

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
ENTERED

SEP 22 2000

Michael N. Milby
Clerk of Court

UNITED STATES OF AMERICA and the)
STATE OF TEXAS)

Plaintiffs,)

v.)

CIVIL ACTION NO. H-00-1931

HARRIS COUNTY MUNICIPAL UTILITY)
DISTRICT NUMBER 50,)

Defendant.)

CONSENT DECREE

WHEREAS, Plaintiffs, the United States of America ("United States"), 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 United States Environmental Protection Agency ("EPA"), and the State of Texas (the "State") have filed the Complaint in this action seeking injunctive relief and civil penalties pursuant to Section 309 of the Clean Water Act, 33 U.S.C. § 1319 and Texas Water Code § 7.105, naming as Defendant the Harris County Municipal Utility District Number 50 ("HCMUD50");

WHEREAS, HCMUD50 operates a publicly owned treatment works ("POTW") that serves citizens of Harris County, Texas;

WHEREAS, the United States and the State of Texas allege that HCMUD50 has violated and continues to violate Section 301 of the Clean Water Act, 33 U.S.C. § 1311 and Section 26.121 of the Texas Water Code by: (1) discharging pollutants from its treatment facilities into Ricketts Gully (via pipeline) thence to San Jacinto River without a permit issued

12

pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342; (2) discharging untreated sewage from its sewage collection system without a permit issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342; (3) discharging sewage into or adjacent to the waters in the State of Texas without authorization; and (4) failing to comply with Administrative Orders issued pursuant to Section 309(a), which incorporate previously permitted effluent limits;

WHEREAS, the parties recognize that this Decree is a settlement of a contested matter and that participation in the settlement does not constitute or represent any admission of law or fact by any party; and

WHEREAS, the parties agree, and the Court finds, that settlement of the claims alleged in the Complaint, without further litigation or trial of any issues, is in the public interest and that the entry of this Consent Decree is the most appropriate way of resolving the claims alleged in the Complaint.

NOW THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I.
JURISDICTION

1. This Court has jurisdiction over the subject matter of this action and over the parties to this action pursuant to Section 309(b) and 309(e) of the Clean Water Act, 33 U.S.C. § 1319(b); and 28 U.S.C. §§ 1331, 1345, 1355. The Complaint states claims under Section 309 of the Clean Water Act, 33 U.S.C. § 1319 and Texas Water Code § 7.105 upon which relief may be granted for injunctive relief and civil penalties. The Defendant waives any and all objections that it might have to the Court's jurisdiction to enter and enforce this Consent Decree. Authority

to bring this action is vested in the United States Department of Justice pursuant to Section 506 of the Clean Water Act, 33 U.S.C. § 1366 and 28 U.S.C. §§ 516 and 519, and the Attorney General of the State of Texas, pursuant to Section 7.105 of the Texas Water Code..

II.
VENUE

2. Venue is proper in this Court pursuant to Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b) and 28 U.S.C. §§ 1391(b) and 1395(a).

III.
PARTIES

3. Plaintiffs are the United States of America ("United States") and the State of Texas ("The State").

4. The State is a plaintiff pursuant to Sections 7.105 and 7.032 of the Texas Water Code and is also a necessary party under Section 309(e) of the Clean Water Act, 33 U.S.C. § 1319(e).

5. Defendant, the Harris County Municipal Utility District Number 50 ("HCMUD50") is a "municipality" as defined in Section 502(4) of the Clean Water Act, 33 U.S.C. § 1362(4).

6. HCMUD50 is a "person" within the meaning of Section 502(5) of the Clean Water Act, 33 U.S.C. § 1362(5).

IV.
BINDING EFFECT

7. The provisions of this Consent Decree apply to and are binding on the Defendant, its officers, directors, employees, agents, servants, successors and assigns, and all

persons, firms and corporations in active concert or participation with Defendant or Defendant's officers, directors, agents, employees, successors and assigns, and upon the United States and the State of Texas.

8. Upon transfer of ownership, operation, or other interest in the POTW, HCMUD50 shall provide a copy of this Consent Decree to any successor in interest. HCMUD50 shall notify EPA, the United States Department of Justice, and the State of Texas in writing of any successor in interest at least twenty-one (21) days before any such transfer.

9. HCMUD50 shall provide a copy of this Consent Decree to each engineering, consulting and contracting firm retained to perform any work required by this Consent Decree.

V. DEFINITIONS

10. 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 that Act.

11. The following terms used in this Consent Decree shall be defined as follows:

a. "Calendar quarter" shall mean a three month period ending on March 31st, June 30th, September 30th, or December 31st.

b. The terms "day" or "days" as used herein shall mean a calendar day or calendar days. When the day a report or other deliverable is due under this Consent Decree falls on a Saturday, Sunday or a legal holiday as set forth in Federal Rule of Civil Procedure 6,

Defendant shall have until the next calendar day that is not one of the aforementioned days for submittal of such report or other deliverable.

- c. "HCMUD50" shall mean the Harris County Municipal Utility District Number 50.
- d. "TNRCC" shall mean the Texas Natural Resource Conservation Commission.
- e. "Collection system" shall mean the sewage collection and transmission system (including all pipes, force mains, gravity sewer lines, lift stations, pump stations, manholes, and appurtenances thereto) operated by HCMUD50.
- f. "Consent Decree" shall mean this Consent Decree.
- g. "Cross Connection" shall mean any physical connection between any part of the collection system and any part of a drainage system, whether valved or not valved, and whether or not such physical connection is now known to HCMUD50.
- h. "Date of Entry" shall mean the date this Consent Decree is approved and signed by a United States District Court Judge for the Southern District of Texas.
- i. "Date of Lodging" shall mean the date this Consent Decree is received for lodging by the Clerk of the Court.
- j. "Drainage system" shall mean pipes, conduits, channels, storm water pump stations, canals and other appurtenances designed for and used for conveying storm water runoff, surface water runoff, and other drainage water.
- k. "The treatment plant" shall mean the Barrett Station Wastewater Treatment Facility located at 922 Magnolia Street, approximately one mile south of U.S.

