

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA and STATE OF CONNECTICUT,)	
)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION NO.
)	
CITY OF SHELTON, CONNECTICUT)	
)	
Defendant.)	

CONSENT DECREE

WHEREAS, the City of Shelton, Connecticut (“City,” “Shelton,” or “Defendant”) owns and operates a Publicly-Owned Treatment Works (“POTW”) as defined at 40 C.F.R. § 403.3 that includes a Wastewater Treatment Plant and Wastewater Collection and Transmission System (“WCTS”) in Shelton, Connecticut that serves the citizens of Shelton; and

Whereas, the City discharges pollutants into waters of the United States from its POTW pursuant to NPDES Permit No. CT0100714 (“Permit”) (attached as Appendix A); and

WHEREAS, the plaintiffs, United States of America, on behalf of the United States Environmental Protection Agency (“EPA”) and the State of Connecticut (“State”) have filed complaints (“Complaints”) simultaneously herewith, alleging that the City has violated its Permit and Section 301(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1311(a); and

WHEREAS, the Parties agree, without adjudication or admission of facts or law, that settlement of this matter is in the public interest and that entry of this Consent Decree without further litigation is an appropriate resolution of the dispute, and the Parties consent to the entry of this Consent Decree;

NOW, THEREFORE, it is hereby ordered, adjudged, and decreed as follows:

I. STATEMENT OF CLAIM

A. The Complaints filed in this action state claims upon which relief can be granted against the Defendant pursuant to Section 309 of the CWA, 33 U.S.C. § 1319. The State's Complaint also states claims upon which relief can be granted pursuant to applicable state law.

II. JURISDICTION AND VENUE

A. This Court has jurisdiction over the subject matter of this action pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, and 1355. Venue properly lies in this district pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), 28 U.S.C. §§ 1391(b) and (c), and 28 U.S.C. § 1395.

III. BINDING EFFECT

A. The provisions of this Consent Decree shall apply to, and be binding on, the City, its officers, directors, employees, agents, servants, successors and assigns, and all persons, firms and corporations in active concert or participation with the City or its officers, directors, agents, employees, successors and assigns, and upon the United States and the State.

B. Effective from the Date of Entry of this Consent Decree until its termination, the City shall give written notice of this Consent Decree to any person or entity to whom

the City transfers ownership or operation of its Wastewater Treatment Plant and WCTS or any other portion of its Wastewater Treatment Plant and WCTS and shall provide a copy of this Consent Decree to any such person or entity. The City shall notify EPA and the United States Department of Justice in writing of any successor in interest at least 30 days prior to any such transfer. Any sale or transfer of the City's interests in, or operating role, with respect to the City's Wastewater Treatment Plant and WCTS shall not in any manner relieve the City of its responsibilities in meeting the terms and conditions of this Consent Decree.

C. The City shall provide a copy of this Consent Decree to all contractors and consultants retained to perform any obligation required by this Consent Decree on behalf of the City, and shall require that contractors and consultants provide a copy of this Consent Decree to their subcontractors. Such parties shall be deemed agents for the purposes of this Consent Decree. In an action to enforce this Consent Decree, the City shall not assert as a defense against an action by EPA or the State any act or failure to act by any of its officers, directors, employees, agents, servants, consultants, engineering firms, contractors, successors and assigns. However, the City retains any rights it may have against such officers, directors, employees, agents, servants, consultants, engineering firms, contractors, successors and assigns.

IV. OBJECTIVES

A. It is the express purpose of the Parties in entering into this Consent Decree to have the City take all measures necessary to fulfill the objectives of the CWA and to achieve and maintain compliance with the CWA, including the regulations promulgated thereunder, Connecticut water pollution control laws, the regulations promulgated under

such laws, the City's NPDES permits, any NPDES permits that may be issued to the City in the future, and to eliminate all overflows from its WCTS.

B. Engineering designs and analyses required to be performed pursuant to this Consent Decree shall be conducted using sound engineering practices, and, as applicable, consistent with: (a) EPA's Handbook: Sewer System Infrastructure Analysis and Rehabilitation, EPA/625/6-91/030, Oct. 1991; (b) EPA's Handbook for Sewer System Evaluation and Rehabilitation, EPA 430/9-75-021, Dec. 1975; (c) Existing Sewer Evaluation and Rehabilitation, WEF MOP FD-6, 1994; (d) A Guide to Short Term Flow Surveys of Sewer Systems, WRc Engineering (Undated); (e) the National Association of Sewer Service Companies (NASSCO) "Manual of Practice"; and, (f) the currently effective edition of "TR 16: Guides for the Design of Wastewater Treatment Works."

V. DEFINITIONS

A. 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. and the regulations promulgated under the CWA. The following terms used in this Consent Decree shall be defined as follows:

1. "Building/Private Property Backup" shall mean a wastewater release or backup into a building or private property that is caused by blockages, flow conditions, or other malfunctions in the WCTS. 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.

2. "Building Connection" shall mean the sewer that connects the plumbing of a building to the public sewer.

3. "Bypass" as that term is defined in Section 22a-430-3(a) of the Regulations of Connecticut State Agencies means the diversion of wastes from any portion of the wastewater collection system or treatment facilities.

4. "Capacity-Related SSO" shall mean any discharge or release from any part of the City's WTCS, including but not limited to the 30-inch bypass immediately upstream of the City's wastewater treatment plant, that is the result of the inability of the WTCS to convey peak flows to the treatment plant.

5. "Consent Decree" or "Decree" shall mean this Decree and all appendices attached hereto. In the event of conflict between this Decree and any appendix, this Decree shall control.

6. "Date of Entry" shall mean the date this Consent Decree is approved and signed by a United States District Court Judge for the District of Connecticut.

7. "Date of Lodging" shall mean the date this Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the District of Connecticut.

