

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA)

Plaintiff,)

v.)

JERSEY CITY MUNICIPAL UTILITIES)
AUTHORITY, and THE STATE OF)
NEW JERSEY,)

Defendants.)
_____)

Civil Action No. _____

CONSENT DECREE

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WHEREAS, plaintiff United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), has filed a Complaint in this action concurrently with this Consent Decree alleging that Defendant Jersey City Municipal Utilities Authority (hereinafter "Defendant" or "JCMUA") violated Section 301(a) of the Clean Water Act ("CWA" or the "Act"), 33 U.S.C. Section 1311(a), and the New Jersey Pollutant Discharge Elimination System General Permit for Combined Sewer System ("CSS General Permit") that has been issued to it pursuant to Section 402 of the Act, 33 U.S.C. Section 1342, due to unauthorized, illegal and persistent discharges of pollutants from its Combined Sewer System. The State of New Jersey is a defendant in this action solely for the purposes of Section 309(e) of the Act, 33 U.S.C. § 1319(e).

WHEREAS, the Complaint against Defendant alleges that Defendant has violated the CWA and its CSS General Permit conditions and limitations in a number of ways, including but not limited to, causing dry weather overflows, failing to properly operate and maintain its combined sewer system, failing to prevent tidal intrusion into the collection system, and allowing the discharge of untreated sewage from the collection system onto public and private property located in Jersey City, where people have or could come into contact with the untreated sewage.

WHEREAS, Defendant does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

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

NOW, THEREFORE, with the consent of the Parties, IT IS HEREBY
ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Sections 309(b) and (d) of the CWA, 33 U.S.C. § 1319(b) and (d), and over the Parties. Venue 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 1395, because Defendant resides and is located in this judicial district. For purposes of this Decree, or any action to enforce this Decree, Defendant consents to the Court's jurisdiction over this Decree and any such action stemming from this Decree and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d).

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States, and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

4. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Decree are implemented. At least thirty (30) Days prior to such transfer, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together

with a copy of the proposed written agreement, to EPA Region 2, the United States Attorney for the District of New Jersey, and the United States Department of Justice, in accordance with Section XV of this Decree (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree.

5. Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

6. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. OBJECTIVE

7. The express purpose of the Parties entering into this Consent Decree is for Defendant to fulfill the requirements of the Clean Water Act, the regulations promulgated thereunder, and its CSS General Permit by operating and maintaining its Facility to maximize flow of untreated sewage to the proper treatment facility, as well as, eliminate any dry weather overflows, or discharges of untreated sewage from its Facility onto public and private property.

IV. DEFINITIONS

8. Terms used in this Consent decree that are defined in the CWA or in regulations promulgated pursuant to the CWA shall have the meanings assigned to them in the

CWA or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. "Building/Private Property Backup" shall mean a Sewer Overflow in the form of wastewater release or backup into a building or onto private property that is caused by blockages, flow conditions, or any malfunction in JCMUA's system. A wastewater backup or release, that is caused by blockages, flow conditions, or other malfunctions of a Private Lateral and/or Common Sewer is not a Building/Private Property Backup for purposes of this Decree.

b. "Common Sewer" shall mean a sanitary or combined sewer, which services two or more separately owned buildings and passes through or exists within two or more separately owned properties prior to connecting to the sewer in the public right of way.

c. "Complaint" shall mean the complaint filed by the United States in this action;

d. "Consent Decree" or "Decree" shall mean this Decree *and* all appendices attached hereto;

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

f. "Defendant" shall mean the Jersey City Municipal Utilities Authority ("JCMUA");

g. "Dry Weather Overflow" means a type of combined sewer overflow which is not the direct result of an increase in wastewater flows due to events of precipitation including floods, storm events, and prolonged snow melts;

h. "EPA" shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;

i. "Effective Date" shall have the definition provided in Section XVI.

j. "Facility" shall mean Defendant's Combined Sewer Collection System, which includes: 232 miles of gravity sewers, 3,600 catch basins, 5,800 manholes, 20 combined sewer outfalls, 25 combined sewer regulators, 21 floatable control facilities, 20 netting facilities, 4 interceptor sewers, 11 remote pump stations, and 2 regional pump stations (east and west). Any changes to the Defendant's Combined Sewer Collection System after the Effective Date of this Decree shall also be included in the definition of Facility, and subject to the terms of this Decree.

k. "Paragraph" shall mean a portion of this Decree identified by an arabic numeral;

l. "Parties" to this Consent Decree shall mean the United States and Defendant;

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

n. "Section" shall mean a portion of this Decree identified by a roman numeral;

o. "Sewer Overflow" or "Overflow" shall mean an overflow, spill, diversion, or release of wastewater from the Defendant's sewer collection system. This term shall include: 1) discharges to surface; and 2) any release of wastewater from the sewer collection system to public or private property that does not reach waters of the United States or the State, including Building/Private Property Backups;

p. "State" shall mean the State of New Jersey; and

q. "United States" shall mean the United States of America, acting on behalf of EPA.