Highway 90 and one-half miles west of Elm Street in Barrett Station in Harris County, Texas, and all components of such sewage treatment plant.

l. "Non-Compliant Discharge" shall mean any discharge of wastewater from outfall 001 referred to in expired Permit TX0057053 and TNRCC WQ Permit No. 11770-001 that is not in compliance with conditions in the Administrative Orders issued under Section 309(a) of the Clean Water Act or TNRCC WQ Permit No. 11770-001. To the extent that the permits differ, the more stringent requirements shall be used for identifying "Non-Compliant Discharges."

m. "Paragraph" shall mean a portion of this Consent Decree identified by Arabic numerals. "Sub-paragraph" shall mean a portion of a paragraph identified by lower case letters.

n. "Permit No. TX0057053" shall mean the National Pollutant Discharge Elimination System ("NPDES") permit number TX0057053 issued to HCMUD50 on July 24, 1987, pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342, for the Treatment Plant and any future, extended, modified or reissued permit. Said permit expired on August 5, 1991.

o. "Outfall 001" shall mean the outfall so designated and described in Permit No. TX0057053.

p. "RMAP" shall mean a Remedial Measures Action Plan consistent with this Consent Decree.

q. "Section" shall mean a portion of this Consent Decree identified by Roman numerals.

r. "Unauthorized Discharge" shall mean any release of wastewater from any point in the Collection System, whether or not said release reaches Waters of the United States.

s. "Qualified Consultant" shall mean a professional engineer licensed in the State of Texas with appropriate experience and adequate staff and resources necessary to undertake any program, plan, study or report required by the terms of this Consent Decree for compliance with the applicable provisions of the Clean Water Act.

t. "TNRCC WQ Permit No. 11770-001" shall mean the TNRCC permit or authorization for HCMUD50 to discharge wastes from the Barrett Station Wastewater Treatment Facility under provisions of Chapter 26 of the Texas Water Code.

VI.

DESIGNATION OF A QUALIFIED CONSULTANT

12. HCMUD50 shall use a qualified consultant to perform all requirements of this Consent Decree and notify EPA and TNRCC of any change of the qualified consultant used.

VII.

REMEDIAL MEASURES: CROSS CONNECTIONS

13. No later than forty-five (45) days after entry of the Consent Decree, HCMUD50 shall certify that it has conducted a thorough inspection of all known cross connections and has permanently closed or eliminated all such connections.

14. If HCMUD50 identifies any cross connection after forty-five (45) days after entry of the Consent Decree, it shall permanently seal or eliminate such cross connection within thirty (30) days of identification.

VIII.

REMEDIAL MEASURES: PREVENTATIVE MAINTENANCE PROGRAM

15. No later than sixty (60) days after entry of the Consent Decree, HCMUD50 shall develop and submit a Preventive Maintenance Program to EPA for approval. The Preventive Maintenance Program shall be designed to ensure proper operation and maintenance of the collection system and treatment facility, on a day-to-day basis, in compliance with the Clean Water Act, Permit No. TX0057053, the Texas Water Code and the TNRCC WQ Permit No. 11770-001. The Preventive Maintenance Program shall include, at a minimum, (1) physical inspection and testing procedures for the collection system, (2) preventive and routine maintenance schedules and procedures, (3) corrective maintenance, (4) current staffing, organization, and resource commitments, (5) a tracking system for all maintenance activities, and (6) an implementation schedule. Upon approval by EPA, HCMUD50 shall comply with the Preventive Maintenance Program in accordance with the procedures and schedules therein.

IX.

REMEDIAL MEASURES: SEWER OVERFLOW ACTION PLAN

16. No later than sixty (60) days after entry of the Consent Decree, HCMUD50 shall develop and submit a Sewer Overflow Action Plan to EPA for approval. The Sewer Overflow Action Plan shall be designed to ensure that, should an unauthorized discharge 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 response plan shall

include, at a minimum, (1) procedures and public notice requirements to limit public access to and contact with areas affected by an unauthorized discharge; (2) procedures to comply with Section 26.039 of the Texas Water Code and any implementing regulations; (3) procedures to provide timely notice to EPA and TNRCC pursuant to paragraph 26, 27, and 28; (4) a program to ensure the rapid dispatch of personnel and equipment to correct or repair the condition causing or contributing to any unauthorized discharge; (5) a program to ensure the preparedness, including responsiveness training, of the HCMUD50's employees and contractors necessary for the effective implementation of the Sewer Overflow Action; (6) an investigative approach to determine the cause(s) of an unauthorized discharge; and (7) an implementation schedule. Upon approval by EPA, HCMUD50 shall comply with the Sewer Overflow Action Plan in accordance with the procedures and schedules therein.

X.
REMEDIAL MEASURES: COMPREHENSIVE COLLECTION SYSTEM REMEDIAL PROGRAM

17. Nothing in this Consent Decree shall be construed as an authorization for any discharge not in accordance with the Clean Water Act, Permit No. TX0057053, the Texas Water Code, and TNRCC WQ Permit No. 11770-001.

18. No later than one (1) year after entry of the Consent Decree, HCMUD50 shall submit to EPA for approval a completed Sanitary Sewer Evaluation Study ("SSES"). HCMUD50 shall carry out the SSES in accordance with industry standards, including at a minimum, (1) identification and quantification of the sources of infiltration and inflow, (2) collection system modeling and capacity assessment, (3) inspection of all manholes, and (4)

smoke testing and video examination of interceptors and mains.

19. Pursuant to the requirements of Section XIII, forty-five (45) days after EPA approval of the SSES, HCMUD50 shall submit to EPA for approval a Remedial Measures Action Plan (“RMAP”) for the collection system. The RMAP shall set out specific remedial measures and schedules for completion of measures that will eliminate unauthorized discharges, minimize inflow and infiltration, and ensure that the collection system has adequate capacity to convey peak flows to the treatment plant. The RMAP shall also give an estimate of the costs to be committed to the proposed remedial measures and the sources of funding to be used.

20. The RMAP for the collection system shall include the following milestones within the proposed schedules: (1) completion of design for remedial measures identified in the RMAP, (2) awarding of a contract to implement the RMAP; (3) begin construction; and (4) end construction.

21. No later than fifteen (15) days following a milestone date or completion of a milestone under the RMAP, HCMUD50 shall submit to EPA a written statement indicating whether or not compliance with the milestone date was achieved, and if not include an explanation.

22. Without limiting the United States’ or the State’s other remedies for noncompliance with this Consent Decree, should HCMUD50 fail to meet any milestone date specified in the approved RMAP schedule and fail to complete the required work within thirty (30) days, HCMUD50 shall not thereafter make any new hook-up, connection, or extension to its sewage system until HCMUD50 has certified to EPA that it has completed the required work and is otherwise in compliance with the RMAP schedule.

23. HCMUD50 shall implement the schedules in the RMAP. The schedules in the RMAP shall be completed no later than April 1, 2005.

XI.
REMEDIAL MEASURES: TREATMENT FACILITY ASSESSMENT

24. No later than 60 days after the entry of this Consent Decree, HCMUD50 shall submit to EPA for approval an engineering assessment of the treatment capabilities of the existing wastewater treatment facility. This assessment shall, at a minimum, analyze (1) the hydraulic and organic design capacity and current and projected loading of the facility, including peak and low flows; and (2) the ability of the plant to meet effluent limitations required by Permit No. TX0057053 and TNRCC WQ Permit No. 11770-001.