8. The terms "day" or "days" as used herein shall mean a calendar day or calendar days. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, federal or state holiday, the period shall run until the close of the next business day.

9. "Flow" shall mean all wastewaters conveyed by any portion of the WCTS.

10. "Force Main" shall mean any pipe that conveys, under pressure, wastewater from the discharge side of a pump.

11. "Infiltration" shall mean water that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes.

12. "Inflow" shall mean water that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm water, surface runoff, street wash waters, or drainage.

13. "Inflow/Infiltration" ("I/I") shall mean the total quantity of water from Inflow and Infiltration without distinguishing the source.

14. "Parties" shall mean EPA, the State of Connecticut, and the City.

15. "Private Lateral" shall mean that portion of the Wastewater Collection and Transmission System, not owned by the City, used to convey wastewater from a building or buildings to that portion of the Wastewater Collection and Transmission System owned by the City.

16. "Pumping Station" shall mean facilities comprised of pumps which lift wastewater to a higher hydraulic elevation, including all related electrical, mechanical, and structural systems necessary to the operation of that pumping station.

17. "Sanitary Sewer Overflow" or "SSO" shall mean an overflow, spill, diversion, or release of wastewater from, or caused by, the City's WCTS. This term shall include: (a) discharges to waters of the State or United States from the City's WCTS, including but not limited to discharges from the 30-inch bypass immediately upstream of the City's wastewater treatment plant, and (b) any release of wastewater caused by the

City's WCTS to public or private property that does not reach waters of the United States or the State, including Building/Private Property Backups.

18. "Wastewater Collection and Transmission Systems" or "WCTS" shall mean the municipal wastewater collection and transmission systems, including all pipes, siphons, manholes, gravity sewer lines, Force Mains, Pumping Stations, and appurtenances thereto, which are owned or operated by the City.

19. "Wastewater Treatment Plant" or "WWTP" shall mean the sewage treatment plant (or water reclamation facility) operated by the City and located at Riverdale Avenue, Shelton, Connecticut, and all components of such sewage treatment plant.

20. The phrases "approval by EPA and CTDEP," and "approved by EPA and CTDEP" shall mean the City's receipt of one joint, written approval document from both EPA and the Connecticut Department of Environmental Protection ("CTDEP").

VI. SUBMISSIONS REQUIRING REVIEW AND APPROVAL BY EPA AND CTDEP

A. **EPA /CTDEP Review:** After review of any plan, report or other item that the City is required to submit to EPA and CTDEP for approval pursuant to this Consent Decree, EPA and CTDEP shall: 1) approve the submission, in whole or in part; 2) approve the submission with specified conditions; 3) disapprove, in whole or in part, the submission, directing the City to modify the submission; or 4) any combination of the above. If EPA or CTDEP disapproves the submission, in whole or in part, EPA or CTDEP shall notify the City in writing of those portions of the submission that EPA or CTDEP disapproves.

B. **The City's Obligations upon EPA and CTDEP Approval:** In the event of approval, or approval with conditions by EPA and CTDEP, the City shall proceed to take any action required by the plan, report or other item as approved by EPA and CTDEP.

C. **The City's Obligations upon EPA or CTDEP Disapproval:** Upon receipt of notice of disapproval pursuant to Subsection VI.A above, the City shall, within 45 days correct the deficiencies in the plan, report or other item and resubmit the plan, report or other item for approval. Notwithstanding the receipt of a disapproval notice pursuant to Subsection VI.A above, the City shall proceed, at the direction of EPA or CTDEP, to take any action required by any non-deficient portion of the submission.

D. **Procedures for Resubmitted Plans:** In the event that EPA or CTDEP disapproves a resubmitted plan, report or other item, or portion thereof, EPA or CTDEP may again require the City to correct the deficiencies within 30 days or EPA or CTDEP may modify the submittal. The City shall, within 15 days, either accept the decision of EPA or CTDEP to modify the submittal or initiate the dispute resolution provisions of this Consent Decree, starting with petitioning the Court pursuant to Section XVI (Dispute Resolution). If the Court upholds EPA's or CTDEP's modification or disapproval, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required.

E. **Enforceability of Modifications:** All plans, reports, and other items required to be submitted to EPA and CTDEP under this Consent Decree shall, upon approval or modification by EPA and CTDEP, be enforceable under this Consent Decree. In the event EPA and CTDEP approves or modifies a portion of a plan, report or other item

required to be submitted to EPA and CTDEP under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

VII. CWA REMEDIAL MEASURES

A. **Wastewater Treatment Plant Upgrade**

1. By January 31, 2008, the City completed construction and commenced operation of the Wastewater Treatment Plant consistent with the plans and specifications for the Wastewater Treatment Plant Upgrade, approved by CT DEP on March 17, 2005.

B. **Capacity, Management, Operation and Maintenance (“CMOM”)**

Program

1. Within 180 days of the Date of Entry, the City shall complete and submit to EPA and CTDEP, an assessment of its WCTS capacity and its operation and maintenance practices (the “CMOM Program Self Assessment”) to determine whether improvements are necessary in order to preserve the infrastructure of the WCTS and to prevent future SSOs. As part of the CMOM Program Self Assessment, the City shall complete and submit the Wastewater Collection System Capacity, Management, Operation, and Maintenance Program Self-Assessment Checklist (the “CMOM Program Self-Assessment Checklist”) (attached as Appendix B).

2. Within 180 days of the Date of Entry, the City shall submit an assessment of the adequacy of the City’s WWTP and WCTS staffs (the “ WWTP and WCTS Staffing Assessment”) to properly operate and maintain the City’s WWTP and WCTS. If additional staff are necessary for the City to properly operate and maintain its WWTP and WCTS, the assessment shall include a schedule for the hiring of the additional staff.

