

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA)	
)	
and)	
)	Case No.
THE STATE OF OHIO)	
)	
Plaintiffs,)	Judge
)	
v.)	
)	
CITY OF LIMA)	
)	<u>CONSENT DECREE</u>
Defendant.)	

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Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“U.S. EPA”), jointly with Plaintiff the State of Ohio (the “State”), on behalf of the Ohio Environmental Protection Agency (“Ohio EPA”), have filed a complaint in this action concurrently with this Consent Decree, alleging that the Defendant, the City of Lima (“Lima”), violated Section 301(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1251 *et seq.*, and regulations promulgated thereunder; Chapter 6111 of the Ohio Revised Code (“O.R.C.”) and rules promulgated thereunder; and certain terms and conditions of the National Pollutant Discharge Elimination System (“NPDES”) permit issued to Lima pursuant to the CWA relating to the municipal wastewater treatment plant (“WWTP”) and Sewer System owned and operated by Lima.

WHEREAS, the Lima Sewer System serves approximately 18,000 households;

WHEREAS, Lima represents and has presented documentation to the United States and Ohio that it has taken steps to date to study and improve the collection system and WWTP, reducing combined sewer overflow (“CSO”) discharges and associated environmental effects, including but not limited to: installation of a storage interceptor system with real-time controls; expansion of the WWTP to provide additional primary treatment, secondary treatment, and nitrification; replacement of the Taflinger sewer; installation of five CSO screen treatment facilities; inspection of manholes; acquisition of property for possible CSO storage; and replacement and rehabilitation of river gates and in-line storage gates;

WHEREAS, Lima previously developed a Combined Sewer Overflow Long Term Control Plan, which was accepted by Ohio EPA on December 9, 1999;

WHEREAS, Lima represents and has presented documentation to the United States and Ohio that it has taken steps to date to address sanitary sewer overflow (“SSO”) discharges,

including but not limited to: conducting SSO field investigations; hydraulic modeling; preparation of a general plan to abate SSOs; rehabilitation of various sources of inflow and infiltration; and design work for Lost Creek pump station improvements;

WHEREAS, Lima developed an Integrated Plan using U.S. EPA's guidance entitled "Integrated Municipal Stormwater and Wastewater Planning Approach Framework" dated May, 2012 (the "EPA Framework.")

WHEREAS, Lima has continued to implement projects to maintain the existing WWTP, including the recent completion of a Rehabilitation Project, which included replacing critical equipment and adding redundancy to the WWTP's electrical system, has pursued methods through pilot testing to provide biological treatment for peak wet weather flows, has bid the rehabilitation of one of the two major interceptors, and is completing design of a replacement project for other critical portions of the WWTP;

WHEREAS, the United States, Ohio, and Lima (the "Parties") recognize, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated in good faith and will avoid prolonged and complicated litigation among the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I (Jurisdiction and Venue) below, and with the consent of the Parties, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I. JURISDICTION AND VENUE

1. 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, 1355. This

Court also has personal jurisdiction over the Parties to this action. Venue is proper in this District pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and 1395(a). The Complaint states claims upon which relief may be granted. Authority for the United States to bring its action is vested in the United States Department of Justice pursuant to Section 506 of the CWA, 33 U.S.C. § 1366, and 28 U.S.C. §§ 516 and 519; authority for Ohio to bring its action is vested in the Ohio attorney general pursuant to O.R.C. §§ 6111.07 and 6111.09. This Court has supplemental jurisdiction over the state law claims asserted by Ohio pursuant to 28 U.S.C. § 1367.

2. For the purposes of this Consent Decree, Lima waives any and all objections that it might have to the Court's jurisdiction and to venue in this District. Lima shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

II. APPLICABILITY AND BINDING EFFECT

3. This Consent Decree shall apply to and be binding upon the United States, on behalf of U.S. EPA; Ohio, on behalf of Ohio EPA; and upon Lima, its successors and assigns, its officers, directors, employees, and agents in their capacities as such, and all other persons and entities as provided for in FED. R. CIV. P. 65(d). In any action to enforce this Consent Decree, Lima shall not raise as a defense the failure of its officers, directors, agents, servants, contractors, employees, or any other persons or entities provided for in FED. R. CIV. P. 65(d) to take any actions necessary to comply with the provisions of this Consent Decree.

4. If Lima seeks to name a successor in interest to assume any or all of its interests in, or operating role with respect to, the Sewer System or WWTP, Lima may request modification of this Consent Decree from Plaintiffs to amend this Consent Decree in accordance

with the role to be assumed by the proposed successor in interest. Upon such request, the Parties shall discuss the matter. If the Parties agree on a proposed modification to the Consent Decree, they shall prepare a joint motion to the Court requesting such modification and seeking leave to join the proposed successor in interest. If the Parties do not agree, and Lima still believes modification of this Decree and joinder of a successor in interest is appropriate, it may file a motion seeking such modification in accordance with FED. R. CIV. P. 60(b); provided, however, that nothing in this Paragraph is intended to waive Plaintiffs' right to oppose such motion and to argue that such modification is unwarranted. If this Consent Decree is modified to allow a successor in interest to assume any or all of the obligations hereunder, Lima shall give written notice of and provide a copy of this Consent Decree to any such successor in interest prior to transfer of ownership or operation of any portion of its WWTP or Sewer System. Lima shall provide Plaintiffs written notice of the prospective transfer, together with a copy of the proposed written agreement, at least 30 days prior to any such transfer. Any attempt to transfer ownership or operation of the Facilities without complying with this Paragraph constitutes a violation of this Decree.

5. Lima shall provide a copy of this Consent Decree to all supervisors employed by the City of Lima and contractors with responsibility for compliance with any provision of this Decree or for work performed under this Decree. Lima shall condition any contract for work performed under this Decree upon performance of the work in conformity with the terms of this Consent Decree. The requirement to provide a copy of this Consent Decree will be satisfied if Lima provides a link to the Lima website where the Consent Decree can be found.

6. In any action to enforce this Consent Decree, Lima 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. OBJECTIVES

7. It is the express purpose of the Parties in entering into this Consent Decree to further the objectives of the CWA, as enunciated at Section 101 of the CWA, 33 U.S.C. § 1251, and the objectives of O.R.C. Chapter 6111, including but not limited to restoring and maintaining the chemical, physical, and biological integrity of the Receiving Waters. All plans, reports, construction, and other obligations in this Consent Decree or resulting from the activities required by this Consent Decree will have the objective of ensuring Lima's full compliance with the CWA and O.R.C. Chapter 6111.