25. The assessment shall include a schedule for improving and/or expanding the existing facility and to ensure proper operation and maintenance of the facility in order to attain and maintain compliance with Permit No. TX0057053 and TNRCC WQ Permit No. 11770-001. HCMUD50 shall implement the schedules within the assessment. The schedules within the assessment shall be completed no later than April 1, 2005.

XII.
REPORTING

26. Beginning with the first quarter following entry of this Consent Decree, and each quarter thereafter until termination of the Consent Decree, HCMUD50 shall submit in writing to EPA and TNRCC a *Quarterly Report* on the fifteenth day of January, April, July and

October, for calendar quarters ending December 31, March 31, June 30 and September 30, containing a summary of compliance with and activities related to:

- a. Retained cross connections that were inspected and closed during the preceding quarter in accordance with Paragraph 13 above, and the location of any new cross connections discovered during the quarter, together with a description of what was done to seal or eliminate them as set forth in Paragraph 14.
- b. implementation of the Preventive Maintenance Program as set forth in Section VIII;
- c. progress of an SSES as set forth in Section X;
- d. implementation of the RMAP as set forth in Section X;
- e. implementation of treatment plant assessment as set forth in Section XI.

27. No later than the fifteenth day of each month, HCMUD50 shall submit to EPA and TNRCC a summary report of all unauthorized discharges which occurred during the previous calendar month. HCMUD50 shall report to EPA and TNRCC within 24 hours, in writing via fax or email, any unauthorized discharge which may endanger public health or the environment. All reports under this paragraph shall contain the following information:

- a. The specific (and general) location of the unauthorized discharge (i.e. street address or geographic area);
- b. The estimated duration of the discharge (including the beginning and end dates and times);

- c. An estimate of the volume discharged;
- d. The specific cause(s) of the discharge;
- e. Any and all measures taken by HCMUD50 to minimize the duration and/or impacts of the discharge, including compliance information under an approved Sewer Overflow Action Plan required under Section IX;
- f. The specific measures taken to eliminate the discharge;
- g. The specific measures HCMUD50 intends to use to prevent recurrence of the discharge; and
- h. The date and time a repair crew arrived on-site.

28. All reports required to be submitted in this Section shall contain a certification signed by a board member of HCMUD50. The certification shall read as follows:

"I certify that the information contained in or accompanying this (submission/document) is true, accurate and complete. As to (the/those) identified portion(s) of this (submission/document) for which I cannot personally verify (its/their) truth and accuracy, I certify as the official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this is true, accurate and complete."

XIII.

APPROVAL OF STUDIES AND IMPLEMENTATION PLANS.

29. HCMUD50 shall submit two copies of any document requiring EPA approval to EPA and TNRCC at the addresses listed in paragraph 72 of this Consent Decree. Within 60 days of any such submission, EPA shall, after consultation with TNRCC, either approve or disapprove the submission in writing. If EPA disapproves any submission, it shall (1) modify the plan and approve the plan as modified or (2) provide written comments to

HCMUD50 and, where appropriate, identify changes or additional information necessary to make the submission approvable. If EPA or TNRCC provides comments, HCMUD50 shall make the necessary changes to address EPA's and TNRCC's concerns and/or provide the additional information necessary to support the submission, within 30 days of receipt of such comments.

30. Should EPA and TNRCC fail to notify HCMUD50 of their approval or disapproval of any submission within sixty 60 days after each has received the submission, the completion dates for each milestone in the submission, once approved, shall be deemed extended by the number of days beyond 60 that EPA took for such approval or disapproval.

XIV. CIVIL PENALTY

31. HCMUD50 shall pay to the United States a civil penalty in the amount of Five Thousand Dollars (\$5,000.00) in settlement of the claims alleged in the Complaint.

32. HCMUD50 shall pay to the State of Texas a civil penalty in the amount of Five Thousand Dollars (\$5,000.00) in settlement of the claims alleged in the Complaint.

33. The first installment payment to the United States shall be made within 30 days after the date of entry of this Consent Decree and shall be in the amount of Two Thousand and Five Hundred Dollars (\$2,500.00).

34. The first installment payment to the State of Texas shall be made within 30 days after the date of entry of this Consent Decree and shall be in the amount of Two Thousand and Five Hundred Dollars (\$2,500.00).

35. A second installment payment to the United States in the amount of Two Thousand and Five Hundred Dollars (\$2,500), plus interest as calculated under Section XVI,

shall be due no later than the last day of the twelfth (12th) month following the entry of this Consent Decree.

36. A second installment payment to the State of Texas in the amount of Two Thousand and Five Hundred Dollars (\$2,500), plus interest as calculated under Section XVI, shall be due no later than the last day of the twelfth (12th) month following the entry of this Consent Decree.

37. HCMUD50 may prepay the balance due on the civil penalty without penalty.

38. Nothing in the Consent Decree is intended to, nor shall be construed to, operate in any way to resolve any civil claims other than those set forth in the Complaint or any criminal liability of HCMUD50.

XV.
STIPULATED PENALTIES

39. Subject to the Force Majeure and Dispute Resolution provision of this Consent Decree, HCMUD50 shall pay stipulated penalties to the United States for each failure to comply with any term or condition of this Consent Decree, including but not limited to, the requirements set forth in Sections "VII", "VIII", "IX", "X", "XI", "XII", "XIV", and the final 2005 milestone to complete the RMAP. Any stipulated penalties paid pursuant to this Section shall be in addition to the civil penalty to be paid by HCMUD50 pursuant to Section "XIV". HCMUD50 shall pay the following amounts per day for each violation:

<u>Period of Failure to Comply</u>	<u>Penalty Per Violation Per Day</u>
1 st through 14 th day	\$500.00
15 th through 44 th day	\$1,000.00
45 th day and beyond	\$1,500.000

40. For a Non-Compliant Discharge or for violations of any monitoring and reporting requirement in Permit No. TX 0051053 or TNRCC WQ Permit No. 11770-001, HCMUD50 shall pay stipulated penalties in accordance with the table below. Violations are calculated separately for each parameter.

<u>Permit Violation</u>	<u>Penalty Per Violation</u>
Exceedance(s) of the daily maximum limit or other non-monthly average limit	\$500.00
Exceedance(s) of monthly average limits	\$1,000.00
Failure to comply with a Monitoring and Reporting Requirement	\$250.00

41. For each day that HCMUD50 has an unauthorized discharge, HCMUD50 shall pay a stipulated penalty of \$500.00.

42. HCMUD50 shall pay 50 percent of each stipulated penalty to the United States and 50 percent to the State of Texas. The provisions of Sections "XVI", "XVII", and "XVIII" shall apply to payments of stipulated penalties due to the United States and the State of Texas.