3. Within 270 days of the Date of Entry, the City shall submit to EPA and CTDEP, a plan (the “CMOM Corrective Action Plan”) that shall include the following:

a. A list of any deficiencies identified by the CMOM Program Self Assessment;

b. A list of causes and contributing factors that lead to the SSOs as identified in the CMOM Program Self-Assessment Checklist;

c. A description of the specific short and long-term actions that the City is taking, or plans to take, to address any of the deficiencies identified during the completion of the CMOM Program Self-Assessment Checklist; and

d. A schedule for implementation of the CMOM Corrective Action Plan.

4. The CMOM Corrective Action Plan implementation schedule submitted pursuant to Paragraph VII.B.3.d as part of the CMOM Corrective Action Plan shall be incorporated and enforceable hereunder upon approval by, and as amended by, EPA and CTDEP, whereupon the City shall implement the CMOM Corrective Action Plan.

5. Within 365 days of the Date of Entry, the City shall consolidate all of its WCTS preventative and reactive maintenance programs and WCTS capital improvement plans into a single CMOM Program document. The CMOM Program document shall be maintained at a location that is readily accessible to the City’s wastewater maintenance staff, and is available for inspection by EPA and CTDEP.

C. Long-Term Preventative Maintenance Program

1. Within 270 days of the Date of Entry, the City shall submit to EPA and CTDEP for approval a plan for a Long-Term Preventative Maintenance Program (“the

Preventative Maintenance Program”). The Preventative Maintenance Program shall include, but need not be limited to, the following:

a. physical inspection and testing procedures to be used to routinely inspect and maintain the City’s WCTS including, but not limited to, all pump stations, force mains, emergency generators, alarms, telemetry equipment, interceptor and lateral sewers, and to be used to identify, and to provide a basis to correct, any structural, mechanical, or operational problems that may result in SSOs;

b. preventative and routine maintenance schedules and procedures, including, but not limited to specific maintenance plans for those areas of the WCTS prone to mechanical failures, grease and silt deposits and root penetration, as well as those areas that have been the source of SSOs in the past;

c. a tracking system for all maintenance activities, including, at a minimum, the purchase and use of sewer system maintenance software designed to catalog the maintenance history of the WCTS and to plan and schedule future WCTS maintenance activities;

d. staffing, organization, and resource commitments;

e. a plan for routine maintenance cleaning of the WCTS to maintain the WCTS’s capacity and to prevent WCTS blockages and SSOs;

f. a description of all preventative maintenance activities, including procedures, equipment, resources to be used and frequency of the activity;

g. a proposed budget for implementation of the Preventative Maintenance Plan;

h. a five-year capital expenditure plan for the WCTS; and

i. an implementation schedule.

2. The City shall immediately and continuously implement the Preventative Maintenance Plan upon approval or conditional approval by EPA and CTDEP.

D. Initial Wastewater Collection and Transmission System Cleaning

1. Within 270 days following the Date of Entry, the City shall prepare and submit to EPA and CTDEP for approval a plan, including a schedule, for an initial cleaning of that portion of the sewer system necessary to restore WCTS capacity and to facilitate future investigations of the WCTS. The plan shall explain why any areas of the system are proposed to be excluded from the initial cleaning. Upon approval, the City shall implement the plan in accordance with the schedule contained therein.

E. Wastewater Collection and Transmission System Rehabilitation Plan

1. The City shall implement the projects regarding “Sanitary Sewer Collection System Improvements, I/I Program Implementation Approach” as stated in the December 29, 2006 letter and attachment from Mayor Mark A. Lauretto, Mayor, Shelton, Connecticut, to Mike Fedak, EPA (attached as Appendix C) in accordance with the following schedule, which shall supersede the schedule proposed in the December 29, 2006 letter:

a. By July 30, 2008, initiate construction of the Phase I facilities itemized in Appendix C;

b. By December 31, 2008, complete construction of the Phase I facilities itemized in Appendix C;

c. By May 30, 2009, submit plans and specifications for the Phase II facilities itemized in Appendix C to CTDEP for review and approval and to EPA for review;

d. By November 31, 2009, initiate construction of the Phase II facilities itemized in Appendix C; and

e. By July 30, 2010, complete construction of the Phase II facilities itemized in Appendix C.

F. Inflow Removal

1. By December 31, 2008, the City shall submit a report (“Inflow Removal Report”) that identifies which extraneous flow sources identified in Tables VI-4 and VI-5 (Estimated Quantity of Inflow From Direct Sources) of the Goodkind & O’Dea Inc. April 1998 Infiltration/Inflow Analysis and Sewer System Evaluation Survey (attached as Appendix D) have been eliminated. The Inflow Removal Report shall explain why any sources will not be eliminated. The Inflow Removal Report shall include a schedule (“Direct Inflow Schedule”) for eliminating, by June 30, 2009, the remaining inflow sources identified in the Inflow Removal Report, from the WCTS. Upon its approval by EPA and CTDEP, the Direct Inflow Schedule submitted pursuant to this Paragraph shall be incorporated herein and enforceable under the terms of this Consent Decree.

G. Additional Investigations

1. By July 30, 2010, the City shall complete the Sewer System Evaluation Survey (“SSES”) of the Huntington and Bridgeport Avenue areas (sewer areas 10 and 12), and additional manhole inspections recommended in the Dewberry-Goodkind, Inc. March, 2003 Infiltration/Inflow Analysis and Sewer System Evaluation Survey (attached

as Appendix F), to identify I/I sources that are cost-effective to remove. The SSES shall include a schedule for the design and implementation of recommended rehabilitation measures (the "Huntington and Bridgeport Avenue Rehabilitation Schedule"), including a December 31, 2010 milestone for completion of all construction activities. The Huntington and Bridgeport Avenue Rehabilitation Schedule submitted pursuant to this Paragraph shall be incorporated and enforceable hereunder upon its approval by, and as amended by, EPA and CTDEP.

