliance Requirements

41. Effluent Limits. Commencing on the Day that Lancaster signs this Consent Decree, Lancaster shall comply with all final effluent limits set forth in the NPDES Permit, as updated or amended.

42. Dry Weather Overflows.

- a. All Dry Weather Overflows from the Lancaster Collection System are prohibited.
- b. Lancaster must immediately report any Dry Weather Overflows to PADEP by telephone at 866-825-0208 and must provide written notification to PADEP and EPA within five (5) Days of when Lancaster becomes aware of the Dry Weather Overflow.
- c. In the event that Lancaster detects a Dry Weather Overflow, Lancaster shall begin corrective action immediately. Lancaster shall inspect the outfall(s) from which the Dry Weather Overflow occurred each subsequent Day until the overflow has been eliminated.
- d. Lancaster shall summarize all Dry Weather Overflows in the Semi Annual Reports required by Paragraph 70, below. Nothing in this Section shall eliminate or minimize any additional notification or reporting required by the NPDES Permit.

43. Sanitary Sewer Overflows. All SSOs from the Lancaster Collection System are prohibited.

44. Unauthorized Releases. All Unauthorized Releases from the Combined Sewer System are prohibited.

45. Reporting Planned Changes and Non-Compliance. Lancaster shall comply with the provisions of its NPDES Permit requiring the reporting of anticipated and unanticipated non-compliance with the NPDES Permit. Whenever written notice of non-compliance is required to

be given to PADEP pursuant to Lancaster's NPDES Permit, Lancaster shall simultaneously notify EPA in accordance with Section XVI (Notices).

46. Public Notification. The Amended LTCP shall include a visual notification system designed to notify the public of the occurrence of CSOs based on flow monitoring at Lancaster's CSO Outfalls. The visual system shall consist of fixed signs, to be installed at each CSO Outfall, in a form substantially similar to the example attached hereto as Appendix D, and fixed signs to be installed at each public access point that has been designated by the Lancaster County Parks Department that is downstream of Lancaster's CSO Outfalls, in a form substantially similar to the example attached as Appendix E hereto. In addition, Lancaster shall install a CSO event indicator warning light system at each CSO Outfall, to advise the public of CSOs. Such warning light system shall provide for red lights during a CSO occurrence and yellow lights for 24 hours after the CSO has stopped. The warning lights shall be operated by signals from Lancaster's CSO Outfalls. Lancaster shall include the details of the public notification system (e.g. location and explanation of visual signs and warning lights) in the Amended LTCP required by Paragraph 13 of this Consent Decree and on the City's website.

47. NPDES Permits. Lancaster shall comply with all terms and conditions of the NPDES Permit and any revisions, modifications, or reissued versions of that permits issued pursuant to 25 Pa. Code Chapter 92.a, unless compliance is stayed or suspended by a court of competent jurisdiction or the Pennsylvania Environmental Hearing Board. Nothing in this Consent Decree authorizes any discharge from the Lancaster Collection and Treatment System other than those discharges authorized by the NPDES Permit or any subsequent applicable NPDES Permit.

48. Failure of Compliance. Notwithstanding the review or approval by any agency of the United States of any plans, reports, policies or procedures formulated pursuant to the Consent Decree, Settling Defendant will remain solely responsible for compliance with the terms of the Consent Decree, all applicable permits, and all applicable federal, state, regional, and local laws and regulations, except as provided in Section XII (Force Majeure) of this Decree.

VII. SUPPLEMENTAL ENVIRONMENTAL PROJECT

49. Lancaster shall implement the supplemental environmental project (SEP) described in Appendix F of this Decree in accordance with all provisions of this Article and Appendix F.

50. Lancaster is responsible for the satisfactory completion of the SEP in accordance with the requirements of this Decree. As used in this Paragraph 50, “satisfactory completion” means completion of items IV.A through IV.C of Appendix F and items V.A through V.C of Appendix F.

51. With regard to the SEP, Lancaster certifies the truth and accuracy of each of the following:

- a. that all cost information provided to EPA in connection with EPA’s approval of the SEP is complete and accurate;
- b. that, as of the date of executing this Decree, Lancaster is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

- c. that the SEP is not a project that Lancaster was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;
- d. that Lancaster has not received and will not receive credit for the SEP in any other enforcement action;
- e. that Lancaster will not receive any reimbursement for any portion of the SEP from any other person; and
- f. that Lancaster is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Appendix F.