43. All stipulated penalties owed to the United States and the State of Texas under this Section shall be due and payable within thirty (30) days of HCMUD50's receipt from EPA or TNRCC of a demand for payment of the penalties, unless HCMUD50 invokes the dispute resolution procedures under Section "XX". During the pendency of any dispute resolution pursuant to Section "XX" of this Consent Decree, HCMUD50's obligation to pay stipulated penalties shall be stayed. All stipulated penalties, however, shall continue to accrue through the dispute resolution period. If HCMUD50's position is upheld in any dispute resolution pursuant to Section "XX" of this Consent Decree, and HCMUD50 is found not to have violated the requirements of this Consent Decree, it shall have no liability to pay stipulated penalties or other sanctions with regard to the matter submitted for dispute resolution. If the United States' position is upheld in any dispute resolution and HCMUD50 is found to have violated the requirements of this Consent Decree, payment of the stipulated penalties shall be made within thirty (30) days of the resolution of the dispute.

44. HCMUD50 shall notify the Department of Justice, EPA, and TNRCC in writing as soon as reasonably practicable, but no later than fifteen (15) calendar days after the occurrences of any violation of the Consent Decree to which stipulated penalties apply.

45. The United States and the State of Texas reserve the right to demand payment of stipulated penalties upon an independent determination by the United States that a violation of this Consent Decree has occurred. The United States or the State of Texas shall notify HCMUD50 in writing of violations of this Consent Decree that have been independently identified, and the amount of the penalty due.

46. All stipulated penalties begin to accrue on the day a violation of the Consent Decree occurs, and continue to accrue through the final day of the correction of the noncompliance. Nothing herein shall preclude the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Decree nor limit or preclude any other remedy.

XVI.
INTEREST

47. Interest on any outstanding balance of principal, shall accrue from the 31st day after the date of entry of this Consent Decree through the date of full and complete payment of the second installment payment.

48. The interest rate shall be the statutory judgment interest rate calculated in accordance with 28 U.S.C. Section 1961.

49. HCMUD50 shall submit a statement with the payment to the Financial Litigation Unit of the United States Attorney's Office for the Southern District of Texas, P.O. Box 61129, Houston, Texas 77208, setting forth the calculation of interest. If necessary, personnel from the United State Attorney's Office Financial Litigation Unit will advise HCMUD50 should HCMUD50's calculation require adjustment.

XVII.
DEFAULT

50. If HCMUD50 fails to timely pay the civil penalty under Section XIV or a stipulated penalty under Section XV, this Consent Decree shall be considered an enforceable judgment against HCMUD50 for purposes of post-judgment collection under Federal Rule 69, Federal Rules of Civil Procedure, and other applicable statutory authority without further order of

this Court.

XVIII.
PAYMENT AND NOTICE OF PAYMENT

51. All payments made to the United States under this Consent Decree shall be paid by cashier's or certified check made payable to the "Treasurer, United States of America". The payment shall be tendered to the *Office of the United States Attorney, Southern District of Texas, P.O. Box 61129, Houston, TX 77208, Attention: Financial Litigation Unit*. Copies of the check and transmittal letter shall reference the Department of Justice case number, 90-5-1-1-4505, and shall simultaneously be mailed to the following persons:

Chief, Water Enforcement Branch (6EN-W)
Compliance Assurance and Enforcement Division
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Chief, Water/RCRA Enforcement Branch (6RC-EW)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

52. All payments made to the State of Texas under this Consent Decree shall be made by certified cashier's check bearing the number AG#99-1113051 and made payable to the "State of Texas." The check shall be mailed to the *Chief, Natural Resources Division, Office of the Attorney General Office, P.O. Box 12548, Austin, Texas 78711*. Copies of the check and

transmittal letter shall reference the Attorney General's case number, AG#99-1113051, and shall simultaneously be mailed to the following persons:

Manager, Enforcement Section 3, Enforcement Division
Texas Natural Resource Conservation Commission,
MC 149
P.O. Box 13087
Austin, Texas 78711-3087

XIX.
FORCE MAJEURE

53. "Force majeure," for purposes of this Consent Decree is defined as any event arising from causes solely beyond the control of HCMUD50, its contractors and subcontractors that delays or prevents the performance of any obligation under this Consent Decree despite HCMUD50's best efforts to fulfill the obligation. The requirement that HCMUD50 exercise "best efforts to fulfill the obligation" includes using best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the extent possible. "Force Majeure" does not include financial inability to complete required work or increased cost of required work.

54. Stipulated penalties shall not be due for the number of days of noncompliance determined by EPA and TNRCC to have been caused by a force majeure event.

55. If any event, whether or not a force majeure event, occurs that may delay the performance of any obligation under this Consent Decree, HCMUD50 shall notify EPA and TNRCC in writing within five (5) days of when HCMUD50 first knew or should have known

that the event would cause a delay. HCMUD50's written notification shall include an explanation and description of the cause(s) of any actual or expected delay; the anticipated duration of the delay; the measures taken or to be taken by HCMUD50 to prevent or minimize the delay; a proposed schedule for implementation of any such; and HCMUD50's rationale for attributing such delay to a force majeure event if it intends to assert such a claim. HCMUD50 shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude HCMUD50 from asserting any claim of force majeure for that event.

56. If EPA and TNRCC agree 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 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. If either EPA or TNRCC does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, it will, within 60 days, notify HCMUD50 in writing of its decision. If either EPA or TNRCC agrees that the delay is attributable to a force majeure event, it will notify HCMUD50 in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

57. In any proceeding concerning the applicability of the force majeure provisions of this Section, HCMUD50 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 HCMUD50 complied with the requirements of Paragraph 55. If HCMUD50 carries this burden, the delay at issue shall be deemed not to be a violation by HCMUD50 of the affected obligation of this Consent Decree.

XX.

RETENTION OF JURISDICTION/DISPUTE RESOLUTION

58. This Court shall retain jurisdiction of this matter for the purposes of implementing and enforcing the terms and conditions of this Consent Decree and for the purpose of adjudicating all disputes among the parties that may arise under the provisions of this Consent Decree.

59. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedure of this Section shall be the exclusive mechanism to resolve disputes arising with respect to the imposition or amount of Stipulated Penalties under Section XV of this Consent Decree.

60. Any dispute between the United States or the State and HCMUD50 arising under or concerning this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to this Decree for a period of fifteen (15) days from the time one party serves upon another a written Notice of Dispute. The period for negotiations may be extended by written agreement of the parties.

61. Formal dispute resolution shall proceed as follows:
- a. If a dispute between the parties cannot be resolved by informal negotiations under the preceding Paragraph, then the position advanced by EPA or TNRCC shall be considered binding unless, within fifteen (15) calendar working days after the end of the informal negotiations period,

HCMUD50 invokes the formal dispute resolution procedures of this Section by serving on EPA and TNRCC 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 HCMUD50.