H. Elimination of Overflows

1. By July 30, 2010, the City shall eliminate Capacity-Related SSOs to waters of the United States from its WCTS.

VIII. EMERGENCY RESPONSE PLAN

A. Within 120 days following the Date of Entry, the City shall develop an Emergency Response Plan and shall submit a copy of the plan to EPA and CTDEP for approval. The Emergency Response Plan shall be designed to ensure that, should an SSO occur, the volume of untreated wastewater discharged to the environment and the impact of the discharge on the environment and public health will be minimized. The Emergency Response Plan shall result in: 1) all SSOs being responded to and halted as rapidly as possible; 2) mitigation being employed whenever appropriate; 3) appropriate measures being implemented to prevent SSO recurrence; and 4) appropriate measures being implemented to respond to and in preventing Building/Private Property Backups. The Emergency Response Plan shall provide procedures for responding to SSOs, including Building/Private Property Backups to minimize the environmental impact and

potential human health risk of SSOs. The Emergency Response Plan shall include, at a minimum:

1. Procedures and public notice requirements to limit public access to and contact with areas affected by SSOs;
2. Procedures to provide timely notice to EPA, CTDEP, and local public health officials of SSOs;
3. Procedures to make the public aware of SSOs, including but not limited to, providing the public with a telephone number which can be used by the public to report SSOs;
4. A review to ensure that the City has available the equipment necessary to respond to SSOs and to implement the Emergency Response Plan;
5. Procedures to ensure the rapid dispatch of personnel and equipment to correct or repair the condition causing or contributing to any SSO;
6. Procedures to ensure the preparedness, including responsiveness training, of the City's employees and contractors necessary for effective implementation of the Emergency Response Plan;
7. A system to track SSO reports and other complaints and related repairs, and to investigate the causes of any SSOs;
8. Safety training for all WCTS personnel;
9. Procedures to ensure that SSOs are immediately contained, and eliminated in a timely manner;
10. Procedures, if any, to provide relief to residents experiencing Building/Private Property Backups resulting from the WCTS;

11. Procedures for investigating and documenting the causes of Building/Private Property Backups; and

12. Measures to eliminate Building/Private Property Backups, and in cases where measures included in Section VII (CWA Remedial Measures) will not completely eliminate the Building/Private Property Backups until some date in the future, measures to mitigate Building/Private Property Backups.

B. Within 90 days following the Date of Entry the City shall provide a list of all known Building/Private Property Backup incidents within the past five years. This listing shall include the date of the Building/Private Property Backup incident, the location by address, source of notification, the cause(s) of the Building/Private Property Backup and actions taken by the City to halt, mitigate, and prevent future incidents.

C. The City shall immediately and continuously implement the Emergency Response Plan upon approval or conditional approval by EPA and CTDEP.

As soon as practicable, but no later than two (2) hours of learning of any SSO, the City shall also provide an oral report to EPA by calling Michael Fedak at (617) 918-1766 and to CTDEP by calling Iliana Ayala, during regular business hours, at (860) 424-3758 or CT DEP's Municipal Facilities Section at (860) 424-3704. If the City learns of an SSO at any other time than normal business hours, the City also shall notify EPA at the above phone number and CTDEP's Emergency Response Unit by calling (860) 424-3338. The oral report must identify the location, estimated volume and receiving water(s), if any, of the SSO(s). The City shall also, within 24 hours of learning of such SSO(s), send a facsimile report to EPA, to the attention of Michael Fedak, at (617) 918-0766 and to CT DEP, to the attention of Iliana Ayala at (860) 424-4067. EPA and CTDEP will advise the

City in writing in the event of any change in personnel to whom oral and facsimile reports should be made. The facsimile reports shall be submitted in the form attached as Appendix E and shall include the following information:

1. The date, time and location of the SSO (including Building/Private Property Backups), including a description of the sewer system component from which the release occurred (e.g., manhole, constructed overflow pipe, crack in pipe);
2. The circumstances that led to the SSO;
3. The estimated volume of the SSO;
4. Whether the SSO reached navigable waters of the State or United States and, if so, the identity of the receiving waters and the estimated volume of the SSO that reached those waters;
5. Steps taken (or the steps to be taken) to mitigate the impact(s) of the SSO, including treatment of any of the discharge, and when those steps were (or will be) taken;
6. If any of the SSO was treated, the volume of the SSO treated and the volume of treated SSO that reached receiving waters;
7. The steps taken (or the steps to be taken) to eliminate and prevent reoccurrence of the SSO and when those steps were (or will be) taken; and
8. A description of the cleanup efforts taken or intended to be taken.

D. The reporting requirements set forth in this Section do not relieve the City of its obligation to cease SSOs as soon as provided elsewhere herein or, submit any other reports or information as required by state, federal or local law.

IX. DEMONSTRATION OF ELIMINATION OF CAPACITY-RELATED SSOs

A. Following completion of the remedial measures required by Section VII (CWA Remedial Measures), in accordance with the approved schedules, the City shall demonstrate for one year that Capacity-Related SSOs have been eliminated to EPA's and CTDEP's satisfaction.

B. If following completion of the measures required by Section VII (CWA Remedial Measures), the City experiences Capacity-Related SSOs, then the City shall by no later than 90 days after the triggering storm event, submit a Capacity Assurance Plan to EPA and CTDEP for approval that shall include provisions for eliminating all Capacity-Related SSOs. The Capacity Assurance Plan shall include a schedule for completing the additional measures proposed therein. After completion of the remedial projects in the Capacity Assurance Plan, the demonstration provisions of this Section shall again apply.

C. If following completion of the measures required by Sections VII (CWA Remedial Measures), the City experiences SSOs that are not Capacity-Related SSOs, then the City shall by no later than 60 days after the non-Capacity-related discharge event, submit revisions to the CMOM Corrective Action Plan and CMOM Corrective Action Schedule (as described in Subsection VII.B) to EPA and CTDEP for approval that shall include provisions for preventing similar operation and maintenance-related SSOs.