52. SEP Completion Report. No later than sixty (60) Days after completion of the SEP as required by Paragraphs 49 and 50, above, Lancaster shall submit a SEP Completion Report to the United States, EPA, and PADEP, in accordance with Section XIV of this Consent Decree (Notices). The SEP Completion Report shall contain the following information:

- a. a detailed description of the SEP as implemented;
- b. a description of any problems encountered in completing the SEP and the solutions thereto;
- c. an itemized list of all eligible SEP costs expended;
- d. certification that the SEP has been fully implemented pursuant to the provisions of this Decree; and

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

53. EPA may, in its sole discretion, require information in addition to that described in the preceding Paragraph 52, in order to evaluate Lancaster's Completion Report.

54. After receiving the SEP Completion Report, the United States, after consultation with PADEP, shall notify Lancaster as to whether Lancaster has satisfactorily completed the requirements of Article VII and items IV.A through IV.C and items V.A through V.C of Appendix F of this Consent Decree. If EPA determines that Lancaster has not satisfactorily completed the SEP in accordance with this Consent Decree, stipulated penalties may be assessed under Section XI of this Consent Decree.

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

56. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 74 of this Consent Decree.

57. Any public statement, oral or written, in print, film, or other media, made by Lancaster making reference to the SEP described in this Section VII of this Decree shall include the following language: "This project was undertaken in connection with the settlement of an

enforcement action, *United States and PADEP v. City of Lancaster, Pennsylvania*, taken on behalf of the Environmental Protection Agency under the Clean Water Act.”

58. For federal income tax purposes, Lancaster agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

VIII. CIVIL PENALTY

59. Within thirty (30) Days after the Effective Date, Lancaster shall pay the sum of \$135,000.00 as a civil penalty, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging. Of this sum, Lancaster shall pay the amount of \$67,500.00 to the United States, and the amount of \$67,500.00 to PADEP.

60. Lancaster shall pay the civil penalty due to the United States by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with written instructions to be provided to Lancaster, following entry of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney’s Office for the Eastern District of Pennsylvania, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106. At the time of payment, Lancaster shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States and PADEP v. City of Lancaster, Pennsylvania*, and shall reference the civil action number and DOJ case number 90-5-1-1-11135, to the United States in accordance with Section XVII of this Decree (Notices); by email to acctstreivable.CINWD@epa.gov; and by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

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

62. No later than thirty (30) Days after the Effective Date, Lancaster shall pay the civil penalty of \$67,500.00 to PADEP.

63. Payments required to be made to PADEP pursuant to the requirements of this Consent Decree shall be made by corporate check or similar instrument to the Commonwealth of Pennsylvania, with a note on the memo line stating "Clean Water Fund," and sent to the address set forth in Paragraph 125 of this Consent Decree.

IX. REVIEW AND APPROVAL OF SUBMISSIONS

64. Approval of Submissions. After review of any plan, report, or other item that is required to be submitted pursuant to this Consent Decree for approval, EPA, after consultation with PADEP, shall in writing: a) approve the submission; b) approve the submission upon specified conditions; c) approve part of the submission and disapprove the remainder; or d) disapprove the submission.

65. If the submission is approved pursuant to Paragraph 64.a, above, Lancaster shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part, pursuant to Paragraph 64.b or .c, Lancaster shall, take all actions required by the approved plan, report, or other item that EPA determines are technically severable from any disapproved portions, subject to Lancaster's right to dispute

only the specified conditions or the disapproved portions, under Section XIII of this Decree (Dispute Resolution).

66. If the submission is disapproved in whole or in part pursuant to Paragraph 64.c or d, Lancaster shall, within forty-five (45) Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, Lancaster shall proceed in accordance with the preceding Paragraph 65.