- b. Within fourteen (14) calendar days after receipt of HCMUD50's Statement of Position, EPA and/or TNRCC shall serve on HCMUD50 a 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/or TNRCC.
- c. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Paragraph.
- d. EPA Region 6, after consultation with TNRCC, will issue a final administrative decision resolving the dispute based on the administrative record described in the preceding subparagraph. This decision shall be binding upon HCMUD50, subject only to the right to seek judicial review pursuant to the following two subparagraphs.
- e. Any administrative decision made by EPA pursuant to the preceding subparagraph shall be reviewable by the Court provided that a notice of judicial appeal is filed by HCMUD50 with the Court and served on EPA and TNRCC within 30 days of receipt of EPA's decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States or the State of Texas may file a response to HCMUD50's notice of judicial appeal.
- f. In proceedings on any dispute governed by this Paragraph, HCMUD50 shall have the burden of demonstrating that the decision of EPA Region 6 is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to this Paragraph.

62. The invocation of formal dispute resolution procedures under this Section

shall not of itself extend or postpone any obligation of HCMUD50 under this Consent Decree.

XXI.
RIGHT OF ENTRY

63. The United States, the State of Texas, TNRCC and their authorized representatives and contractors shall have authority at all times, upon the presentation of credentials, to enter the premises of Defendant to:

- a. Monitor the progress of activities required by this Consent Decree
- b. Verify any data or information submitted to the United States or TNRCC;
- c. Obtain samples, and, upon request, obtain splits of any samples collected by Defendant or their consultants and contractors;
- d. Observe performance tests;
- e. Inspect and evaluate any portions of the Collection System;
- f. Inspect and evaluate the wastewater treatment facilities; and
- g. Inspect and review any records required to be kept under the terms and conditions of this Consent Decree, Permit No. TX0057053, the Clean Water Act, TNRCC WQ Permit No. 11770-001, and the Texas Water Code.

These inspection rights are in addition to, and in no way limit or otherwise affect, the United States or the State of Texas' statutory authority to conduct inspections, to require monitoring and to obtain information from Defendant as authorized by law.

XXII.
NON-WAIVER PROVISIONS

64. Nothing in this Consent Decree shall be construed to relieve HCMUD50 or its officers, agents, servants, employees, successors, or assigns of their obligation to comply with all applicable Federal, State, and local statutes and regulations.

65. This Consent Decree, or any requirement hereunder, is not and shall not be interpreted to be a Permit, or a modification of an existing Permit, issued pursuant to Section 402 of the CWA, 33. U.S.C. § 1342, or the Texas Water Code, nor shall it in any way relieve HCMUD50 of its obligation to obtain a Permit and comply with the requirements of any Permit or with any other applicable Federal or State, and local statutes and regulations. The pendency or outcome of any proceeding concerning the issuance, re-issuance, or modification of any Permit shall neither affect nor postpone HCMUD50's duties and liabilities as set forth in this Consent Decree.

66. Nothing contained in this Consent Decree shall be construed to prevent or limit the right of the United States or the State of Texas to seek or obtain any other remedy, sanction or relief that may be available to it by virtue of HCMUD50's failure to comply with this Consent Decree, the Clean Water Act, the Texas Water Code, a permit issued to HCMUD50 or any other applicable law or regulation, except for those violations specifically alleged in the Complaint.

67. This Consent Decree does not limit or affect the rights of HCMUD50 or the United States or the State of Texas as against any third party. This Consent Decree does not limit the rights of any entity not a party to this Consent Decree, against HCMUD50.

68. Nothing contained in this Consent Decree shall be construed to limit the authority of the United States to exercise its independent information gathering authority under CWA Section 308, 33 U.S.C. §1318, or under any other federal law or regulation.

XXIII.
FAILURE TO COMPLY

69. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's complete compliance with this Consent Decree will result in compliance with the provisions of the Clean Water Act, 33 U.S.C. §§ 1251 et seq., or the Texas Water Code. Notwithstanding EPA's review or approval of any plans, reports, policies, or procedures formulated pursuant to this Consent Decree, Defendant shall remain solely responsible for any non-compliance with the terms of this Consent Decree, all applicable permits, the Clean Water Act, the Texas Water Code and regulations promulgated pursuant to those Acts. The pendency or outcome of any proceeding concerning issuance, reissuance, or modification of any permit shall neither affect nor postpone Defendant's duties and obligations as set forth in this Consent Decree.

XXIV.
COSTS OF SUIT

70. Each party shall bear its own costs and attorney's fees with respect to matters resolved by this Consent Decree. Should Defendant subsequently be determined by the Court to have violated the terms and conditions of this Consent Decree, Defendant shall be liable to the United States or the State of Texas for any costs and attorney's fees incurred by the United States or the State of Texas in such actions against Defendant for non-compliance with this Consent Decree.

XXV.
RECORD KEEPING

71. Defendant shall maintain copies of any underlying research and data in its possession, custody or control for any and all documents, reports, or permits submitted to EPA pursuant to this Consent Decree for a period of three (3) years from date of submission. Defendant shall require any independent contractor operating any portion of the Collection System or the Treatment Plant or implementing any portion of this Consent Decree to also retain such materials for a period of three (3) years from date of submission. Defendant shall submit such supporting documents to EPA and the TNRCC upon request.

XXVI.
FORM OF NOTICE

72. Unless otherwise specified, notices, or any other written communications required to be submitted under this Consent Decree shall be sent to the respective parties at the following addresses:

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
1425 New York Avenue, N.W.
Washington, D.C. 20005
Reference DOJ Case No. 90-5-1-1-4505

As to EPA:

Chief, Water Enforcement Branch (6EN-W)
Compliance Assurance and Enforcement Division
U.S. Environmental Protection Agency, Region VI
1445 Ross Avenue
Dallas, Texas 75202-2733

Chief, Water/RCRA Enforcement Branch (6RC-EW)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region VI
1445 Ross Avenue
Dallas, Texas 75202-2733

As to the State of Texas:

Office of the Attorney General
Natural Resource Division
P.O. Box 12548
Austin, Texas 78711
Reference Case Number AG#99-1113051

Manager, Enforcement Section 3, Enforcement Division
Texas Natural Resource Conservation Commission, MC 149
P.O. Box 13087
Austin, Texas 78711-3087

As to HCMUD50:

Harris County Municipal Utility District Number 50
Attention: District Manager
P.O. Box 3529
Crosby, Texas 77532

Notifications to or communications with EPA, TNRCC, or the United States Department of Justice ("DOJ"), if received, shall be deemed submitted on the date they are postmarked and sent by certified mail, return receipt requested or, when sent by non-postal delivery, the date of pickup provided same is for next day delivery to the persons and addresses set forth in this paragraph.

73. Through written communication, the parties may change the persons to be notified listed in paragraph 72.

XXVII.
MODIFICATION

74. This Consent Decree contains the entire agreement of the parties. The Consent Decree may be modified by written consent of all of the parties or, if the parties cannot agree, by written Order of this Court. Any modification of this Consent Decree by the parties shall be in writing and filed with the Court before it will be deemed effective.