IV. DEFINITIONS

8. Unless otherwise defined herein, terms used in this Decree shall have the meaning given to those terms in the CWA, 33 U.S.C. § 1251 *et seq.*, the regulations promulgated thereunder at 40 C.F.R. Part 122, O.R.C. Chapter 6111, the regulations promulgated under that Chapter, and Lima's NPDES Permit No. 2PE00000* MD and any successor permits. The following definitions shall apply to the terms used in the Consent Decree:

a. "Achievement of Full Operation" shall mean completion of construction and installation of equipment or infrastructure such that the equipment or infrastructure has been placed in full operation, and is expected to both function and perform as designed, plus completion of modified operations and maintenance manuals. This specifically includes all control systems and instrumentation necessary for normal operations and all residual handling systems. Certain specified CSO Control Measures and SSO Control Measures set forth in Lima's CSO/SSO Control Measures Plan may consist of separate components. For those

specified Control Measures, “Achievement of Full Operation” shall not be achieved until the last component is completed.

b. “Appendix A” shall mean Appendix A: CSO/SSO Control Measures Plan, attached to and incorporated into this Consent Decree.

c. “Appendix B” shall mean Appendix B: Post Construction Monitoring Program, attached to and incorporated into this Consent Decree.

d. “Appendix C” shall mean Appendix C: Procedures Applicable to Wet Weather Operation of Nitrification Towers, attached to and incorporated into this Consent Decree.

e. “Appendix D” shall mean Appendix D: Supplemental Information to be Considered in Evaluating Lima’s Financial Circumstances or Other Financial or Budgetary Issues, attached to and incorporated into this Consent Decree.

f. “Appendix E” shall mean Appendix E: CMOM Table of Contents, attached to and incorporated into this Consent Decree.

g. “Appendix F” shall mean Appendix F: Supplemental Environmental Project, attached to and incorporated into this Consent Decree.

h. “Building/Property Backup” means a Sanitary Sewer Overflow or CSS Release in the form of wastewater release or backup into a building or onto private property that is caused by blockages, flow conditions, or other malfunctions in the Sewer System. A wastewater backup or release that is caused by blockages, flow conditions, or other malfunctions of a Private Service Connection Lateral is not a Building/Property Backup for purposes of this Decree.

i. “Bypass” shall have the meaning set forth in 40 C.F.R. § 122.41 (m).

j. “Combined Sewer System” (“CSS”) shall mean the portion of Lima’s Sewer System designed to convey municipal sewage (domestic, commercial, and industrial wastewaters) and stormwater to Lima’s WWTP or to a Combined Sewer Overflow (“CSO”) Outfall.

k. “Complaint” shall mean the complaint filed by the United States and the State of Ohio in this action.

l. “Consent Decree” or “Decree” shall mean this Consent Decree and all appendices attached hereto.

m. “CSO Control Measures” shall mean the CSO-related control measures, construction projects, actions, and other activities set forth in the CSO/SSO Control Measures Plan and the LTCP, including the WWTP improvements and CSO control facilities described in Appendix A.

n. “CSO/SSO Control Measures Plan” shall mean the plan attached as Appendix A and any U.S. EPA approved revisions to that plan.

o. “CSO Discharge” or “Combined Sewer Overflow Discharge” shall mean any discharge from Lima’s CSO Outfalls.

p. “CSO Outfall” shall mean an outfall in the Combined Sewer System. Certain listed CSO Outfalls are identified as “overflows” in Lima’s NPDES Permit.

q. “CSO Policy” shall mean the Combined Sewer Overflow (CSO) Control Policy published at 59 Fed. Reg. 18688 (April 19, 1994).

r. “Date of Lodging” shall mean the date that this Consent Decree is lodged with the Clerk of the Court for the United States District Court for the Northern District of Ohio.

s. “Day” shall mean a calendar day unless expressly stated to be a working

day. When the day a report or other deliverable is due under this Consent Decree falls on a Saturday, Sunday, federal holiday, or legal holiday for Lima, Lima shall have until the next calendar day that is not one of the aforementioned days for submission of such report or other deliverable.

t. “Dry Weather Flow” means the combination of domestic sewage, groundwater infiltration, commercial and industrial wastewaters, and any other non-precipitation related flows.

u. “Dry Weather Overflow” or “DWO” means any discharge or release from any portion of the Sewer Systems to waters of the United States or State that consists of Dry Weather Flow.

v. “Effective Date” shall have the meaning provided in Section XXII (Effective Date).

w. “Facilities” shall mean and include all of the following:

(1) any wastewater and/or stormwater collection and conveyance system owned or operated by Lima that is designed to and does collect and convey stormwater and/or domestic, commercial, or industrial sewage to a wastewater treatment plant or to a sewer overflow structure (including, but not limited to, the Sewer System);

(2) any wastewater treatment plant owned or operated by Lima;

(3) any sewer overflow structure owned or operated by Lima; and

(4) any sewer overflow structure to which Lima directs or conveys the flow of domestic, commercial, or industrial sewage or at which such sewage from Lima users comes to be found.

x. “Integrated Plan” shall mean the Integrated Plan developed by Lima using

U.S. EPA's guidance entitled "Integrated Municipal Stormwater and Wastewater Planning Approach Framework" dated May, 2012. The Integrated Plan includes the CSO/SSO Control Measures Plan, the LTCP, the SSOAP, and all duly-approved revisions to those plans.

y. "Lima" shall mean the Defendant City of Lima, Ohio. The terms "Lima" and "Defendant" are interchangeable for the purposes of this Consent Decree.

z. "Long Term Control Plan" or "LTCP" shall mean the plan (dated April 18, 2012, with an updated Chapter 9 dated August 22, 2014) that Lima has developed pursuant to Part I.C.B. of its NPDES Permit and that was accepted by U.S. EPA and approved by OEPA and any OEPA-approved revisions to the LTCP.

aa. "NPDES Permit" shall mean Permit No. 2PE00000*MD issued to the City of Lima by Ohio EPA, effective on January 1, 2013, and all revisions, modifications, and successors to this NPDES Permit.

bb. "Ohio EPA" or "OEPA" shall mean the Ohio Environmental Protection Agency and any successor departments or agencies of the State of Ohio.

cc. "Paragraph" shall mean a provision of this Consent Decree identified by an Arabic number.

dd. "Parties" shall mean the United States, the State of Ohio, and the City of Lima.

ee. "Plaintiffs" shall mean the United States and the State of Ohio.

ff. "Private Service Connection Lateral" means a portion of the Sewer System, not owned by Lima, used to convey wastewater from a building or buildings to that portion of the Sewer System owned by Lima.

gg. "Receiving Water" or "Receiving Waters" shall mean the receiving

water(s) of the Sewer System, including the Ottawa River and Pike Run.

hh. “Sanitary Sewer System” shall mean that portion of the Sewer System intended to carry liquid and water-carried waste to Lima’s WWTP together with minor quantities of ground, storm, and surface waters that are not admitted intentionally.

ii. “Sanitary Sewer Overflow” or “SSO” shall mean an overflow, spill, diversion, or release of wastewater from or caused by Lima’s Sanitary Sewer System. This term shall include: 1) discharges to waters of the State or United States from Lima’s Sanitary Sewer System; and 2) any release of wastewater from Lima’s Sanitary Sewer System to public or private property that does not reach waters of the State or the United States, including Building/Property Backups.

jj. “Sanitary Sewer Overflow Abatement Plan” or “SSOAP” shall mean the plan developed by Lima entitled SSO Abatement Master Plan Addendum No. 2 2009 Update (dated September 22, 2009, with an updated Chapter 5 dated August 22, 2014) and any U.S. EPA-approved revisions to the SSOAP.

kk. “Section” shall mean a portion of this Consent Decree identified by an uppercase Roman number.

ll. “SEP” shall mean the Supplemental Environmental Project described in Appendix F of this Consent Decree.

mm. “Sewer System” shall mean the wastewater collection and transmission system owned or operated by Lima designed to collect and convey municipal sewage (domestic, commercial, and industrial) to Lima’s WWTP or to a CSO Outfall. “Sewer System” includes both the “Combined Sewer System” and the “Sanitary Sewer System.”

nn. “SSO Control Measures” shall mean the SSO-related control measures, construction projects, actions, and other activities set forth in the CSO/SSO Control Measures Plan and the SSOAP, including the SSO abatement measures described in Appendix A.

oo. “State” or “Ohio” shall mean the State of Ohio. State and Ohio are interchangeable for the purposes of this Consent Decree.

pp. “Typical Year” shall mean the year 1949.

qq. “U.S. EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

rr. “United States” shall mean the United States of America.

ss. “Wastewater Treatment Plant” or “WWTP” shall mean the wastewater treatment plant owned and operated by the City of Lima in Allen County, Ohio and located at 1200 Fort Amanda Road, Lima, Ohio, and any future wastewater treatment facilities connected to the Sewer System.