67. Any stipulated penalties applicable to the original submission, as provided in Section XI (Stipulated Penalties) of this Decree, shall accrue during the 45-Day period or other 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 Lancaster's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

68. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA, after consultation with PADEP, may again require Lancaster to correct any deficiencies, in accordance with the preceding Paragraphs, or may itself correct any deficiencies, and Lancaster shall implement the corrected submission, subject to Lancaster's right to invoke Dispute Resolution and the right of EPA and PADEP to seek stipulated penalties as provided in the preceding Paragraphs.

69. Permits. Where any compliance obligation under Section VI (Clean Water Act Compliance Requirements) requires Lancaster to obtain a federal, state, or local permit or

approval, Lancaster shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. If Lancaster has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals, Lancaster may seek relief under the provisions of Section XII of this Consent Decree (Force Majeure) for any delay in the performance of any such compliance obligation resulting from an inability to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, due to the action or inaction, of the federal, state, or local entity responsible for issuing the permit or approval at issue.

X. REPORTING REQUIREMENTS

70. On January 30 and July 30 of each year, Lancaster shall submit a Semi Annual Report for the preceding six-month period (January 1 to June 30 and July 1 to December 31), with the first such report submitted for the first full six-month period after the Effective Date. The Semi Annual Reports required by this Paragraph 70 shall include the status of any construction or compliance measures; completion of milestones; problems encountered or anticipated, together with implemented or proposed solutions; status of permit applications; operation and maintenance; and reports to state agencies; and including, at a minimum:

- a. a statement setting forth the deadlines and other terms that Lancaster was required by this Consent Decree to meet since the date of the last Semi Annual Report, whether and to what extent Lancaster has met these requirements, and the reasons for any noncompliance;

- b. a general description of the Work completed within the reporting period, and a projection of Work to be performed pursuant to this Consent Decree during the next or succeeding reporting period;
- c. a summary of all contacts with EPA and PADEP during the reporting period relating to CSOs, SSOs, or implementation of this Consent Decree;
- d. a statement of any exceedances of NPDES Permit limitations during the reporting period;
- e. a summary of all CSOs (including Dry Weather Overflows), SSOs, and Unauthorized Releases occurring within the period covered by the Semi Annual Report, including the actual or estimated frequency, duration, and volume of each CSO (including Dry Weather Overflows), SSO, and Unauthorized Release; and
- f. a summary of costs incurred since the previous Semi Annual Report.

71. The Semi Annual Reports required by Paragraph 70, above, shall also include a description of any violation of the requirements of this Consent Decree and an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If Lancaster violates, or has reason to believe that it may violate, any requirement of this Consent Decree, Lancaster shall notify the United States and PADEP of such violation and its likely duration, in writing, within ten (10) Days of the date Lancaster first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Lancaster shall so state in the report. Lancaster shall investigate the cause of the violation and shall then submit an amendment

to the report, including a full explanation of the cause of the violation, within thirty (30) Days of the date Lancaster becomes aware of the cause of the violation. Nothing in this Paragraph 71 nor the following Paragraph 72 relieves Lancaster of its obligation to provide the notice required by Section XII of this Consent Decree (Force Majeure).

72. Whenever any violation of this Consent Decree or of Lancaster's NPDES Permit, or any other event affecting Lancaster's performance under this Decree, or the performance of the Lancaster Collection and Treatment System, may pose an immediate threat to the public health or welfare or the environment, Lancaster shall notify PADEP orally as soon as possible, but no later than four (4) hours after Lancaster first knew of the violation or event. Such notice shall be made by telephone to 866-825-0208. This procedure is in addition to the requirements set forth in Paragraph 71, above.

73. All reports shall be submitted to the persons designated in Section XVII of this Consent Decree (Notices).

74. Each submission by Lancaster under this Section shall be signed by a Lancaster official and include the following certification:

I certify under penalty of law that I am authorized to sign this document on behalf of the City of Lancaster, Pennsylvania, and that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge, information, 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.

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

75. The reporting requirements of this Consent Decree do not relieve Lancaster of any reporting obligations required by the Clean Water Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

76. Any information provided pursuant to this Consent Decree may be used by the United States and/or PADEP in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

XI. STIPULATED PENALTIES

77. Lancaster shall be liable for stipulated penalties to the United States and PADEP for violations of this Consent Decree as specified below, unless excused under Section XII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

78. Late Payment of Civil Penalty. If Lancaster fails to pay the civil penalty required to be paid under Section VIII of this Decree (Civil Penalty) when due, Lancaster shall pay a stipulated penalty of \$5,000 per Day for each Day that the payment is late.