V. CIVIL PENALTY

9. Within thirty (30) Days after the Effective Date of this Consent Decree, Defendant shall pay the sum of \$375,000.00 as a civil penalty, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961, as of the date of lodging.

10. Defendant shall pay the civil penalty due by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with written instructions to be provided to Defendant, following entry of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney's Office for the District of New Jersey, Federal Building, Room 701, 970 Broad Street, Newark, NJ 07102-2506. At the time of payment, Defendant shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in

United States v. Jersey City Municipal Utilities Authority, and shall reference the civil action number and DOJ case number 90-5-1-1-09499, to the United States in accordance with Section XV of this Decree (Notices); by email to acctsreceivable.CINWD@epa.gov; and by mail to:

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

11. Defendant shall not deduct any penalties paid under this Decree pursuant to this Section or Section IX (Stipulated Penalties) in calculating its federal or State or local income tax.

VI. COMPLIANCE REQUIREMENTS

12. At all times, Defendant shall comply with Section 301(a) of the CWA, 33 U.S.C. § 1311 (a), as well as the CSS General Permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and any permit Defendant subsequently applies for and obtains, including but not limited to the New Jersey Pollutant Discharge Elimination System permit (“NJPDES permit”).

13. Defendant is undertaking a Combined Sewer System Capacity and Condition Assessment Study (“Capacity and Condition Assessment Study”) to better understand its entire system and to identify actions that need to be undertaken to address flooding and other problems on its system. The Capacity and Condition Assessment Study should enable Defendant to prioritize improvements needed and begin addressing those improvements in an orderly fashion as capital improvement funding becomes available. Defendant has embarked on a phased approach to this Capacity and Condition Assessment Study. Defendant shall complete all phases of the Capacity and Condition Assessment Study no later than April 15, 2015. The

remaining phases of the Capacity and Condition Assessment Study shall be completed according to the following schedule:

Phase of the Capacity Assessment Study	Date Study is to be completed	Date the Report of the Study and Recommendations are to be submitted to EPA
Phase IV (1094 manholes and associated pipes inspected)	No later than January 15, 2012	No later than April 15, 2012
Phase V (1138 manholes inspected and associated pipes inspected)	No later than January 15, 2013	No later than April 15, 2013
Phase VI (1082 manholes inspected and associated pipes inspected)	No later than January 15, 2014	No later than April 15, 2014
Phase VII (1,227 manholes inspected and associated pipes inspected)	No later than January 15, 2015	No later than April 15, 2015

The locations to be inspected in the remaining phases of the Capacity and Condition Assessment Study are set forth in spreadsheets attached to this Consent Decree as Appendix A. After completing each phase of the Capacity and Condition Assessment Study, Defendant shall prepare for EPA approval a report containing any recommended actions that are to be implemented by Defendant as a result of the Study by the dates indicated above. Defendant's report to EPA shall include recommended actions and the time frame for completing each action. The Parties agree that the extent of the repairs and actions necessarily resulting from each phase of the Capacity and Condition Assessment Study are presently unknown and cannot be estimated until after each phase of the Capacity and Condition Assessment Study is completed. The Parties agree to confer on an as needed basis to discuss the relative priority to be given to the actions resulting from the Capacity and Condition Assessment Study. Defendant shall complete all of

the recommended actions resulting from the Capacity and Condition Assessment Study as soon as practicable, but no later than December 31, 2021.

14. Defendant will install a residential complaint system which should enable Defendant to better understand and characterize any releases that occur into public and private areas from its Facility. Defendant will analyze the complaints received on the system for a period of one year, and provide to EPA for approval no later than September 30, 2011 a report analyzing all received complaints, determinations made regarding the cause of the complaint, remedial actions taken and proposed to eliminate any release(s) on the system that are attributable to Defendant. EPA will provide comments on the report to Defendant within sixty (60) days of receipt. A summary of the residential complaints received shall be discussed in the Quarterly Reports required under Section VIII (Reporting Requirements).