X. CLOSURE OF 30-INCH BYPASS

A. By letter dated July 12, 2007, the City has certified to EPA that the 30-inch bypass immediately upstream of the City's wastewater treatment plant has been permanently sealed. Should the City alter the 30-inch bypass in any way such that any flow from the 30-inch bypass is discharged to the Housatonic River, the City shall notify

EPA and CTDEP immediately pursuant to Section XVIII (Form of Notice). In the event the 30-inch bypass is re-opened, for any reason, the City shall monitor and record the minimum, average, and maximum flow rates and total flow discharged to the Housatonic River. The City shall collect flow data through operation of a flow meter and shall perform all necessary calibrations to maintain the accuracy of the meter.

XI. REPORTS ON COMPLIANCE

A. In the event that any flow passes through the 30-inch bypass, no later than 15 days after the end of each month, the City must submit to the EPA and the CTDEP a report on discharges to the Housatonic River from the 30-inch bypass immediately upstream of the City's wastewater treatment plant. Such reports shall include all flow calibration records, flow measurement results, daily records of adjustment and settings of the influent control gate, and copies of the Monthly Operating Reports (MOR) that the City has historically submitted to the CT DEP. If no bypass occurs during any month, the City shall submit a letter in conjunction with the monthly MOR stating that no discharge occurred.

B. Beginning with the first quarter following the date of entry of this Consent Decree and until this Consent Decree is terminated, the City shall, on a quarterly basis by the 15th day of each January, April, July, and October, report to EPA and CTDEP on its compliance with Section VII (CWA Remedial Measures). Each progress report submitted under this Paragraph shall: 1) describe activities undertaken during the reporting period directed at achieving compliance with this Consent Decree; 2) identify all plans, reports, and other deliverables required by this Consent Decree that the City completed and submitted during the reporting period; and 3) describe the expected

activities to be taken during the next reporting period in order to achieve compliance with this Consent Decree.

C. The reporting requirements set forth in this Consent Decree do not relieve the City of its obligation to submit any other reports or information as required by state, federal or local law.

XII. RECORDS RETENTION

A. The City shall retain copies of all data collected and all documents and reports generated pursuant to this Decree for the pendency of this Decree.

XIII. CIVIL PENALTY

A. The City shall pay a civil penalty in the amount of \$142,000 in satisfaction of the claim for civil penalties alleged in the United States' and the State of Connecticut's Complaints.

1. The City shall pay a civil penalty in satisfaction of the United States' claims in the amount of SEVENTY-ONE THOUSAND DOLLARS (\$71,000). The City shall make payment by electronic funds transfer in accordance with written instructions to be provided by the United States Attorney's Office, Financial Litigation Unit, New Haven, Connecticut. The costs of such electronic funds transfer shall be the responsibility of the City. The City shall send a copy of the electronic funds transfer authorization form, the electronic funds transfer transaction record, and the transmittal letter to EPA and the United States Department of Justice as specified in Section XVIII (Form of Notice). Payment of the civil penalty shall be made within 15 days after the City receives notice of entry of the Consent Decree. If the City fails to tender payment within 15 days of receiving notice of entry of this Consent Decree, then interest shall

accrue on the debt to the United States, from the date of entry of this Consent Decree, at the rate provided for in 28 U.S.C. § 1961.

2. The City shall pay a civil penalty in satisfaction of the State of Connecticut's claims in the amount of SEVENTY-ONE THOUSAND DOLLARS (\$71,000). This amount shall be deposited into the Statewide SEP Account in accordance with Conn. Gen. Stat. 22a-16a, to fund various environmental projects as selected by CT DEP consistent with its February 15, 1996 "Policy on Supplemental Environmental Projects." The City shall make payment by electronic funds transfer to the Office of the Connecticut Attorney General, in accordance with written instructions to be provided by the Office of the Connecticut Attorney General. The costs of such electronic funds transfer shall be the responsibility of the City. The City shall send a copy of the electronic funds transfer authorization form, the electronic funds transfer transaction record, and the transmittal letter to CTDEP and the Office of the Connecticut Attorney General as specified in Section XVIII (Form of Notice). Payment of the civil penalty shall be made within 15 days after the City receives notice of entry of the Consent Decree. If the City fails to tender payment within 15 days of receiving notice of entry of this Consent Decree, then interest shall accrue on the debt to the State of Connecticut, from the date of entry of this Consent Decree, at the rate provided for in 28 U.S.C. § 1961.

XIV. STIPULATED PENALTIES

A. Failure to Submit Timely and Complete Documents

The City shall pay to the United States and the State stipulated penalties, as set forth below, for each day the City fails to submit and/or complete any plans, reports or

other submittals required under this Decree by the specified due dates or to make the changes to those documents per EPA's or CTDEP's comments within the required time frames. All plans, upon submission and approval, shall be incorporated herein as part of this Decree. The stipulated penalties for failure to meet each document submission date shall be as follows:

Period of Noncompliance	Penalty per Day per Violation
1 st to 10 th day	\$500
11 th to 20 th day	\$1,000
21 st day and beyond	\$2,000

B. Remedial Requirements

The City shall pay to the United States stipulated civil penalties as set forth below for each day the City fails to satisfy any of the remedial requirements of Section VII (CWA Remedial Measures) of this Decree. The stipulated penalties for failure to meet each such requirement shall be as follows:

Period of Noncompliance	Penalty per Day per Violation
1 st to 10 th day	\$500
11 th to 20 th day	\$1,000
21 st day and beyond	\$2,000

C. Unpermitted Discharges

For each Capacity-Related SSO, the City shall pay a stipulated penalty of \$5,000. Notwithstanding the foregoing, the City shall not be liable for such a stipulated penalty if all of the following conditions are met: 1) The City stopped the discharges from the SSO outfall as soon as reasonably practicable as determined by EPA; 2) The City is in full

compliance with the schedules and requirements set forth pursuant to Section VII (CWA Remedial Measures) of this Consent Decree as determined by EPA; and, 3) The City has complied with all reporting requirements related to such discharges from its SSO outfalls as determined by EPA, including those set forth in this Consent Decree.