V. COMPLIANCE MEASURES

9. Lima shall maintain full compliance with the terms and conditions of Part I.A. of its NPDES Permit, the provisions of the Clean Water Act, 33 U.S.C. 1281 et seq., and the rules promulgated thereunder, Ohio Revised Code Chapter 6111 and the rules promulgated thereunder, the LTCP, the SSOAP, and the compliance measures and the schedules set forth below.

10. No Dry Weather Overflows. Lima is prohibited from any and all Dry Weather Overflows.

11. Nine Minimum Control Compliance. Lima shall comply with the nine minimum controls as required by Part II (E) of its NPDES Permit. In 1999, Lima developed a CSO

Operational Plan designed to ensure Lima's compliance with the nine minimum controls as required by Part II(E) of its NPDES Permit. Lima shall review and update its CSO Operational Plan consistent with the Nine Minimum Controls described in the "Combined Sewer Overflow (CSO) Control Policy," 59 Fed. Reg. 18688 (April 19, 1994), and U.S. EPA's May 1995 "Combined Sewer Overflows; Guidance for Nine Minimum Controls." Lima shall submit the Revised CSO Operational Plan to U.S. EPA for review and approval, in accordance with Section VII (Reporting, Review, And Approval) within 90 days of the Effective Date. Lima shall comply with the CSO Operational Plan as revised immediately upon its submission to U.S. EPA, unless instructed otherwise by U.S. EPA or unless Lima invokes the dispute resolution procedures set forth in Section XIII (Dispute Resolution).

12. CSO Control Measures Implementation. Lima shall perform the activities and construct the CSO Control Measures in accordance with the descriptions, Design Criteria, Performance Criteria, implementation schedule, and requirements for Achievement of Full Operation for each CSO Control Measure specified in the CSO/SSO Control Measures Plan and the LTCP.

13. Lima shall ensure that all facilities are designed in accordance with good engineering practices to ensure that corresponding facility-specific and system-wide Performance Criteria specified in Table 1 of Appendix A will be achieved. Lima shall achieve the Performance Criteria for each CSO Control Measure by the date for Achievement of Full Operation for the CSO Control Measure, as set forth in the CSO/SSO Control Measures Plan. The procedure set forth in Appendix A shall be used to determine whether Lima has achieved the Performance Criteria. By July 1, 2018, Lima shall submit to U.S. EPA and Ohio EPA, in accordance with Paragraph 38, a WWTP Flow Maximization Plan. Upon approval by U.S. EPA,

Lima shall implement the WWTP Flow Maximization Plan in accordance with the terms and schedule specified in the approved Plan. The Plan shall show how Lima plans to effectively operate and maintain the WWTP, including the nitrification towers, during dry and wet weather flow. The plan shall demonstrate that the WWTP upgrades have achieved full operation, including the use of the nitrification towers in peak flow conditions. Lima shall sample the effluent from the Nitrification Towers in accordance with Appendix C and operate the Nitrification Towers at the WWTP in accordance with Appendix C: Procedures Applicable to Operation of Nitrification Towers.

14. After implementing the CSO Control Measures and SSO Control Measures, Lima shall demonstrate compliance with the technology-based and water quality-based requirements of the CWA, State law and regulation, and the applicable provisions of its NPDES Permit by implementing the Post Construction Monitoring Program attached to this Consent Decree in Appendix B, in accordance with the terms and schedule specified therein. If the results of the Post Construction Monitoring Program do not demonstrate compliance, Lima shall, within 60 days after submission of the Final Post Construction Monitoring Report, submit to U.S. EPA and Ohio EPA a Supplemental Compliance Plan that includes the actions that Lima shall take to achieve compliance, and a schedule for taking such actions. The schedule for additional corrective measures necessary to achieve compliance may consider the ability to address all WWTP upgrades, LTCP, and SSOAP obligations in the Integrated Plan. Upon approval by U.S. EPA, Lima shall implement the Supplemental Compliance Plan in accordance with the terms and schedule specified in the approved Plan. Upon completion of the supplemental actions, Lima shall demonstrate compliance with the technology-based and water quality-based requirements of the CWA, state law and regulation, and the applicable provisions of its NPDES Permit.

15. By August 30, 2024, which is the date specified for Achievement of Full Operation of all CSO Control Measures as set forth in Appendix A:

a. Lima shall have no unlisted CSO Outfalls (either because Lima has eliminated discharges from unlisted CSO Outfalls and/or because Lima has turned its unlisted CSO Outfalls into newly-listed CSO Outfalls by having them included as permitted CSO Discharge points in Lima's NPDES Permit);

b. Lima's remaining CSO Outfalls, if any, shall comply with the applicable NPDES Permit; and

c. Lima shall have eliminated Bypasses at the WWTP or any remaining Bypasses shall comply with the applicable NPDES Permit.

16. Lima may utilize the information contained in the approved LTCP, as well as any subsequently developed information, in attempting to establish compliance with the applicable NPDES Permit. However, the preceding sentence shall not be construed to waive or preclude any objections by the United States or the State to the admissibility of information under the Federal Rules of Evidence in any judicial action in which Lima's compliance with its applicable NPDES Permit is at issue.

17. Sanitary Sewer Overflows. Sanitary Sewer Overflows are prohibited under the CWA and Lima's NPDES Permit and shall constitute violations of this Consent Decree. Lima shall perform the activities and construct the SSO Control Measures in accordance with the descriptions, Design Criteria, Performance Criteria, implementation schedule and dates for completion of the bidding process and requirements for Achievement of Full Operation for each SSO Control Measure specified in the CSO/SSO Control Measures Plan and the SSOAP

18. Developing and Implementing a CMOM Program. Lima shall develop and

implement a Capacity, Management, Operation, and Maintenance Program (“CMOM Program”) for the SSS with the goal to eliminate the occurrence of SSOs. By no later than six (6) months after the Effective Date, Lima shall prepare a written CMOM Program Plan in accordance with EPA’s Guide for Evaluating Capacity, Operations, and Maintenance (CMOM) Programs at Sanitary Sewer Collection Systems, EPA Doc. 305-B-05-002, January 2005, and shall submit the CMOM Program Plan to U.S. EPA and OEPA for review and approval in accordance with Sections XXI (Notices) and XII.A (Review and Approval of Submissions) of this Decree. The guide can be found online at http://www.epa.gov/npdes/pubs/cmom_guide_for_collection_systems.pdf. In preparing its CMOM Program Plan, Lima shall use the CMOM Table of Contents (attached at Appendix E to this Decree) to aid in documenting its program. Lima shall implement the CMOM Program within thirty (30) days of approval of its CMOM Program Plan.

19. CMOM Program Reporting. After Lima’s CMOM Program is approved under Paragraph 18, each Progress Report that Lima is required to submit under Paragraph 33 shall include a separate CMOM section detailing activities conducted as part of its CMOM Program during the previous six month period. The CMOM section of the Progress Report must summarize activities performed during the previous six month period to implement the approved CMOM Program including, but not limited to:

- a. describing Sewer System cleaning, including:
 - (1) providing the total unique miles of sewer cleaned and percentage of system cleaned (with repeat cleaning of the same sewer segment not counted toward the total mileage);

- (2) listing hotspot locations and the frequency that those sewer segments were cleaned;
 - b. describing and quantifying the total mileage of internal sewer inspections, such as by CCTV;
 - c. describing the rehabilitation and replacement work within the Sewer System started and completed or identified for future scheduling;
 - d. describing operational changes or improvements implemented as part of the approved CMOM;
 - e. identifying any cross-connections detected or eliminated and dye testing or clear water source elimination measures implemented; and
 - f. identifying the cause and the corrective maintenance response taken to any SSOs that occurred.