15. Any unpermitted Sewer Overflow including a Building/Private Property Backup constitutes a violation of this Consent Decree.

16. Defendant shall purchase two additional vacuum trucks no later than August 31, 2011. These two vacuum trucks shall be in service no later than January 31, 2012. At all times during pendency of this Consent Decree, Defendant shall at a minimum maintain in service three vacuum trucks to assist with the operation and maintenance of its Facility. Failure to maintain three vacuum trucks throughout the duration of this Consent Decree constitutes a violation of the Consent Decree, and shall be included in the Quarterly Reports as required under Section VIII (Reporting Requirements).

17. No later than sixty (60) days after the Effective Date, Defendant shall post, and continuously thereafter shall maintain, signs within 10 feet of each and every CSO point.

Each such sign shall be in substantially the same form as the sign attached in Appendix B. Sign dimensions should be at a minimum 18 x 24 inches and made of durable weatherproof material. Signs shall be visible to the unaided eye from land and water from a distance of 100 feet. In the first Quarterly Report submitted pursuant to Section VIII after the completion date for the posting of the signs required by this Paragraph, an authorized representative of Defendant shall certify that all signs required by this Paragraph have been posted and remain in place.

18. Telemetry

a. Defendant has completed a telemetry feasibility study which was submitted to EPA for review and approval on December 14, 2010. This feasibility study was approved by EPA on February 10, 2011. Defendant shall install a telemetry system and implement a telemetry pilot study which will utilize both depth measurement for detection of CSO discharges and tide gate closure sensors for detection of tidal intrusion at the locations within its CSS identified below:

- i. Brown Place regulator chamber
- ii. Sip Avenue regulator chamber
- iii. Mill Creek regulator chamber
- iv. Mina Drive regulator chamber
- v. Second Street regulator chamber
- vi. Secaucus Road regulator chamber
- vii. Grand Street regulator chamber
- viii. York regulator chamber
- ix. Within the North West Interceptor

- x. Within the South West Interceptor
- xi. Within the North East Interceptor
- xii. Within the South East Interceptor

b. The pilot study telemetry system shall be designed to detect Dry Weather Overflows, Combined Sewer Overflows, and tidal intrusion. The Defendant shall install and implement the pilot study telemetry system by no later than October 15, 2011.

c. Defendant shall continuously implement the pilot study telemetry system and continue to detect Dry Weather Overflows, Combined Sewer Overflows and tidal intrusion until Defendant commences implementation of the telemetry system, consistent with Paragraph d., below.

d. By January 15, 2013, the Defendant shall submit a report with the results of the pilot study telemetry system to EPA for review and approval (“Telemetry Report”). The Telemetry Report shall include recommendations on the telemetry system to be installed on Defendant’s Combined Sewer System, and a schedule for installation of telemetry on the system. Defendant shall install and implement the telemetry system as approved by EPA.

e. In the Quarterly Reports required under Section VIII (Reporting Requirements), the Defendant shall provide the following information based on data gathered from the pilot study telemetry system and approved telemetry system:

i. indicate when a Dry Weather Overflow occurs at the regulator chambers listed in a.i.– viii, above, including the estimated volume and duration of the Dry Weather Overflow; and

ii. when a CSO discharge occurs at the locations listed in a., above, during wet weather, indicate the duration (including start and stop time of the CSO event).

f. Based on rainfall data collected by the Defendant, the Defendant shall utilize the Storm Water Management Model ("SWMM") to estimate overflow volumes for its entire CSS, consisting of each regulator chamber location, and shall provide this information in the Quarterly Reports required under Section VIII (Reporting Requirements). For regulator chambers listed in a.i.– viii., above, the Quarterly Report shall show the SWMM results and the corresponding telemetry results for each Combined Sewer Overflow discharge.

g. Until otherwise excused by EPA pursuant to this Paragraph, Defendant shall continuously implement the telemetry system in the approved Telemetry Report and continue to detect dry weather overflows, combined sewer overflows and tidal intrusion until termination of the Consent Decree. After Defendant has satisfactorily completed the requirements of pilot telemetry study required under this Paragraph, Defendant may request that it terminate implementation of all or a portion of the telemetry system. After review of the Defendant's request, EPA shall in writing: a) approve the request; b) approve the request upon specified conditions; c) approve part of the request and disapprove the remainder; or d) disapprove the request. The determination of whether the Defendant may terminate all or part of the telemetry system is in the sole discretion of EPA.