D. **Delay in Payment of Penalty**

The City shall pay to the United States and/or the State, as applicable, a stipulated penalty of \$2,000 for each day that the City is late in paying the civil penalty required under Section XIII (Civil Penalty).

E. **All Other Violations**

The City shall pay a stipulated penalty of \$1,000 per violation per day for any violation of the Consent Decree that is not specified in this Section.

F. **Payment of Stipulated Penalties**

Stipulated penalties shall automatically begin to accrue on the first day the City fails either to meet any of the schedules of performance required by this Consent Decree or to satisfy any obligation or requirement of this Consent Decree and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity, but need not be paid except as provided in Subsection G below. Payment of stipulated penalties as set forth above shall be in addition to any other rights or remedies which may be available to the United States or the State by reason of the City's failure to comply with requirements of this Consent Decree, and any applicable federal, state or local laws, regulations, NPDES Permits and all other applicable permits.

G. **Written Demand for Payment of Stipulated Penalties**

Stipulated penalties shall be paid within 30 days of EPA's or CTDEP's written demand for payment of stipulated penalties. Stipulated penalties shall be paid to the United States and the State in accordance with the payment procedures detailed in Sections XIII.A.1. and A.2 above. Copies of any checks and the transmittal letters shall be sent simultaneously to U.S. DOJ, EPA, and the State.

XV. FORCE MAJEURE

A. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes entirely beyond the control of the City, including its contractors and subcontractors, which delays or prevents the timely performance of any obligation under this Consent Decree notwithstanding the City's best efforts to avoid the delay. Stipulated penalties shall not be due for the number of days of noncompliance caused by a Force Majeure event as defined in this Section, provided that the City complies with the terms of this Section. Examples of events which may constitute Force Majeure events include natural disasters, national emergencies, and delays in obtaining any required approvals or permits despite the City's complete and timely submission of requests for approval and applications for required permits and any supplemental information that may be requested. Examples of events that are not Force Majeure events include, but are not limited to, normal inclement weather, unanticipated or increased costs or expenses of work, the financial difficulty of the City to perform such work, acts or omissions attributable to the City's contractors or representatives, and the failure of the City or the City's contractors or representatives to make complete and timely application for any required approval or permit.

B. If any event occurs that may delay or prevent the performance of any obligation under this Consent Decree, whether or not caused by a Force Majeure event, the City shall notify EPA and CTDEP within 48 hours after the City first knew or should have known that the event might cause a delay. Within five working days thereafter, the City shall provide to EPA and CTDEP, at the addresses specified in Section XVIII (Form of Notice), a written explanation of the cause(s) of any actual or expected delay or noncompliance, the anticipated duration of any delay, the measure(s) taken and to be taken by the City to prevent or minimize the delay, a proposed schedule for the implementation of such measures, and a statement as to whether, in the opinion of the City, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Notwithstanding the foregoing, the City shall notify EPA and CTDEP orally or via fax within 24 hours of becoming aware of any event which presents an imminent threat to the public health or welfare or the environment and provide written notice to EPA and CTDEP within 72 hours. Failure to give timely and complete notice in accordance with this Subsection shall constitute a waiver of any claim of Force Majeure with respect to the event in question.

C. If the Parties agree that a delay or anticipated delay is attributable to Force Majeure, the time for performance of the obligations under this Consent Decree that are affected by the Force Majeure event shall be extended by mutual agreement of the Parties for a period of time as may be necessary to allow performance of such obligations to the extent the delay was caused by a Force Majeure event.

D. If the Parties are unable to agree as to whether a delay or anticipated delay is attributable to Force Majeure, or on the number of days of noncompliance caused by such

event, the City may initiate the Dispute Resolution process set forth in Section XVI (Dispute Resolution) below. If the City does not initiate the Dispute Resolution process set forth in Section XVI below within 14 days of receiving written notice that EPA and CTDEP disagree as to whether a delay or anticipated delay is attributable to Force Majeure, or on the number of days of noncompliance caused by such circumstances, then the City shall be deemed to have waived any Force Majeure claims or any rights to initiate Dispute Resolution with regard to such claims.

E. Delay in performance of any obligation under this Consent Decree shall not automatically justify or excuse delay in complying with any subsequent obligation or requirement of this Decree.

F. Failure of the City to obtain any state or federal grants or loans shall not be considered a Force Majeure event under this Consent Decree.

XVI. DISPUTE RESOLUTION

A. 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. However, the procedures set forth in this Section shall not apply to actions by the United States or the State to enforce obligations that the City has not disputed in accordance with this Section.

B. If the City objects to disapproval or conditions in an approval of a plan, report, or other item required to be submitted to EPA and the CTDEP under this Consent Decree, or if the Parties are unable to agree as to whether a delay or anticipated delay is attributable to Force Majeure, or the number of days of noncompliance caused by such event, or on the amount of Stipulated Penalties due, the City may initiate informal, good

faith negotiations between the Parties to the dispute for a period of up to 30 days from the time the City gives notice of the existence of the dispute to EPA and CTDEP. The period for negotiations may be extended by agreement of the Parties. If the parties cannot resolve any such dispute by informal negotiations, and prior to petitioning the Court pursuant to the Paragraph below, the City shall serve on EPA and CTDEP a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the City. Within 30 days after receipt of the City's Statement of Position, EPA and CTDEP will serve on the City its Statement of Position including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA and CTDEP. The Parties respective Statements of Position and supporting documentation shall be included in the administrative record.