20. If Lima experiences significant adverse changes to its financial circumstances or other financial or budgetary issues, Lima may request a modification of a Control Measure and/or an extension of a Critical Milestone up to a maximum of five years. The request for modification shall be made in writing to the United States and Ohio within eight years of the Date of Lodging of this Consent Decree, and shall:

- a. Provide a detailed discussion of the significant adverse changes to Lima's financial circumstances or other financial or budgetary issues, as analyzed in accordance with Paragraph 22;
- b. Specify which Control Measure and/or Critical Milestone cannot be complied with;
- c. Propose a revised Control Measure and/or Critical Milestones that are

as expeditious as feasible and in no event longer than an additional five years;

d. Demonstrate that the proposed Control Measure will meet the same Performance Criteria as the Control Measure it replaces, as well as comply with all federal and state laws and regulations; and

e. Include all documents and information supporting the request.

21. Lima shall provide such additional information requested by the United States or Ohio to assist in evaluating the modification request. If the Parties agree on a proposed modification to the Consent Decree, the modification shall be incorporated into an amended consent decree that shall be subject to court approval after public notice and comment in accordance with Section XXIV (Modification) and Section XXVI (Lodging and Opportunity for Public Comment). If the Parties do not agree that a modification proposal under Paragraph 20 is warranted, and Lima believes modification is appropriate, Lima reserves its rights to seek resolution of the dispute pursuant to Paragraph 107. Such action by Lima shall not relieve Lima of its obligations pursuant to Section V (Compliance Measures), unless the Court orders otherwise, and Lima shall continue with timely implementation of the Control Measures until the Court rules on any motion described in this Paragraph in a manner that modifies Lima's obligations under this Decree.

22. To make a threshold showing that there has been a significant adverse change to Lima's financial circumstances or other financial or budgetary issues as required by Subparagraph 20.a, Lima shall submit the analyses and information specified by Subparagraphs 22.a - 22.c. Once that threshold showing has been made, the supplemental information referenced in Appendix D will be considered in evaluating Lima's specific request for a

modification of a Control Measure and/or an extension of a Critical Milestone under Subparagraphs 20.b - 20.d.

a. Lima shall submit an updated Financial Capability Analysis that demonstrates that the expected per household cost of the Control Measures and/or Critical Milestones will cause Lima's cost per household to exceed 2.8% of the Median Household Income ("MHI") for Lima's entire service area, calculated using EPA's "Combined Sewer Overflows Guidance for Financial Capability Assessment and Schedule Development," EPA 8320B-97-004, published February 1997. To calculate and determine Lima's MHI as required by this Subparagraph, Defendant shall use MHI data for the most recent year from either the Federal Census or American Community Survey ("ACS"), whichever is the most current. If the most current ACS data includes both a one-year estimate and a three-year estimate of MHI, Lima shall use the one-year estimate to determine its MHI, although the Lima may also submit an MHI figure based on the three-year estimate of MHI under the ACS.

b. Lima shall demonstrate that the Residential Indicator exceeds 2.8% when calculated in accordance with EPA's Financial Capability Assessment Guidance as modified by the requirements and inputs described and defined in this Subparagraph, and using a reasonable engineering estimate of the remaining costs of completing construction of the Control Measures expressed in the value of dollars during the year that Lima submits the modification request, but excluding the cost of the Post-Construction Monitoring Program. To calculate and determine Lima's Residential Indicator at the time a modification request is submitted, Lima shall use the following methods and inputs:

(1) Lima shall use current wastewater and sewer annual operation and maintenance expenses calculated as total expenses less depreciation in Lima's

Comprehensive Annual Financial Report (“CAFR”) for the most recent year, but only if the CAFR accurately states Lima’s operation and maintenance expenses. If Lima’s CAFR for the most recent year either does not exist or does not accurately state its operation and maintenance expenses, Lima shall calculate and determine this input with appropriate accounting records, including source documents, and submit to Plaintiffs copies of the accounting records and source documents.

(2) Lima shall use current wastewater and sewer annual debt service calculated as the total principal and interest payments on bonds and notes from the financing activities section of the cash flow statement in Lima’s CAFR for the most recent year, but only if the CAFR accurately reflects the principal and interest payments. If Lima’s CAFR for the most recent year either does not exist or does not accurately state Lima’s principal and interest payments, Lima shall calculate and determine this input with appropriate accounting records, including source documents and submit to Plaintiffs copies of the accounting records and source documents.

(3) Lima shall use reasonable documented engineering estimates projecting the increase in operation and maintenance expenses expected after completing construction of Lima’s Control Measures, expressed in value of dollars for the year during which Lima submits the modification request.

(4) Lima shall use the annual capital costs based on the expected financing of a reasonable, documented engineering estimate of the costs of completing construction of the Control Measures expressed in the value of dollars during the year that Lima submits the modification request. To support Lima’s calculation of this input, Lima shall submit to Plaintiffs an explanation of the basis for, and calculation of, the

annual cost estimate and the engineering estimates, accounting records, and source documents on which Lima relied to calculate this input.

(5) When calculating Lima's residential share of wastewater treatment costs in accordance with U.S. EPA's CSO Financial Capability Assessment Guidance, Lima shall use the most recent year of Federal Census or ACS data and billing data regarding Lima's customer base not reflected in such data. Lima shall also use the same ratio between total wastewater flow and residential infiltration and inflow that Lima uses for rate setting purposes, if any, to calculate the residential share of wastewater treatment costs.

(6) When calculating the total number of households in Lima's service area, Lima shall count each single family house, and each unit in multi-family housing structures such as apartment buildings and duplexes as one household, but shall not count households that have onsite sewage disposal systems and are not paying wastewater sewer fees to Lima. To the extent that customer billing data does not accurately reflect the number of units in multi-family housing structures, Lima shall use ACS and Federal Census data to more accurately estimate the total number of households in Lima's service area.

c. In addition to the calculation of the Residential Indicator as required in Subparagraph 22.b, Lima may submit an additional calculation of the Residential Indicator using alternative inputs that Lima contends produce a more accurate calculation of the Residential Indicator, provided such inputs are consistent with EPA's "Combined Sewer Overflows Guidance for Financial Capability Assessment and Schedule Development," EPA 8320B-97-004, published February 1997.

23. Notwithstanding anything else in this Decree, Lima may propose, and the United States and the State may consider, any amendments to Appendix A to accommodate changed circumstances that may include but are not limited to: (i) financial and budgetary considerations identified Appendix D; (ii) adaptive management considerations yielding equal or better environmental outcomes than particular projects identified in Appendix A; and/or, (iii) green infrastructure projects. If the parties agree on a modification, the agreed amendment shall be implemented in accordance with Paragraph 106. If the Parties cannot agree on an amendment, Lima may invoke the procedure included in Paragraph 107.

VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT

24. Lima shall implement a Supplemental Environmental Project (“SEP”), providing for the revitalization of the Ottawa River bank in Lima, Ohio.

25. The SEP shall be completed in accordance with the schedule and requirements set forth in Appendix F.

26. Lima is responsible for the satisfactory completion of the SEP in accordance with the requirements of this Decree. Lima may use contractors or consultants in planning and implementing the SEP.