79. Reporting Requirements. For each failure to submit a timely and adequate plan, report, schedule, written notice, or other submission required by this Consent Decree, except the revised and Amended LTCP required by Paragraph 13, Lancaster shall pay the following stipulated penalties to Plaintiffs per violation per Day:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
Days 1-30	\$1,500
Days 31-60	\$2,000
Days 61- and over	\$4,000

80. For each failure to submit the Amended LTCP required by Paragraph 13 of this Consent Decree:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
Days 1-30	\$5,000
Days 31-60	\$7,000
Days 61 and over	\$8,000

81. Consent Decree Submittals:. For each failure to submit timely the documents required by Paragraphs 22 (H&H Model technical memoranda), 23 (Existing Collection Area Characterization), 24 (Public Participation Plan), 25 (Identification of Lancaster's Proposed Alternatives Evaluation Approach), 26 (Demonstration Approach Water Quality Model Plan), 27 (Water Quality Model Report), 28 (Financial Capability Assessment, draft and final), 29 (Alternatives Evaluation), 52 (SEP Completion Report) of this Consent Decree:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
Days 1-30	\$3,000
Days 31-60	\$5,000
Days 61 and over	\$8,000

82. Compliance Milestones. For each failure to comply with any deadline set forth in the implementation schedule developed and approved pursuant to the approved Amended LTCP Lancaster shall pay the following stipulated penalties to Plaintiffs per violation per Day:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
Days 1-30	\$4,500

Days 31-60	\$5,500
Days 61- and over	\$6,500

83. Nine Minimum Controls. For each failure to comply with a requirement of, or meet a deadline in, the Nine Minimum Controls Plan pursuant to Paragraph 40, above, (Nine Minimum Controls Plan), Lancaster shall pay the following stipulated penalties to Plaintiffs per violation per Day:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
Days 1-30	\$1,000
Days 31-60	\$2,000
Days 61 and over	\$3,000

84. For each Dry Weather Overflow, SSO, and/or Unauthorized Release, Lancaster shall pay a stipulated penalty of \$2,000 per violation per Day.

85. Effluent Limits. For each failure to comply with Paragraph 41 of this Consent Decree (Effluent Limits), Lancaster shall pay the following stipulated penalties to Plaintiffs:

<u>Type of Permit Limit:</u>	<u>Penalty per violation:</u>
Daily or Instantaneous	\$1,000
Weekly	\$3,000
Monthly	\$5,000

86. For each failure to provide telephonic notification in compliance with Paragraph 42.b, Lancaster shall pay a stipulated penalty of \$2,000 per occurrence.

87. For each failure to comply with Paragraphs 42.c and d, Lancaster shall pay the following stipulated penalties to Plaintiffs per violation per Day:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
Days 1-30	\$1,000
Days 31-60	\$2,000
Days 61-and over	\$4,000

88. Access Requirements. For each failure of Lancaster to allow the United States and/or PADEP access to the WWTP and the Lancaster Collection System in accordance with Section XIV (Information Collection and Retention), below, Lancaster shall pay stipulated penalties of \$5,000 to Plaintiffs per Day.

89. SEP. For each failure of Lancaster to satisfactorily meet a SEP implementation deadline set forth in item IV.A through IV. C of Appendix F, Lancaster shall pay the following stipulated penalties to Plaintiffs per violation per day:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
Days 1-30	\$500
Days 31-60	\$1,000
Days 61 and over	\$2,000

90. Stipulated penalties under this Section XI shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree .

91. Lancaster shall pay stipulated penalties to the United States and PADEP within 30 Days of a written demand by either Plaintiff. Lancaster shall pay 50 percent of the total stipulated penalty amount due to the United States and 50 percent to PADEP. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff.

92. Upon the Effective Date, the stipulated penalty provisions of this Decree shall be retroactively enforceable to the date Lancaster signed this Decree, with regard to any and all violations that have occurred after Lancaster signed, provided that stipulated penalties that may have accrued prior to the Effective Date may not be collected unless and until this Consent Decree is entered by the Court.