19. Defendant shall prevent the intrusion of the receiving waters into Defendant's combined sewer collection and conveyance system past Defendant's combined sewer overflow control facilities (CSO regulators/tide gates). Such protection shall be provided against the intrusion of receiving waters.

20. Defendant shall take all measures necessary to prevent the occurrence of Dry Weather Overflows (DWOs). Each DWO event shall be reported as required under Section VIII (Reporting Requirements).

21. Defendant shall complete the Cuneo Place sewer replacement (between Ogden Avenue and Palisades Avenue) no later than July 30, 2011. The replacement includes two pipe reaches on Cuneo Place that total approximately 260 feet.

22. Defendant shall complete a sewer separation and regulator modification study for the combined sewers in Mina Drive (County Village area), between Route 440 to Sycamore Road on the east and from Pine Crest south to Briarwood Road. The Mina Drive Sewer separation study will include a detailed survey of the area including basement and first floor elevations, pipe elevations, and modeling of both sanitary and storm water flows. This study shall determine if sewer separation is feasible given the existing infrastructure. This study shall be completed no later than December 31, 2011, and the study with recommendations shall be sent to EPA for approval no later than March 15, 2012.

23. Defendant shall complete the sewer cleaning project at the Claremont Carteret Trunk Sewer no later than December 31, 2012. This project is more fully described in Appendix C.

24. Defendant shall construct a pump station at the Southern end of Pine Street where it intersects with the New Jersey Transit Light Rail tracks (referred to as the "Pine Street Pump Station"). The Pine Street Pump Station will pump combined sewage during wet weather conditions to prevent flooding at the southern end of Pine Street. The project will relieve flooding conditions in the Pine Street area by having a pump station that will

automatically start pumping combined sewage from the existing 15" combined sewer into the existing 30" sewer. The Pine Street Pump Station construction shall be completed, and in service no later than November 30, 2013.

25. Defendant shall complete the sewer cleaning and lining for Sixth and Tenth Streets area no later than March 1, 2014. This project is more fully described in Appendix C.

26. Defendant shall reconstruct the Van Winkle Trunk Sewer. This project will involve cleaning and installing a cured in place liner where the inter single wythe of brick has collapsed, and replacing the sewer pipes with reinforced concrete pipe where the interior two wythe of brick pipe has completely failed. This reconstruction project shall be completed no later than March 1, 2015.

27. Defendant shall replace the Brown Place Sewer no later than June 30, 2015. This project is more fully described in Appendix C.

28. Defendant shall finish replacing the Duncan Avenue Outfall areas no later than June 30, 2015. This project is more fully described in Appendix C.

29. Defendant shall replace portions of the sewers on Sip Avenue no later than August 30, 2015. This project is more fully described in Appendix C.

30. Defendant shall clean, line, and replace as necessary, the Grand Street Twin 54" Sewers. Construction for this project is expected to take a minimum of four years. This project shall be completed no later than October 1, 2019. This project is more fully described in Appendix C.

31. Operation and Maintenance. Defendant submitted the Operation and Maintenance Manual (O&M) with revisions (dated January 5, 2011) to EPA for approval, which EPA approved on January 19, 2011. Defendant shall maintain the O&M Manual as current, and review the O&M Manual periodically, but not less than once a year, to determine whether modifications or revisions to it are necessary and shall make such modifications. Defendant shall operate its system in accordance with its EPA approved O&M Manual, or as subsequently modified in accordance with this Paragraph. Defendant shall report to EPA in its Quarterly Report, as described in Section VIII of this Decree (Reporting Requirements), any revisions or updates made to the O&M Manual. Any proposed major modifications of the Manual shall be submitted to EPA for prior approval. The O&M Manual, and subsequent approved amendments and/or modifications to the Manual, is incorporated by reference as is set forth fully in this Decree, and shall be implemented in accordance with the dates contained in the schedule approved by EPA.