27. With regard to the SEP, Lima certifies the truth and accuracy of each of the following:

a. that all cost information provided to EPA in connection with EPA’s approval of the SEP is complete and accurate and that Lima in good faith estimates that the cost to implement the SEP is \$218,400.00;

b. that, as of the date of executing this Decree, Lima is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to

perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

c. that the SEP is not a project that Lima was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;

d. that Lima has not received and will not receive credit for the SEP in any other enforcement action; and

e. that Lima will not receive any reimbursement for any portion of the SEP from any other person.

28. SEP Completion Report

a. Within 30 days after the date set for completion of the SEP as specified in Appendix F, Lima shall submit a SEP Completion Report to the United States and Ohio, in accordance with Section XXI of this Consent Decree (Notices and Submissions). The SEP Completion Report shall contain the following information:

- (1) a detailed description of the SEP as implemented;
- (2) a description of any problems encountered in completing the SEP and the solutions thereto;
- (3) an itemized list of all eligible SEP costs expended;
- (4) certification that the SEP has been fully implemented pursuant to the provisions of this Decree; and
- (5) a description of the environmental and public health benefits resulting from implementation of the SEP.

29. The United States or Ohio may, in either entity's sole discretion, require information in addition to that described in the preceding Paragraph, in order to evaluate Lima's SEP Completion Report.

30. After receiving the SEP Completion Report, U.S. EPA shall notify Lima whether or not Lima has satisfactorily completed the SEP. If Lima fails to satisfactorily complete the SEP in accordance with this Consent Decree, including Appendix F, Lima shall pay a stipulated penalty of \$150,000 under Section X (Stipulated Penalties) of this Consent Decree.

31. Disputes concerning the satisfactory performance of the SEP shall be resolved under Section XIII (Dispute Resolution) of this Decree. No other disputes arising under this Section shall be subject to Dispute Resolution.

32. Each submission by Lima required under this Section shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 36.

VII. REPORTING, REVIEW AND APPROVAL

A. Reports

33. On January 31 and July 31 after the Effective Date and continuing on January 31 and July 31 of each year until termination of this Consent Decree, Lima shall submit to U.S. EPA and Ohio EPA a progress report regarding the implementation of the requirements of this Decree in the previous calendar half year ("Progress Report"). The Progress Report shall include at a minimum:

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

b. A general description of the projects and activities conducted during the reporting period to comply with the requirements of this Decree, and a projection of work to be performed pursuant to this Consent Decree during the next reporting period. Notification to U.S. EPA and Ohio EPA of any anticipated delay shall not, by itself, excuse the delay;

c. A summary of all material problems or potential problems encountered during the reporting period, and the actions taken to rectify the problems;

d. A summary of all material contacts with U.S. EPA and Ohio EPA during the reporting period, including but not limited to the date deliverables under this Decree were sent to U.S. EPA and Ohio EPA;

e. A statement of any exceedances of NPDES permit limitations;

f. A summary of all CSO Discharges, SSOs, Bypasses, and other unpermitted discharges occurring within the reporting period including the actual or estimated frequency, duration and volume of each CSO Discharge, SSO, Bypass, and other unpermitted discharge; and

g. A section containing a report on Lima's CMOM Program, as required by Paragraph 19.

34. In addition to the other reports required by this Consent Decree, if Lima violates any requirement of this Consent Decree or its NPDES Permit, Lima shall notify Plaintiffs of such violation and its likely duration in writing within 10 working days of the day Lima first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, and/or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Lima shall include a statement to that effect in the report. Lima shall immediately investigate to determine the cause of the violation

and then shall submit an amendment to the report described in this Paragraph, including a full explanation of the cause of the violation, within 30 days of the day Lima became aware of the cause of the violation.

35. The reporting requirements of this Consent Decree do not relieve Lima of any reporting obligations required by its NPDES Permit, the CWA or implementing regulations, or by any other federal, state, or local law, regulation, permit, or requirement.

B. Certification and Admissibility

36. All reports required to be submitted by Lima pursuant to this Consent Decree will contain a certification signed by the Lima Utilities Director or other responsible official or authorized agent of Lima. The certification will read as follows:

“I certify under penalty of law 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. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.”

37. Lima shall not object to the admissibility into evidence of any information provided under the requirements of this Consent Decree or its NPDES Permit in any proceeding to enforce this Consent Decree.

C. Plaintiffs’ Review and Approval of Submissions

38. For any submissions for which Lima must obtain U.S. EPA approval, U.S. EPA shall consult with Ohio EPA before deciding whether to approve or disapprove the submission. For any submissions for which Lima must obtain U.S. EPA approval, U.S. EPA may (i) approve

the submission, in whole or in part; (ii) disapprove the submission, in whole or in part; (iii) approve the submission upon specified conditions, directing that Lima modify its submission; or (iv) any combination of the above. Within 60 days following receipt of written notice of disapproval or direction to modify the submission from U.S. EPA (or within a longer time if set forth in the notice), Lima shall submit a modified document to U.S. EPA for approval.

39. Lima shall provide Ohio EPA with a copy of each plan, report, schedule, or other document submitted by Lima for U.S. EPA approval. Notwithstanding the receipt of a notice of disapproval pursuant to the preceding Paragraph, Lima will proceed, if directed by U.S. EPA, to take any action required by any nondeficient portion of Lima's submission, if such action can be undertaken independent of the deficient portion of Lima's submission. Implementation of any nondeficient portion of a submission will not relieve Lima of any liability for stipulated penalties.

40. In the event that a resubmitted document or portion thereof is disapproved in whole or in part or approved with conditions by U.S. EPA, U.S. EPA may again require Lima to correct the deficiencies or conditions in accordance with the preceding Paragraphs. U.S. EPA also retains the right to modify or develop any disapproved or conditioned portion of the resubmitted plan or report. Lima will implement any such plan/report as modified, conditioned, or developed by U.S. EPA, subject only to Lima's right to invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution).

41. If, upon resubmission, a document is disapproved or modified in whole or in part by U.S. EPA due to a material defect previously identified and not corrected, Lima shall be deemed to have failed to submit its plan or report timely and adequately unless Lima invokes the dispute resolution procedures set forth in Section XIII (Dispute Resolution), and (i) U.S. EPA

agrees to modify its earlier position or (ii) the Court adopts Lima's position. If U.S. EPA's disapproval or modification is upheld by the Court, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required. Whether U.S. EPA disapproves of Lima's submissions or approves the submissions with modifications will not affect the burden of proof or the standard of review set forth in Section XIII (Dispute Resolution) of this Consent Decree.

D. Enforceability

42. The United States and Ohio are specifically authorized to seek injunctive relief in this civil action to address any violation of this Consent Decree.

VIII. FUNDING

43. Compliance with the terms of this Consent Decree by Lima is not conditioned on the receipt of federal or state grant or loan funds. In addition, Lima's failure to comply is not excused by the lack of federal or state grant or loan funds, or by the processing of any applications for the same, or by Lima's financial capabilities, except as expressly provided in Section XXIV (Modification).

IX. CIVIL PENALTY

Civil Penalties Payable to the United States.

44. No later than 30 days after the Effective Date, Lima shall pay a civil penalty in the amount of \$24,500 to the United States, plus interest at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961, from the Effective Date to the date of payment of the penalty. Payment to the United States shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with instructions to be provided to Lima upon entry of this Consent Decree by the Financial Litigation Unit of the U.S. Attorney's

Office for the Northern District of Ohio. Any EFTs received at the DOJ lockbox bank after 11:00 a.m. Eastern Time will be credited on the next business day. At the time of payment, Lima shall simultaneously send written notice of payment and a copy of the transmittal documentation to the United States Department of Justice and EPA in accordance with Section XXI of this Consent Decree (Notices and Submissions); by email to acctsreceivable.CINWD@epa.gov; and by mail to:

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

Civil Penalties Payable to the State of Ohio.