93. Either Plaintiff may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

94. Stipulated penalties shall continue to accrue as provided in Paragraph 90, during any Dispute Resolution, but need not be paid until the following:

- a. If the dispute is resolved by agreement or by a decision of EPA or PADEP that is not appealed to the Court, Lancaster shall pay accrued penalties determined to be owing, together with interest, to the United States or PADEP within thirty (30) Days of the effective date of the agreement or the receipt of EPA's or PADEP's decision or order.
- b. If the dispute is appealed to the Court and the United States or PADEP prevails in whole or in part, Lancaster shall pay all accrued penalties determined by the Court to be owing, together with interest, within sixty (60) Days of receiving the Court's decision or order, except as provided in subparagraph c, below.
- c. If any Party appeals the District Court's decision, Lancaster shall pay all accrued penalties determined to be owing, together with interest, within fifteen (15) Days of receiving the final appellate court decision.

95. Lancaster shall pay stipulated penalties owing to the United States and PADEP in the manner set forth and with the confirmation notices required by Section VIII of this Consent Decree (Civil Penalty), except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

96. If Lancaster fails to pay stipulated penalties according to the terms of this Consent Decree, Lancaster shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph 96 shall be construed to limit the United States or PADEP from seeking any remedy otherwise provided by law for Lancaster's failure to pay any stipulated penalties.

97. Subject to the provisions of Section XV of this Consent Decree (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States and/or PADEP for Lancaster's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the Clean Water Act, Lancaster shall be allowed a credit for any stipulated penalties paid against any statutory penalties imposed for such violation.

XII. FORCE MAJEURE

98. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Lancaster, of any entity controlled by Lancaster, or of Lancaster's contractors, agents, or consultants that delays or prevents the performance of any obligation under this Consent Decree despite Lancaster's best efforts to fulfill the obligation. The requirement that Lancaster exercise "best efforts to fulfill the obligation" includes using best

efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. “Force majeure” does not include Lancaster’s financial inability to perform any obligation under this Consent Decree. In addition, failure to apply for a required permit or approval or to provide in a timely manner all information required to obtain a permit or approval that is necessary to meet the requirements of this Consent Decree, or failure of Lancaster to approve contracts, shall not, in any event, be considered a force majeure event.

99. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Lancaster shall provide notice orally or by electronic or facsimile transmission to EPA and PADEP within 48 hours of when Lancaster first knew or should have known that the event might cause a delay.. Within seven (7) Days thereafter, Lancaster shall provide in writing to EPA and PADEP an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Lancaster’s rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Lancaster, such event may cause or contribute to an endangerment to public health, welfare or the environment. Lancaster shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure event. Failure to comply with the above requirements shall preclude Lancaster from asserting any claim of force majeure for that event for the period of time of such failure to

comply, and for any additional delay caused by such failure. Lancaster shall be deemed to know of any circumstance of which Lancaster, any entity controlled by Lancaster, or Lancaster's contractors knew or should have known.

100. If EPA, after a reasonable opportunity for review and comment by PADEP, agrees in writing that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Lancaster in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

101. If EPA, after a reasonable opportunity for review and comment by PADEP, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Lancaster in writing of EPA's decision.

102. If Lancaster elects to invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution), it shall do so no later than fifteen (15) Days after receipt of EPA's written notice. In any such proceeding, Lancaster shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Lancaster complied with the requirements of Paragraphs 98 and 99,

above. If Lancaster carries this burden, the delay at issue shall be deemed not to be a violation by Lancaster of the affected obligation of this Consent Decree identified to EPA and the Court.

XIII. DISPUTE RESOLUTION

103. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Lancaster's failure to seek resolution of a dispute under this Section shall preclude Lancaster from raising any such issue as a defense to an action by the United States and/or PADEP to enforce any obligation of Lancaster arising under this Decree.

104. The issuance, renewal, modification, denial or revocation of a permit and the issuance of orders or other actions of PADEP, including but not limited to decisions with respect to water quality standards, are not subject to dispute resolution under this Decree, but, rather, shall be subject to challenge before the Pennsylvania Environmental Hearing Board.

105. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Lancaster sends the United States and PADEP a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed thirty (30) Days from the date the dispute arises, unless that period is modified by written agreement of all Parties. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within thirty (30) Days after the conclusion of the informal negotiation period, Lancaster invokes formal dispute resolution procedures as set forth below.

106. Formal Dispute Resolution. Lancaster shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph by serving on the United States and PADEP a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Lancaster's position and any supporting documentation relied upon by Lancaster.

107. The United States shall serve its Statement of Position within forty-five (45) Days of receipt of Lancaster's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Lancaster, unless Lancaster files a motion for judicial review of the dispute in accordance with the following Paragraph.

108. Lancaster may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XVII of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within twenty (20) Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Lancaster's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

109. The United States shall respond to Lancaster's motion within the time period allowed by the Local Rules of this Court. Lancaster may file a reply memorandum, to the extent permitted by the Local Rules.

110. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 103 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree, the adequacy of the performance of Work undertaken pursuant to this Consent Decree and disputes regarding stipulated penalties, Lancaster shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 105, Lancaster shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the purposes of the Consent Decree.

111. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Lancaster under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 94. If Lancaster does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XI (Stipulated Penalties).

XIV. INFORMATION COLLECTION AND RETENTION

112. The United States, PADEP, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States or PADEP in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Lancaster or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data;
- e. inspect and evaluate any portion or portions of the WWTP and/or the Collection System;
- f. inspect and review any records required to be kept under the terms and conditions of the Consent Decree, Lancaster's NPDES Permit, any future modifications or renewals thereof, and the Clean Water Act; and
- g. assess Lancaster's compliance with this Consent Decree.

113. Upon request, Lancaster shall provide EPA and PADEP or their authorized representative splits of any samples taken by Lancaster. Upon request, EPA and PADEP shall provide Lancaster splits of any samples taken by EPA or PADEP.

114. Until five (5) years after the termination of this Consent Decree, Lancaster shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic

form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Lancaster's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or PADEP, Lancaster shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

115. At the conclusion of the information-retention period provided in the preceding Paragraph, Lancaster shall notify the United States and PADEP at least ninety (90) Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or PADEP, Lancaster shall deliver any such documents, records, or other information to EPA or PADEP. Lancaster may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Lancaster asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Lancaster. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

116. If Lancaster seeks to claim that any information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2, Lancaster shall follow the procedures set forth in 40 C.F.R. Part 2.

117. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or PADEP pursuant to applicable federal or Commonwealth laws, regulations, or permits, nor does it limit or affect any duty or obligation of Lancaster to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

118. This Consent Decree resolves the civil claims of the United States and PADEP for the violations alleged in the Complaint filed in this action through the date of lodging of this Consent Decree.

119. The United States and PADEP reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 118, above. This Consent Decree shall not be construed to limit the rights of the United States or PADEP to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal or Commonwealth laws, regulations, or permit conditions, except as expressly specified in Paragraph 118. The United States and PADEP further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the Lancaster Collection and Treatment System, whether related to the violations addressed in this Consent Decree or otherwise.

120. In any subsequent administrative or judicial proceeding initiated by the United States or PADEP for injunctive relief, civil penalties, other appropriate relief relating to the Lancaster's violations of the NPDES permit or Lancaster's Collection and Treatment System, Lancaster shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or PADEP in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 118 of this Section.

121. This Consent Decree is not a permit, nor a modification of any permit, under any federal, State, or local laws or regulations. Lancaster is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Lancaster's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and PADEP do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Lancaster's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 33 U.S.C. §§ 1251 et seq. or with any other provisions of federal, State, or local laws, regulations, or permits. The Commonwealth of Pennsylvania, Department of Environmental Protection, is a plaintiff and a signatory to this Consent Decree, and pursuant to Section 309(e) of the Clean Water Act, 33 U.S.C. § 1319(e), Pennsylvania is required to be joined as a party to this action. PADEP shall have no liability under this Consent Decree except, as set forth in Section 309(e), to the extent that the laws of the Commonwealth of Pennsylvania prevent Lancaster from raising revenues needed to comply with

this Consent Decree. PADEP represents that its current laws do not prevent Lancaster from raising revenues needed to comply with this Consent Decree. PADEP reserves all defenses to any claims pursuant to Section 309(e), including among other defenses that Pennsylvania law does not prevent Lancaster from raising revenues needed to comply with this Consent Decree. This Consent Decree does not authorize or approve the construction of any physical structure or facilities, or the modification of any existing treatment works or sewer system.