XXVIII.
CONTINGENT LIABILITY OF STATE OF TEXAS

75. This Consent Decree does not resolve any contingent liability of the State of Texas under Section 309(e) of the Act, 33 U.S.C. § 1319(e). The United States specifically reserves its claims against the State, and the State specifically reserves all its defenses.

XXIX.
PUBLIC COMMENT AND ENTRY

76. The parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the requirements of 28 C.F.R. § 50.7 and Section 7.110 of the Texas Water Code, which provide for notice of the lodging of this Consent Decree in the Federal Register and Texas Register, an opportunity for public comment, and consideration by the United States and the State of Texas of any comments. The United States and the State of Texas reserve the right to withdraw or withhold its consent if the public comments regarding the Consent Decree discloses facts or considerations which indicate that the Consent Decree is inappropriate, improper or inadequate. HCMUD50 may not withdraw from the Consent Decree during the pendency of the United States and the State of Texas' review of the Decree. HCMUD50 consents to the entry of this Consent Decree without further notice. Further,

HCMUD50 agrees that it will not oppose the entry of this Consent Decree.

XXX.
TERMINATION

77. Subject to Paragraph 78, this Consent Decree shall automatically terminate one year after HCMUD50 has certified to EPA, TNRCC, and the Court that Defendant has complied with Sections "VII", "VIII", "IX", "X", "XI", "XII", "XIV", and has paid all penalties demanded under section "XV".

78. The Consent Decree shall not terminate if, following certification by HCMUD50 of compliance pursuant to Paragraph 77 above, the United States, in consultation with TNRCC, asserts in writing that full compliance has not been achieved. If the United States disputes Defendant's full compliance, this Consent Decree shall remain in effect pending resolution of the dispute by the parties or the Court.

XXXI.
SIGNATORIES

79. The Assistant Attorney General on behalf of the United States, the undersigned representatives of the State of Texas and the Texas Natural Resource Conservation Commission, and the undersigned representatives of Defendant certify that they are fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

CONSENT DECREE among the United States, the State of Texas and
Harris County Municipal Utility District Number 50 in
United States v. Harris County Municipal Utility District Number 50

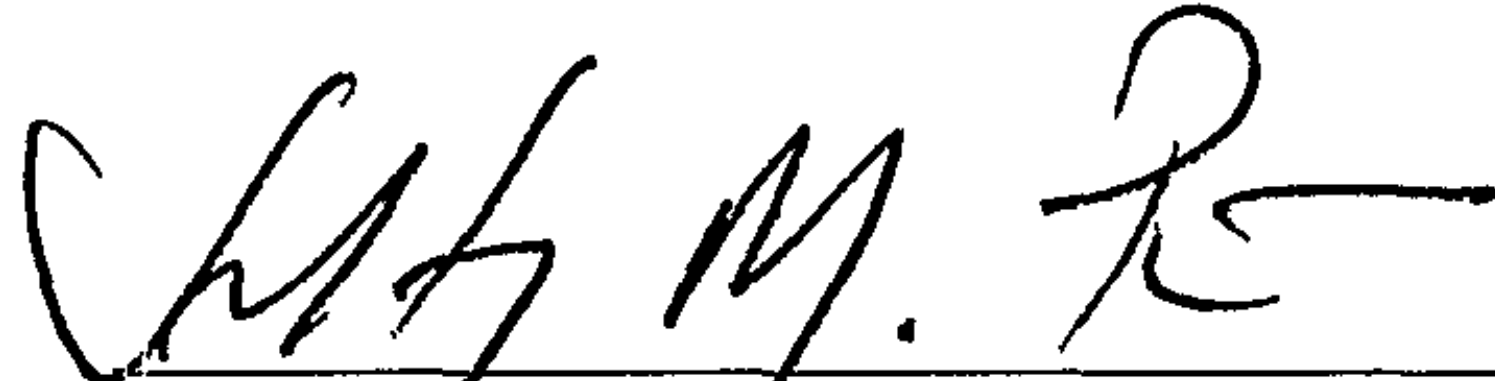
FOR THE UNITED STATES OF AMERICA:

DATE: 7/10/00

By: 

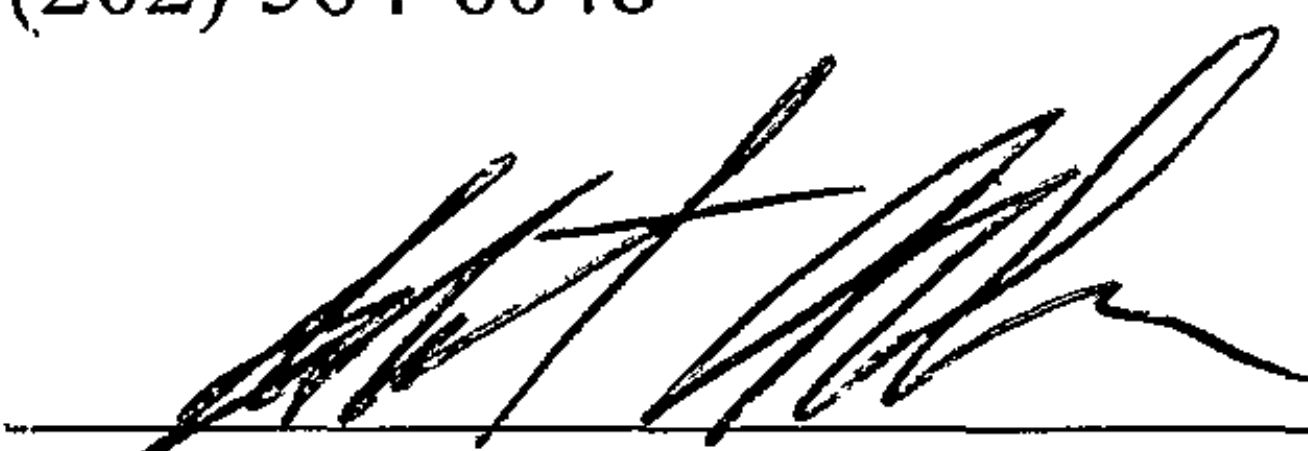
LOIS J. SCHIFFER
Assistant Attorney General
Environmental & Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

DATE: 7/10/00

By: 

JEFFREY M. PRIETO
Trial Attorney
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20530
(202) 564-6048

DATE: 7/10/00

By: 