45. No later than 30 days after the Effective Date, Lima shall pay a civil penalty in the amount of \$ 24,500 to the State of Ohio. Payment to the State of Ohio shall be made by certified check or checks payable to “Treasurer, State of Ohio,” and shall be delivered to Scott Hainer, Paralegal, or his successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, Public Protection Division, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400. Payment may also be made by electronic funds transfer to the designated accounts pursuant to instructions sent by Ohio upon request by Lima. At the time of payment, Lima shall simultaneously send written notice of payment and a copy of any transmittal documentation (which should reference the above-captioned case name and civil action number, U.S. Attorney’s Office File No., and DOJ case number 90-5-1-1-08433) to Plaintiffs in accordance with Section XXI (Notices and Submissions) of this Consent Decree.

Late Payments.

46. In accordance with the Debt Collection Act of 1982, 31 U.S.C. § 3717, and 40 C.F.R. § 13.11, Lima shall be subject to three forms of late charges in the event of late payment

of the civil penalties required to be paid under Paragraph 44 (Civil Penalties Payable to the United States) or Paragraph 45 (Civil Penalties Payable to the State of Ohio), or stipulated penalties required to be paid under Section X (Stipulated Penalties) of this Consent Decree.

a. Lima shall pay interest on any unpaid balance of the civil penalty owed to the United States under this Section at the rate of the current value of funds to the U.S. Treasury (i.e., the Treasury tax and loan account rate), accruing on the date payment was due and payable beginning on the 31st day after payment was due. Lima shall pay interest on any unpaid balance of the civil penalty owed to the State of Ohio under this Section at the rate provided for in O.R.C. § 1343.03, accruing on the date payment was due and payable beginning on the 31st day after payment was due.

b. Lima shall pay an administrative costs (handling) charge of \$15 for each month past the due date specified by this Consent Decree that it does not pay the penalty in full.

c. In addition to the previous two charges, Lima shall pay late fees on any unpaid balance of the civil penalty amount still owed more than 90 days past the date due. Late fees shall accrue at the rate of 6% per annum and shall be assessed monthly. Interest and handling charges as provided for in this Paragraph shall be tendered along with any late penalty payments in the manner specified above.

47. Upon entry of this Decree, this Decree shall constitute an enforceable judgment for purposes of post-judgment collection in accordance with Rule 69 of the Federal Rules of Civil Procedure, the Federal Debt Collection Procedure Act, 28 U.S.C. §§ 3001-3308, and other applicable federal authority. The Plaintiffs shall be deemed judgment creditors for purposes of collection of any unpaid amounts of the civil penalty, stipulated penalty, interest, or late payment

costs or fees. The Plaintiffs shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty, stipulated penalty, interest, or late payment costs or fees.

X. STIPULATED PENALTIES

48. Lima shall pay to the United States and the State of Ohio stipulated penalties as set forth in this Section for failure to comply with the requirements of this Consent Decree, unless excused under Force Majeure (Sections XI and XII), and subject to Lima's right to invoke Dispute Resolution (Section XIII).

49. Failure to Comply with NPDES Permit. Stipulated penalties for any noncompliance with Section I.A of Lima's NPDES Permit shall accrue as follows:

<u>Parameter</u>	<u>Stipulated Penalty</u>
Daily concentration or mass limits	\$500 per day per violation
Weekly average concentration or mass limits	\$750 per day per violation
Monthly average concentration or mass limits	\$1,000 per month per violation
Any other violation of the NPDES Permit	\$500 per violation

50. SSO Discharges. The following stipulated penalty shall accrue for each SSO from: (1) Lost Creek, Cole St., Findlay Road, or Fifteenth St. when the precipitation is less than that expected for a storm with a 5-year recurrence interval, 24-hour duration; and (2) Allentown, West St., or Koop when the precipitation is less than that expected for a storm with a 25-year recurrence interval, 6-hour duration: \$1,000 per day following the date of Achievement of Full Operation of the relevant SSO Control Measures in Appendix A. The expected precipitation at a given recurrence interval and duration will be taken from NOAA's Point Precipitation Frequency

Estimates at the 90% confidence interval for the Lima area, currently reported at http://hdsc.nws.noaa.gov/hdsc/pfds/pfds_map_cont.html?bkmrk=oh as: (1) 3.11 inches of rainfall for a 5-year recurrence interval, 24-hour duration storm; and (2) 3.26 inches of rainfall for a 25-year recurrence interval, 6-hour duration storm.

51. SSOs from any location other than specified in Paragraph 50. The following stipulated penalties shall accrue for each SSO from any location, other than specified in Paragraph 50.

1. For SSOs occurring before the deadline for implementation of an approved CMOM Program under Paragraph 18 and Appendix E, if Lima is *not* in compliance with the schedule for submission of its CMOM Program Plan: \$1,500.
2. For SSOs occurring before the deadline for implementation of an approved CMOM Program under Paragraph 18 and Appendix E, provided Lima is in compliance with the schedule for submission of its CMOM Program Plan: \$500.
3. For SSOs occurring after the deadline for implementation of an approved CMOM Program under Paragraph 18 and Appendix E, if Lima is *not* in compliance with its approved CMOM Program: \$2,000.
4. For SSOs occurring after the deadline for implementation of an approved CMOM Program under Paragraph 18 and Appendix E, provided Lima is in compliance with its approved CMOM Program: \$500.

52. Dry Weather Overflows. The following stipulated penalties shall accrue per day for any Dry Weather Overflow:

<u>Period of Noncompliance</u>	<u>Stipulated Penalty</u>
1st to 3rd day of Dry Weather Overflow	\$500 per day per DWO
4th to 10th day of Dry Weather Overflow	\$1,000 per day per DWO
After 10 days of Dry Weather Overflow	\$2,000 per day per DWO

53. Failure to Implement CSO Control Measures, SSO Control Measures, or Supplemental Compliance Plan Requirements.

a. CSO Control Measures. The following stipulated penalties shall accrue for the failure to timely implement any CSO Control Measure described in Appendix A or in the approved LTCP:

<u>Period of Noncompliance</u>	<u>Stipulated Penalty</u>
1st to 30th day of violation	\$500 per day per violation
31st to 60th day of violation	\$1,000 per day per violation
After 60 days of violation	\$2,000 per day per violation

b. SSO Control Measures. The following stipulated penalties shall accrue for the failure to timely implement any SSO Control Measure described in Appendix A or in the approved SSOAP:

<u>Period of Noncompliance</u>	<u>Stipulated Penalty</u>
1st to 30th day of violation	\$500 per day per violation
31st to 60th day of violation	\$1,000 per day per violation
After 60 days of violation	\$2,000 per day per violation

c. Supplemental Compliance Plan Requirements. The following stipulated penalties shall accrue for the failure to timely implement any requirement in a Supplemental Compliance Plan submitted and approved under Paragraph 14:

<u>Period of Noncompliance</u>	<u>Stipulated Penalty</u>
1st to 30th day of violation	\$500 per day per violation
31st to 60th day of violation	\$1,000 per day per violation
After 60 days of violation	\$2,000 per day per violation

54. Failure to Revise CSO Operational Plan. The following stipulated penalties shall accrue for the failure to timely submit the revised CSO Operational Plan as required by Paragraph 11 of the Consent Decree:

\$100 per day, for each day the resubmission is late.