122. This Consent Decree does not limit or affect the rights of Lancaster or of the United States or PADEP against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Lancaster, except as otherwise provided by law.

123. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XVI. COSTS

124. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and PADEP 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 due but not paid by Lancaster.

XVII. NOTICES

125. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-1-1-11135

To EPA:

Chief
NPDES Enforcement Branch (3WP42)
Water Protection Division
U.S. Environmental Protection Agency, Region 3
1650 Arch St.
Philadelphia, PA 19103-2029

and

Douglas Frankenthaler
Office of Regional Counsel (3RC20)
U.S. Environmental Protection Agency, Region 3
1650 Arch St.
Philadelphia, PA 19103-2029
215-814-2472

To PADEP:

Program Manager
Clean Water Program
Pennsylvania Department of Environmental Protection
909 Elmerton Avenue
Harrisburg, PA 17110-8200
717-705-4795
717-705-4760 (telefax)

To Lancaster:

Director of Public Works
City of Lancaster
120 North Duke Street
City of Lancaster, Pennsylvania
(717) 291-4739
(717) 291 4721 (fax)

126. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

127. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XVIII. EFFECTIVE DATE

128. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket; provided, however, that Lancaster hereby agrees that it shall be bound to perform duties scheduled to occur prior to the Effective Date. In the event the United States withdraws or withholds consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall terminate.

XIX. RETENTION OF JURISDICTION

129. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections XII (Dispute Resolution) and XIX (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XX. MODIFICATION

130. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Lancaster's request for modification may be based, among other things, on: (a) an integrated plan developed in

accordance with EPA's Integrated Municipal Stormwater and Wastewater Planning Approach Framework, issued on June 5, 2012; or (b) a current Financial Capability Assessment (per EPA's Financial Capability Assessment Framework, issued on November 24, 2014). If either the Integrated Municipal Stormwater and Wastewater Planning Approach Framework or the Financial Capability Assessment Framework is modified after the Effective Date, Lancaster's request for modification shall be based on the version of the Framework(s) that is in effect on the Day that the request for modification is submitted to the Plaintiffs.

131. Any modification of this Consent Decree, or any documents that are developed pursuant to the requirements of this Decree and that become a part of the Decree, that effect a material change to the terms of the Decree shall become effective upon a subsequent written agreement signed by all Parties and approved by the Court. Any schedule that is included in this Decree or in any document developed pursuant to the Decree may be extended, modified, or revised upon written agreement of the Parties, without Court approval, unless the schedule extension effects a material change to the terms of this Decree.

132. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XIII of this Decree (Dispute Resolution). However, instead of the burden of proof provided by Paragraph 110, above, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XXI. TERMINATION

133. After Lancaster has completed the requirements of Section VI (Clean Water Act Compliance Requirements) of this Decree and thereafter maintained satisfactory compliance

with this Consent Decree and with NPDES Permit No. PA0026743 for a period of three (3) years, has complied with all other requirements of this Consent Decree, and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Lancaster may serve upon the United States and PADEP a Request for Termination, stating that Lancaster has satisfied those requirements, together with all necessary supporting documentation.

134. Following receipt by the United States and PADEP of Lancaster's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Lancaster has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States, after consultation with PADEP, agrees that the Decree may be terminated, the United States shall submit, for the Court's approval, a motion to terminate the Consent Decree.

135. If the United States, after consultation with PADEP, does not agree that the Decree may be terminated, Lancaster may invoke Dispute Resolution under Section XIII (Dispute Resolution) of this Decree. However, Lancaster shall not seek Dispute Resolution of any dispute regarding termination, under Paragraph 103 of Section XIII (Dispute Resolution), until 120 Days after service of its Request for Termination. Lancaster shall have the burden of proof that the conditions for termination of the Decree have been satisfied. This Consent Decree shall remain in effect pending resolution of the dispute by the Parties or the Court in accordance with Section XIII (Dispute Resolution) of this Consent Decree.