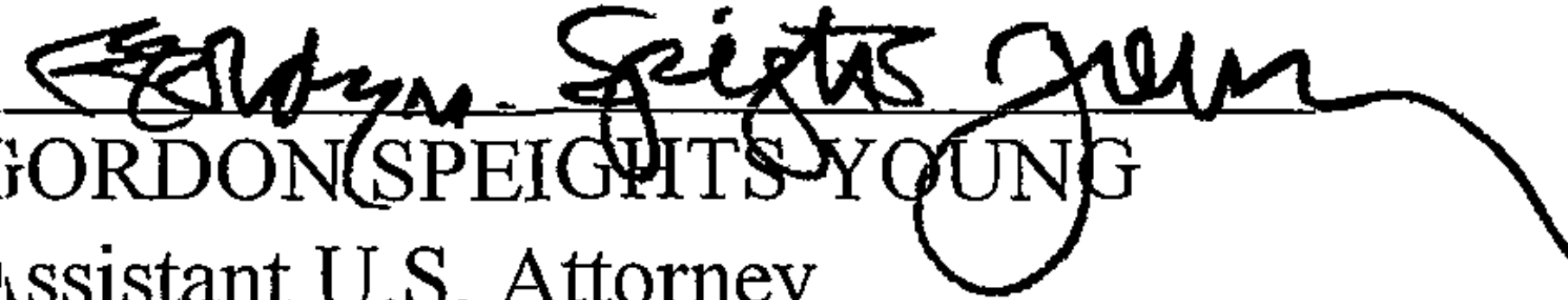
ROBERT MAHER
Senior Attorney
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20530
(202) 514-4241

CONSENT DECREE among the United States, the State of Texas and
Harris County Municipal Utility District Number 50 in
United States v. Harris County Municipal Utility District Number 50

MERVYN M. MOSBACKER
United States Attorney
Southern District of Texas

DATE: July 13, 2000

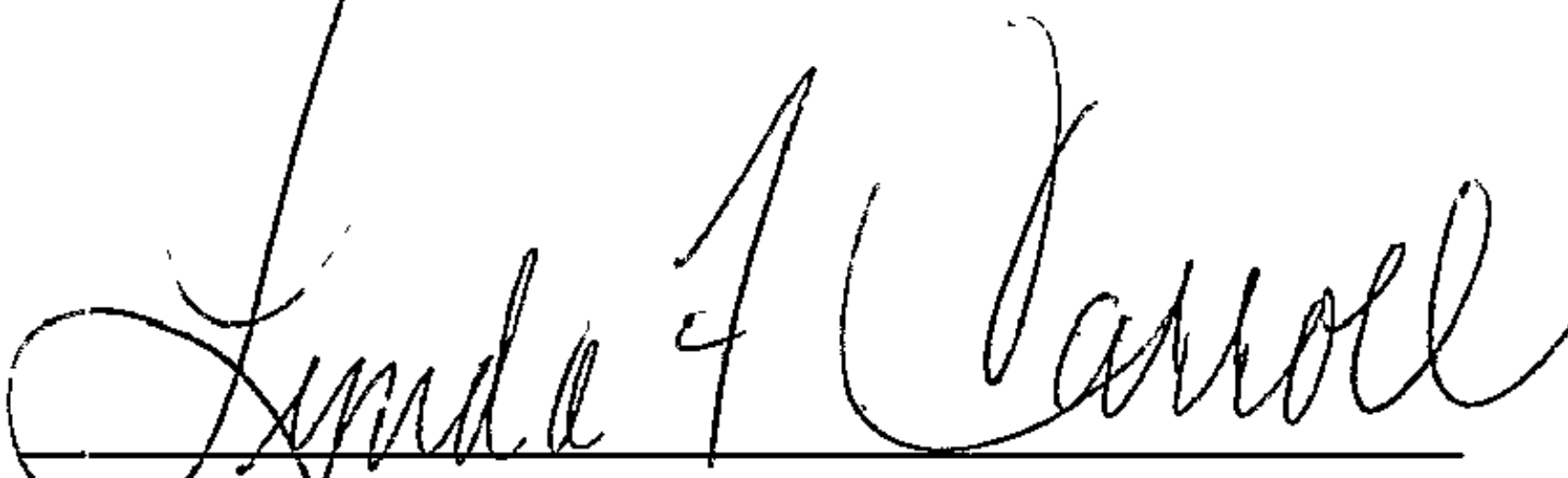
By:


GORDON SPEIGHTS YOUNG
Assistant U.S. Attorney
P.O. Box 61129
Houston, Texas 77208
(713) 569-9501
Facsimile:(713)718-3300

CONSENT DECREE among the United States, the State of Texas and
Harris County Municipal Utility District Number 50 in
United States v. Harris County Municipal Utility District Number 50

DATE: 3-8-00

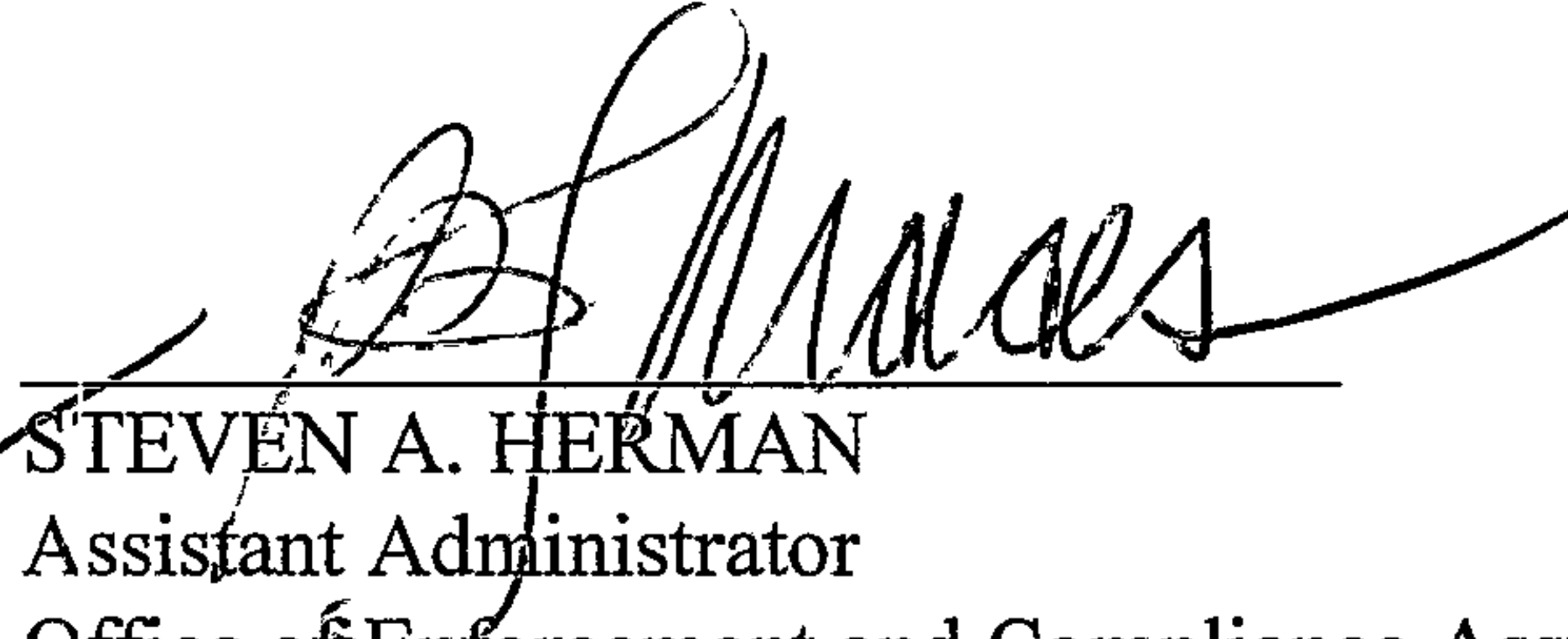
By:



GREGG COOKE
Region Administrator
U.S. Environmental Protection Agency
Region VI
1445 Ross Avenue
Dallas, Texas 75202-2733

DATE: 2/17/00

By:



STEVEN A. HERMAN
Assistant Administrator
Office of Enforcement and Compliance Assurance
401 M Street, S.W.
Washington, D.C. 20460

OF COUNSEL:

Cheryl Boyd
Office of Regional Counsel
U.S. EPA Region VI
1445 Ross Avenue
Dallas, Texas 75202

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401 M Street, SW
Washington, D.C. 20460
(202) 564-4088

CONSENT DECREE among the United States, the State of Texas and
Harris County Municipal Utility District Number 50 in
United States v. Harris County Municipal Utility District Number 50

FOR THE STATE OF TEXAS:

JOHN CORNYN
Attorney General of Texas

ANDY TAYLOR
First Assistant Attorney General

LINDA S. EADS
Deputy Attorney General for Litigation

KAREN W. KORNELL
Assistant Attorney General
Chief, Natural Resources Division

DATE: 6/8/00

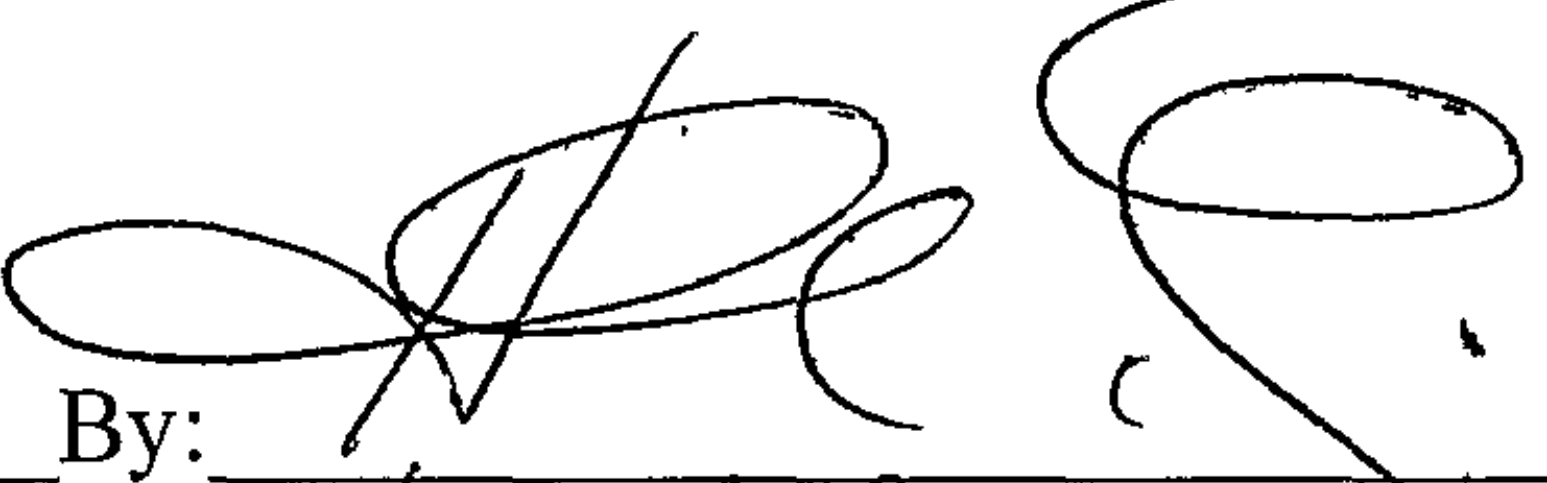
By: Jane E. Atwood
JANE E. ATWOOD
Assistant Attorney General
Texas State Bar No. 00796144
Natural Resources Division
P. O. Box 12548
Austin, Texas 78711-2548
(512) 463-2012
FAX: (512) 320-0052

DATE: 6/8/00

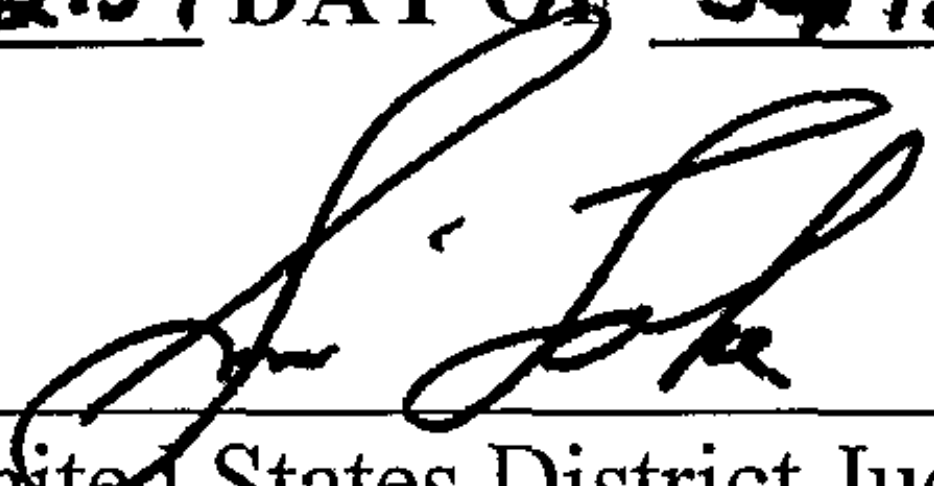
By: [Signature]
DUNCAN NORTON
General Counsel
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

CONSENT DECREE among the United States, the State of Texas and
Harris County Municipal Utility District Number 50 in
United States v. Harris County Municipal Utility District Number 50

FOR THE HARRIS COUNTY MUNICIPAL DISTRICT NUMBER 50:

DATE: 1-17-00 By: 
HUEY P. CARTER, JR.
VICE-PRESIDENT

IT IS SO ORDERED. JUDGMENT ENTERED IN ACCORDANCE WITH THE
FOREGOING CONSENT DECREE, THIS 21st DAY OF September, ~~1999~~ 2000


United States District Judge