55. Failure to Implement Provisions of the CSO Operational Plan. The following stipulated penalties shall accrue for the failure to timely implement each provision of the revised CSO Operational Plan, in any month, as required by Paragraph 11 of the Consent Decree:

Stipulated Penalty per provision per month: \$500

56. Failure to Comply with WWTP Operational Requirements. The following stipulated penalties shall accrue for any failure to operate the WWTP in accordance with the requirements of the WWTP Flow Maximization Plan or the Procedures Applicable to Operation of Nitrification Towers, as mandated by Paragraph 13:

<u>Period of Noncompliance</u>	<u>Stipulated Penalty</u>
1st to 30th day of violation	\$500 per day per violation
31st to 60th day of violation	\$1,000 per day per violation
After 60 days of violation	\$2,000 per day per violation

57. Noncompliance with Reporting and Submission Requirements. Except as otherwise provided by this Section, the following stipulated penalties shall accrue for each instance of noncompliance with any requirement that Lima submit to the Plaintiffs any work plan, report, or any other submission under this Consent Decree:

<u>Period of Noncompliance</u>	<u>Stipulated Penalty</u>
1st to 30th day of violation	\$500 per day per violation
31st to 60th day of violation	\$1,000 per day per violation

Decree, and will continue until compliance is achieved, but shall not be payable until demand.

Payment of stipulated penalties shall be made within 30 days of the date of a written demand for payment. Written demand by either U.S. EPA or Ohio EPA shall constitute written demand from both agencies, provided however, that the entire amount of stipulated penalties determined to be owing shall be payable to the Plaintiff making the written demand unless the demand notice states to the contrary. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree, except that when two or more violations are based upon the same noncompliance, only the higher stipulated penalty shall apply.

61. Payment of Stipulated Penalties to the United States.

a. Payment. Any interest owed or stipulated penalties incurred by Lima to the United States shall be paid by certified or cashier's check payable to "Treasurer, United States of America," and shall reference USAO File Number 2012V03801, DOJ Case Number 90-5-1-1-08433, and the civil action case number and case name of this action assigned to this matter by the United States District Court for the Northern District of Ohio. Checks shall be tendered to the United States Attorney's Office, Financial Litigation Unit, United States Courthouse, 800 West Superior Avenue, Suite 400, Cleveland, Ohio 44113, and shall be accompanied by a letter specifying the specific stipulated penalty provision involved, and a description of the violation(s) of this Decree for which the stipulated penalties are being tendered. Simultaneously, a copy of the check and letter shall be sent to the United States, as provided in Section XXI ("Notices and Submissions").

b. Late Payment. Should Lima fail to pay stipulated penalties and accrued interest payable to the United States in accordance with the terms of this Consent Decree, the United States shall be entitled to collect interest and late payment costs and fees, as set forth in

Paragraph 46 (Late Payments) together with the costs (including attorneys' fees) incurred in any action necessary to collect any such stipulated penalties, interest, or late payment costs or fees.

62. Payment of Stipulated Penalties to the State.

a. Payment. Any interest owed or stipulated penalties incurred by Lima to the State of Ohio shall be paid by certified or cashier's check payable to "Treasurer, State of Ohio," accompanied by a copy of the same letter submitted to the United States in the immediately preceding Paragraph, and shall be sent to:

Scott Hainer, Paralegal
Attorney General's Office
Environmental Enforcement Section
30 East Broad St., 25th Floor
Columbus, OH 43215-3400

b. Late Payment. Should Lima fail to pay stipulated penalties and accrued interest payable to the State of Ohio in accordance with the terms of this Consent Decree, the State of Ohio, shall be entitled to collect interest and late payment costs and fees, as set forth in Paragraph 46 (Late Payments) together with the costs (including attorneys' fees) incurred in any action necessary to collect any such stipulated penalties, interest, or late payment costs or fees.

63. Penalty Accrual During Dispute Resolution. Stipulated penalties shall continue to accrue as provided in accordance with this Section during any dispute resolution, with interest on accrued penalties payable and calculated at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961 (for penalties payable to the United States) and at the rate established pursuant to O.R.C. § 1343.03 (for penalties payable to the State), but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of U.S. EPA that

is not appealed to this Court, accrued penalties determined to be owing, together with accrued interest, shall be paid to the Plaintiffs, within 30 days of the effective date of the agreement or the receipt of U.S. EPA's decision or order.

b. If the dispute is appealed to this Court and the Plaintiffs prevail in whole or in part, Lima shall, within 60 days of receipt of the Court's decision or order, pay all accrued penalties determined by the Court to be owing, together with accrued interest, except as provided in Subparagraph c below.

c. If the District Court's decision is appealed by any Party, Lima shall, within 15 days of receipt of the final appellate court decision, pay all accrued penalties determined to be owing to the Plaintiffs, together with accrued interest.

XI. FORCE MAJEURE BETWEEN THE UNITED STATES AND LIMA

64. "Force majeure" for the purposes of this Consent Decree is defined as an event arising from causes beyond the control of Lima or the control of any entity controlled by Lima, including its agents, consultants, and contractors, which delays or prevents the performance of any obligation under this Consent Decree despite Lima's best efforts to comply with the Decree. "Best efforts" include using best efforts to anticipate any potential force majeure event and to address the effects of any such event (a) as it is occurring and (b) after it has occurred, such that the delay is minimized to the greatest extent possible. Unanticipated or increased costs or expenses associated with implementation of this Consent Decree and changed financial circumstances will not be considered force majeure events, except as expressly provided in Section XXIV (Modification). Failure to apply for a required permit or approval or to provide in a timely manner all information required to obtain a permit or approval that is necessary to meet

the requirements of this Consent Decree, or failure of Lima to approve contracts, will not, in any event, be considered force majeure events.

65. If any event occurs or has occurred that may prevent or delay performance of any requirement of this Consent Decree, whether or not the event is a force majeure event, Lima shall notify U.S. EPA, in writing, within 14 days after Lima first knew – or, in the exercise of reasonable diligence under the circumstances, should have known – of such event. The notice will indicate whether Lima claims that the performance or delay should be excused due to a force majeure event. The notice will describe in detail the basis for Lima’s contention that it experienced a force majeure event, the anticipated length of any delay, the precise cause or causes of the force majeure event, the measures taken or to be taken to prevent or minimize any delay, and the timetable by which those measures will be implemented. Failure to timely notify U.S. EPA may, at U.S. EPA’s option, render this Section void and of no effect as to the event in question, and may be a waiver of Lima’s right to obtain an excuse or extension of time for its obligations based on such event.

66. If U.S. EPA finds that performance is or was prevented or delayed by a force majeure event, the United States and Lima shall stipulate to an excuse or extension of deadline(s) for performance of the affected compliance requirement(s) by a period equal to any delay actually caused by the event, and Lima shall be relieved of stipulated penalties or other remedies provided under the terms of this Consent Decree for that period. Such agreement shall be reduced to writing, and signed by all agreeing Parties. If the agreement results in a material change to the terms of this Consent Decree, an appropriate modification shall be made pursuant to Section XXIV (Modification). If such change is not material, no modification of this Consent Decree shall be required.

67. In proceedings on any dispute regarding force majeure event that prevents or delays performance, the dispute resolution provisions of Section XIII (Dispute Resolution) will apply, and Lima will have the burden of proving, by a preponderance of the evidence, performance is or was prevented or delayed by a force majeure event, that Lima gave the notice required by the preceding Paragraph, that Lima took all reasonable steps to prevent or minimize any delay caused by the event, that any period of delay it claims was attributable to the force majeure event was caused by that event, and that the excuse or amount of time requested is necessary to compensate for that event.

68. An excuse or extension of one compliance date based on a particular event will not excuse any other non-performance or extend any other compliance date. Lima shall make an individual showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought.