XXII. PUBLIC PARTICIPATION

136. 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 28 C.F.R. § 50.7. The United

States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Lancaster consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Lancaster in writing that it no longer supports entry of the Decree.

XXIII. SIGNATORIES/SERVICE

137. Each undersigned representative of Lancaster, the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice, and the Southcentral Region Office Environmental Program Manager of PADEP, certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

138. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Lancaster agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXIV. INTEGRATION

139. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein, other than submissions that are subsequently submitted and

approved pursuant to this Decree. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXV. FINAL JUDGMENT

140. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and PADEP, and Lancaster.

XXVI. APPENDICES

141. The following appendices are attached hereto and incorporated into this Consent Decree:

Appendix A – City of Lancaster Green Infrastructure Program

Appendix B - Outlines of Green Infrastructure Program Documents

Appendix C – Receiving Water Quality Model for Demonstration Approach

Appendix D – Public Notification Sign for CSO Outfalls

Appendix E – Public Notification Sign for Public Access Points

Appendix F – Supplemental Environmental Project Requirements

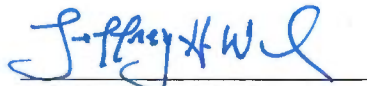
SO ORDERED THIS ____ DAY OF _____, 2018

UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States and Commonwealth of Pennsylvania Department of Environmental Protection v. City of Lancaster*

ON BEHALF OF THE UNITED STATES:

12/18/17
Date



JEFFREY H. WOOD
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

12/18/17
Date




DONNA D. DUER
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
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Washington, DC 20044
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Donna.Duer@usdoj.gov
DC Bar No. 414056


THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States and Commonwealth of Pennsylvania Department of Environmental Protection v. City of Lancaster*

ON BEHALF OF THE ENVIRONMENTAL PROTECTION AGENCY:


11-30-2017
Date


COSMO SERVIDIO
Regional Administrator
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

11/29/17
Date



MARY B. COE
Regional Counsel
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

11/28/17
Date



DOUGLAS FRANKENTHALER
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States and Commonwealth of Pennsylvania Department of Environmental Protection v. City of Lancaster*

12.8.17
Date


MARK POLLINS
Director, Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

12/8/17
Date


CATHLEEN GILLEN TIERNEY
Attorney-Advisor
U.S. Environmental Protection Agency
Headquarters
1200 Pennsylvania Ave., NW
Washington, DC 20460

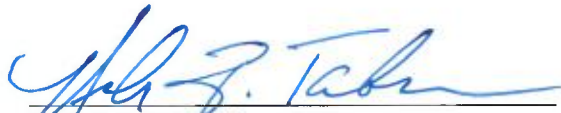
12/8/2017
Date


SARAH GONZALEZ
Attorney-Advisor
U.S. Environmental Protection Agency
Headquarters
1200 Pennsylvania Ave., NW
Washington, DC 20460


THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States and Commonwealth of Pennsylvania Department of Environmental Protection v. City of Lancaster*

ON BEHALF OF THE PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION:

11/29/2017
Date


NELS J. TABER
PA Supreme Court I.D. No. 44486
Office of Chief Counsel
PA Department of Environmental Protection
909 Elmerton Avenue
Harrisburg, PA 17110-8200
Phone: 717-705-4817
ntaber@pa.gov

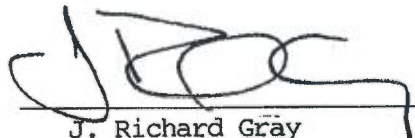
11/29/17
Date


MARIA D. BEBENEK, P.E.
Environmental Program Manager
Southcentral Regional Office
PA Department of Environmental Protection
909 Elmerton Avenue
Harrisburg, PA 17110-8200
Phone: 717-705-4795
mbebenek@pa.gov

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States and Commonwealth of Pennsylvania Department of Environmental Protection v. City of Lancaster*

ON BEHALF OF THE CITY OF LANCASTER, PENNSYLVANIA:

11-28-17
Date



J. Richard Gray
Mayor
120 N. Duke Street
Lancaster, PA 17602