C. In the event that the Parties cannot resolve any such dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA and CTDEP shall be considered binding unless, within 21 days of the end of the informal negotiation period, including the exchange of Statements of Position, the City files a petition with this Court setting forth the matter in dispute, the efforts of the Parties to resolve it, and the relief requested. EPA and/or CTDEP shall then have 30 days to respond to any such petition.

D. In proceedings on any dispute regarding a delay in performance as set forth in the previous Paragraph, the City shall have the burden of proving: (1) that the delay or noncompliance is or was caused by a Force Majeure event, and (2) that the amount of

additional time requested is necessary to compensate for that event. In no event shall the time for performance be extended for a period longer than the actual delay resulting from the Force Majeure event.

E. In all disputes under this Section, the City shall have the burden of proving, based upon an administrative record, that the United States' and CTDEP's position is arbitrary and capricious, an abuse of discretion or otherwise not in accordance with law. EPA or CTDEP shall maintain the administrative record of the dispute, which shall contain all statements of the Parties, including supporting documentation, submitted pursuant to this Section.

XVII. RIGHT OF ENTRY

A. EPA and CTDEP and their contractors, consultants, and attorneys shall have authority to enter the City's real property, including all easements and leaseholds, at all reasonable times, upon proper identification, for the purposes of monitoring the progress of activity required by this Consent Decree, verifying any data or information submitted to EPA and the CTDEP under this Consent Decree, and assessing the City's compliance with this Consent Decree. This requirement is in addition to, and does not limit, EPA's or CTDEP's authority pursuant to the CWA, or any other provision of state or federal law.

XVIII. FORM OF NOTICE

A. Submissions required by this Consent Decree shall be made in writing to the following respective addresses, unless written notice is given that another individual has been designated to receive the submissions:

As to the Department of Justice:

Chief, Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
P.O. Box 7611 - Ben Franklin Station
Washington, D.C. 20044

Katherine M. Kane
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
P.O. Box 7611 , Ben Franklin Station
Washington, D.C. 20044-7611

As to the EPA:

Michael Fedak
Water Technical Unit (SEW)
U.S. Environmental Protection Agency, Region I
One Congress Street
Boston, MA 02114-2023

Jeffrey Kopf, Senior Enforcement Counsel
Office of Environmental Stewardship (SEL)
U.S. Environmental Protection Agency, Region I
One Congress Street
Boston, MA 02114-2023

Reports and plans required to be submitted by the City to EPA shall be submitted to Michael Fedak, with a copy of the transmittal letter only to Jeffrey Kopf. The City shall provide complete copies to both Mike Fedak and Jeffrey Kopf of all other submissions required to be made by the City to EPA pursuant to this Decree.

As to the CTDEP:

William Hogan
Connecticut Department of Environmental Protection
Bureau of Water Management
79 Elm Street
Hartford, CT 06106-5127

As to the Connecticut Attorney General:

John Looney, Assistant Attorney General
Office of the Attorney General
55 Elm Street
Hartford, CT 06106

Reports and plans required to be submitted by the City to CT DEP shall be submitted to William Hogan, with a copy of the transmittal letter only to John Looney. The City shall provide complete copies to both William Hogan and John Looney of all other submissions required to be made by the City to CT DEP pursuant to this Decree.

As to the City of Shelton, Connecticut:

Honorable Mark Lauretti, Mayor
City of Shelton, Connecticut
54 Hill Street
Shelton, CT 06484

B. All written notices, reports and all other submissions required by this Consent Decree shall contain the following certification by a duly authorized representative of the City:

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

XIX. EFFECT OF SETTLEMENT

A. This Consent Decree is neither a permit nor a modification of existing permits under any federal, state, or local law and in no way relieves the City of its responsibilities to comply with all applicable federal, state, and local laws and regulations, nor shall it be construed to constitute EPA approval of any equipment or technology installed by the City under the terms of this Consent Decree.

B. This Consent Decree does not limit any rights or remedies available to the United States or the State for any violation by the City of the CWA and associated regulations or permit conditions other than those civil violations alleged in the Complaints through the Date of Entry. This Consent Decree does not limit any rights or remedies available to the United States or the State for any criminal violations. This Consent Decree does not limit the standing of any person under Section 505 of the CWA to sue for any future violation of the CWA not addressed by this Decree. The United States and the State expressly reserve all rights and remedies, legal and equitable, available to each of them for all violations of the CWA or other applicable law where such violations are not alleged in their respective Complaints, and reserve all rights and remedies, legal and equitable, available to enforce the provisions of this Consent Decree. Nothing herein shall be construed to limit the power of the United States or Connecticut, consistent with its respective authority, to undertake any action against any person, in response to conditions which may present an imminent and substantial endangerment to the public's health or welfare, or the environment.

C. Neither the United States nor the State, by consent to the entry of this Consent Decree, warrant or aver in any manner that the City's compliance with this Consent Decree will result in compliance with the CWA, Connecticut state laws, or any regulations or permits issued thereunder.

XX. COSTS

A. Each party shall bear its own costs and attorney's fees in this action, except that the City shall be responsible for all expenses incurred by the United States in collecting any outstanding penalties due under Sections XIII and XIV of this Consent

Decree and in enforcing the requirements of this Consent Decree, unless the City prevails before a court in any dispute resolution brought pursuant to Section XVI (Dispute Resolution). In no event shall the United States or the State be responsible for any expenses, costs or attorney's fees incurred by the City.

XXI. RETENTION OF JURISDICTION

A. The Court shall retain jurisdiction to modify and enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Consent Decree and to assess any stipulated penalties that may have accrued during the term of the Decree. This Paragraph does not constitute a waiver of the bar to judicial review of administrative decisions, including, but not limited to, approval of plans and other submissions, and permitting decisions.