32. Pump Station Evaluation. JCMUA shall at all times maximize the conveyance of wastewater to the treatment plan(s) and minimize the frequency and duration of CSOs to the receiving waters.

a. Pump Station Operation and Maintenance. No later than January 1, 2013, JCMUA shall submit to EPA an evaluation of all pump stations throughout its CSS. This Pump Station Evaluation ("PSE") shall include, without limitation, for each pump station, an evaluation of the following:

- i. design capacity;
- ii. current effective capacity;

- iii. peak capacity;
- iv. adequacy of pump station condition, based upon both physical inspection and recent operating and mechanical failure history during at least the past five years;
- v. adequacy of pump station design and equipment, including standby pumps;
- vi. backup power;
- vii. availability of replacement parts;
- viii. routine and emergency funding mechanisms to make corrections;
- ix. adequacy of pump stations to convey contractual flow and maximize existing station capacity flow to PVSC;
- x. adequacy of pump stations to convey flow to PVSC from North Bergen;
- xi. critical response time, defined as the time interval between activation of the high wet well level alarm and the first CSO, under peak flow conditions; and
- xii. the ability of maintenance personnel to take corrective action within the critical response time calculated for the pump stations.

b. No later than July 1, 2013, based on the PSE, JCMUA shall submit an engineering report, for review and approval by EPA, in accordance with Approval of Deliverables Section of CD, which will make any necessary recommendations for upgrading the pump stations

("Pump Station Report") and will provide an implementation schedule, if necessary, to ensure that the following standards are maintained:

- i. all pump stations are operated in accordance with good engineering practices and the O&M Manual, considering current and expected future uses;
- ii. JCMUA maximizes the conveyance of wastewater to the treatment plant and to minimize the frequency and duration of CSOs to the receiving waters; and
- iii. All pump stations function in accordance with the requirements described in the "Pump Systems" chapter of the most current version of Water Environment Federation's Manual of Practice FD-4, "Design of Wastewater and Storm water Pump Stations."

Upon approval by EPA, the Pump Station Report shall be incorporated by reference as if set forth fully in this Decree. JCMUA shall implement the approved Pump Station Report, in accordance with the approved schedule, if any, and shall complete all work set forth in the approved schedule by no later than July 1, 2014. The Parties agree that the extent of any repairs and actions identified in the Pump Station Report are presently unknown and cannot be estimated until after the completion of the Pump Station Report; thus JCMUA may seek to modify the July 1, 2014 date pursuant to Section XVIII (Modification) if substantial repairs and actions are necessary. JCMUA shall continue to maintain pump stations in accordance with the O&M Manual thereafter.

33. Grease Inspection Program. Defendant has implemented a Grease Inspection Program. Defendant shall continue to implement the Grease Inspection Program throughout the duration of this Consent Decree including, at a minimum, the following: (1)

directing at least two employees to inspect food establishments in the Jersey City area that are connected to the combined sewer system, (2) coordinating inspections and Defendant's findings with the Passaic Valley Sewerage Commissioners (PVSC), and (3) notifying PVSC when violations are found, including, but not limited to, establishments that do not have grease traps and require such traps, establishments that do not properly maintain their grease traps or fail to properly maintain their outdoor grease or oil storage containers, and/or establishments whose storm drains show evidence of grease and/or oil. Defendant shall report on the grease program implementation in the Quarterly Reports, described in Section VIII, including information on staffing levels, and the number of inspections and copies of all notices provided to PVSC where violations were found.

34. Approval of Deliverables After review of any plan, report, or other item that is required to be submitted pursuant to this Consent Decree, EPA shall in writing: a) approve the submission; b) approve the submission upon specified conditions; c) approve part of the submission and disapprove the remainder; or d) disapprove the submission. If Defendant has not received any approval, partial approval, disapproval or comments from EPA to a plan, report, or other item or deliverable submitted by Defendant pursuant to this Decree within sixty (60) days of confirming EPA has received the plan, report or other item or deliverable, Defendant may proceed in implementing that plan, report or other item or deliverable. However, nothing in this Paragraph shall prevent EPA from discussing any concern it may have with any plan, report, or other item or deliverable submitted by Defendant at any time during the effectiveness of this Decree. Defendant shall make reasonable efforts to address any concern raised by EPA to a plan, report or other item or deliverable submitted pursuant to this Decree.

35. If the submission is approved pursuant to Paragraph 34.a, Defendant shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part, pursuant to Paragraph 34.b or 34.c, Defendant shall, upon written direction from EPA take all actions required by the approved plan, report, or other item that EPA determines are technically severable from any disapproved portions, subject to Defendant's right to dispute only the specified conditions or the disapproved portions, under Section XI of this Decree (Dispute Resolution).

36. If the submission is disapproved in whole or in part pursuant to Paragraph 34.c or 34.d, Defendant shall, within forty-five (45) Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part by EPA Defendant shall proceed in accordance with the preceding Paragraph.

37. Any stipulated penalties applicable to the original submission, as provided in Section IX of this Decree, shall accrue during the forty-five (45) Day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Defendant's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

38. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA may again require Defendant to correct any deficiencies, in