XXII. MODIFICATION

A. Any material modification to the terms of this Consent Decree shall be by written agreement of the Parties and approval of the Court. Any nonmaterial modifications to the terms of this Consent Decree, such as approval of modifications to submissions to EPA and CTDEP, shall be effective upon approval by EPA and CTDEP.

XXIII. CONTINGENT LIABILITY OF THE STATE OF CONNECTICUT

A. This Consent Decree does not resolve the contingent liability of the State of Connecticut under Section 309(e) of the Clean Water Act, 33 U.S.C. § 1319(e). The United States specifically reserves its claims against the State, and the State specifically reserves all defenses to any such claims, including that State law does not prevent the City from raising revenues needed to comply with such judgment.

XXIV. FUNDING

A. Performance of the terms of this Consent Decree by the City is not conditioned on the receipt of any federal or state grant funds or loans. In addition, performance is not excused by the lack of any federal or state grant funds or loans.

XXV. SEVERABILITY PROVISION

A. The provisions of this Consent Decree shall be severable, and should any provisions be declared by a court of competent jurisdiction to be unenforceable, the remaining provisions shall remain in full force and effect.

XXVI. TERMINATION

A. This Decree shall not terminate until the City has completed all the remedial measures required by Section VII (CWA Remedial Measures) of the Decree and achieved and has maintained compliance with all provisions of this Decree for twelve consecutive months. The Decree shall not terminate thereafter until each of the following occurs:

1. The City has demonstrated for one year that Capacity-Related SSOs have been eliminated to EPA's and CTDEP's satisfaction, as provided in Subsection IX.A;
2. The City has paid all penalties due under this Decree;
3. The City has certified in writing to the Court and to the United States compliance with each provision of the Decree; and
4. The City and the United States jointly move the Court for termination of the Decree.

XXVII. FINAL JUDGMENT

A. Entry of this Consent Decree constitutes Final Judgment under Rule 54 of the Federal Rules of Civil Procedure.

XXVIII. WAIVER OF SERVICE OF SUMMONS AND COMPLAINT

A. The City hereby acknowledges receipt of the Complaint and waives service of the summons pursuant to Rule 4 of the Federal Rules of Civil Procedure.

XXIX. PUBLIC COMMENT

A. This Consent Decree shall be lodged with the Court for a period of not less than 30 days, for public notice and comment in accordance with the provisions of 28 C.F.R. § 50.7. Plaintiffs reserve the right to withdraw or withhold their consent if the comments received disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper or inadequate. Defendant hereby agrees not to withdraw from, oppose entry of, or to challenge any provision of this Consent Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Consent Decree.

XXX. APPENDICES

A. The following appendices are attached to and incorporated into this Consent Decree:

1. "Appendix A" is the NPDES Permit No. CT0100714.
2. "Appendix B" is the "CMOM Program Self-Assessment Checklist."
3. "Appendix C" is the December 29, 2006 letter and attachment from Mayor Mark A. Lauretti, Mayor, Shelton, Connecticut, to Mike Fedak, EPA regarding "Sanitary Sewer Collection System Improvements, I/I Program Implementation Approach."
4. "Appendix D" are Tables VI-4 and VI-5 of the Goodkind & O'Dea, Inc. April 1998 Infiltration/Inflow Analysis and Sewer System Evaluation Survey.

5. "Appendix E" is the SSO Report Form.

6. "Appendix F" is the Dewberry-Goodkind, Inc. March 2003

Infiltration/Inflow Analysis and Sewer System Evaluation Survey.

Judgment is hereby entered in accordance with the foregoing Consent Decree this _____
day of _____ 2008.

UNITED STATES DISTRICT JUDGE

United States and State of Connecticut v. The City of Shelton, Connecticut
United States District Court
District of Connecticut
Consent Decree

The following Parties hereby consent to the entry of this Consent Decree:

For Plaintiff UNITED STATES OF AMERICA

RONALD J. TENPAS
Assistant Attorney General
Environment & Natural Resources Division
United States Department of Justice

31 May 2008
DATE

Katherine M. Kane
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
P.O. Box 7611 , Ben Franklin Station
Washington, D.C. 20044-7611
(202)514-0414

6 June 2008
DATE

United States and State of Connecticut v. The City of Shelton, Connecticut
United States District Court
District of Connecticut
Consent Decree

NORA R. DANNEHY
Acting United States Attorney
District of Connecticut

Lisa E. Perkins
Assistant United States Attorney
U.S. Attorney's Office
Hartford Office
450 Main Street, Room 328
Hartford, Connecticut 06103
Tel.: (860) 947-1101
Fed. Bar No. CT23164
lisa.perkins@usdoj.gov

DATE

United States and State of Connecticut v. The City of Shelton, Connecticut
United States District Court
District of Connecticut
Consent Decree

For the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Walker B. Smith
Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

4.25.08
DATE

United States and State of Connecticut v. The City of Shelton, Connecticut
United States District Court
District of Connecticut
Consent Decree

For the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Susan Studlien
Director, Office of Environmental Stewardship
United States Environmental Protection Agency,
Region I
One Congress Street
Boston, MA 02114

04/23/08
DATE

United States and State of Connecticut v. The City of Shelton, Connecticut
United States District Court
District of Connecticut
Consent Decree

For Plaintiff STATE OF CONNECTICUT
RICHARD BLUMENTHAL
ATTORNEY GENERAL

b:
John M. Looney
Assistant Attorney General
55 Elm St.
Hartford, CT 06106

0 - 4-25-2008
DATE

United States and State of Connecticut v. The City of Shelton, Connecticut
United States District Court
District of Connecticut
Consent Decree

For Defendant, The City of Shelton, CONNECTICUT

Hon. Mark Lauretti, Mayor
City of Shelton, Connecticut
54 Hill Street
Shelton, CT 06484

4.22.08

DATE