XII. POTENTIAL FORCE MAJEURE BETWEEN OHIO AND LIMA

69. If any event occurs that causes or may cause Lima to violate any requirement of this Consent Decree, whether or not due to a force majeure event, Lima will so notify Ohio EPA, in writing, within 14 days after Lima knew, or in the exercise of due diligence should have known of the event. The notice will describe in detail the bases for Lima's contention that it experienced a force majeure event, the precise cause or causes of the event, the measures taken or to be taken to prevent or minimize the noncompliance or event, and the timetable by which those measures will be implemented. Lima shall adopt all reasonable measures to avoid or minimize any such violation.

70. In any action by Ohio to enforce any of the provisions of this Consent Decree, Lima may raise at that time the question of whether it is entitled to a defense that its conduct was

caused by circumstances beyond its control such as, by way of example and not limitation, acts of God, strikes, acts of war, or civil disturbances. While Ohio does not agree that such a defense exists, it is, however, hereby agreed by Lima and the State that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time, if ever, that a proceeding to enforce this Consent Decree or collect stipulated penalties is commenced by the State. At that time, Lima will bear the burden of proving that any delay was or will be caused by circumstances beyond the control of Lima. Failure by Lima to timely comply with the notice requirements of the preceding Paragraph may constitute, at Ohio EPA's discretion, a waiver by Lima of any right it may have to raise such a defense. Changed financial circumstances or increased costs associated with the implementation of any action required by this Consent Decree will not in any event constitute circumstances beyond the control of Lima or serve as a basis for an extension of time under this Decree, except as expressly provided in Section XXIV (Modification). An extension of one date based on a particular incident does not mean that Lima qualifies for an extension of a subsequent date or dates. Lima must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought.

XIII. DISPUTE RESOLUTION

71. 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. Lima's failure to seek resolution of a dispute under this Section shall preclude Lima from raising any such issue as a defense to an action by the United States or Ohio to enforce any obligation of Lima arising under this Decree. However,

these dispute resolution procedures shall not apply to actions by Plaintiffs to enforce obligations of Lima that have not been disputed in accordance with this Section.

72. The issuance, renewal, modification, denial, or revocation of a permit, certification, or other authorization, and the issuance of orders or other action of the Director of Ohio EPA are not subject to dispute resolution under this Decree but, rather, shall be subject to challenge under Ohio Revised Code Chapter 3745. The term “actions of the Director of Environmental Protection” shall consist of those actions by the Director or Ohio EPA over which the Environmental Review Appeals Commission has jurisdiction, pursuant to O.R.C. Chapter 3745.

73. Informal Dispute Resolution. Except as provided in the preceding Paragraph, any dispute which arises under or with respect to this Consent Decree shall first be the subject of informal negotiations. The period of informal negotiations shall not exceed 30 days from Plaintiffs’ receipt of a written Notice of Dispute in accordance with Section XXI (Notices and Submissions), unless that period is modified by written agreement of the Parties. Such Notice of Dispute shall state clearly the matter in dispute and the date the dispute is contended to have arisen. The failure to submit a Notice of Dispute within ten days from the date upon which the issue in dispute first arises waives Lima’s right to invoke dispute resolution under this Section.

74. Formal Dispute Resolution. If the Parties cannot resolve a dispute by informal negotiations pursuant to the preceding Paragraph, then the position advanced by Plaintiffs in writing shall be considered binding unless, within 30 days after the conclusion of the informal negotiation period, Lima invokes formal dispute resolution procedures by serving on Plaintiffs, in accordance with Section XXI (Notices and Submissions), a written Statement of Position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation,

together with a statement indicating whether formal dispute resolution should proceed upon the administrative record.

75. Within 60 days after receipt of Lima's Statement of Position, Plaintiffs will serve on Lima their Statement of Position, including any supporting factual data, analysis, opinion, or documentation, together with a statement indicating whether formal dispute resolution should proceed upon the administrative record. Within 20 days after receipt of Plaintiffs' Statement of Position, Lima may submit a Reply.

76. An administrative record of the dispute shall be maintained by U.S. EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. That record, together with other appropriate records maintained by U.S. EPA or submitted by Lima, shall constitute the administrative record upon which the matter in dispute is to be resolved, when such resolution proceeds on the administrative record under this Section.

77. Resolution of Disputes.

a. The Director of the Water Division in U.S. EPA Region 5 will issue a final decision resolving the matter in dispute. Where the dispute pertains to the performance of the Compliance Measures under Section V or Appendices A, B, C, D, E, or F of this Consent Decree, or is otherwise accorded review on the administrative record under applicable principles of administrative law, the decision shall be upon the administrative record maintained by U.S. EPA pursuant to Paragraph 76. The decision of the Water Division Director shall be binding upon Lima, subject only to the right to seek judicial review, in accordance with Subparagraph 77.b.

b. The decision issued by the Region 5 Water Division Director under

Subparagraph 77.a shall be reviewable by this Court upon a motion filed by Lima and served upon Plaintiffs within 20 days of Lima's receipt of U.S. EPA's decision. In addition to containing the supporting factual data, analysis, opinion, and documentation upon which Lima relies, the motion shall describe the history of the matter in dispute, the relief requested, and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree, as well as Lima's position on whether the dispute should be resolved on the administrative record.

c. Plaintiffs shall respond to Lima's motion within the time period allowed by the Local Rules of this Court. Lima may file a reply memorandum, to the extent permitted by the Local Rules.

d. In any judicial proceeding pursuant to Subparagraph 77.b that concerns the performance of the Compliance Measures under Section V or Appendices A, B, C, D, E, or F or that is otherwise accorded review on the administrative record under applicable principles of administrative law, Lima shall have the burden of demonstrating that its position complies with this Consent Decree and the Clean Water Act, and that Lima is entitled to relief under applicable law. Judicial review of such decision shall be on the administrative record compiled in accordance with Paragraph 76. Judicial review for all other disputes shall be governed by applicable principles of law.

78. The invocation of dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation under this Consent Decree that is not directly in dispute, unless the Parties agree or the Court decides otherwise.

XIV. EFFECT OF SETTLEMENT AND RESERVATION OF RIGHTS

79. Complete performance by Lima of all its obligations under this Consent Decree shall fully satisfy all civil liability of Lima for the violations alleged in the Complaint in this action through the Date of Lodging.

80. Plaintiffs reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 79. This Consent Decree shall not be construed to limit the rights of Plaintiffs to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 79.

81. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, civil penalties, or other appropriate relief relating to Lima's violations, Lima shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 79.

82. This Consent Decree in no way affects or relieves Lima of its responsibility to comply with any federal, state, or local law, regulation, or permit, or to obtain any applicable federal or state permits or approvals including, but not limited to, a permit to install. Compliance with this Consent Decree will be no defense to any actions commenced by Plaintiffs pursuant to said laws, regulations, or permits.

83. Nothing herein will be construed to limit the authority of the United States or the State of Ohio to undertake any action against any person, including Lima, to address conditions

that may present an imminent and substantial endangerment to the public health, welfare, or the environment, whether related to the violations addressed in the Decree or not.

84. Nothing herein will be construed to limit the authority of the United States to act under Section 308 of the CWA, 33 U.S.C. § 1318.

85. Plaintiffs expressly reserve all remedies available to them for all violations of the CWA not specifically addressed by Paragraph 79 of this Consent Decree.

86. The United States and the State of Ohio reserve any and all legal and equitable remedies available to enforce the provisions of this Decree.

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

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

XV. COSTS

89. The Parties shall bear their own costs of this action, including attorneys' fees, except that Plaintiffs shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Lima.

XVI. NOT A PERMIT

90. This Consent Decree is not and shall not be construed as a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, or O.R.C. § 6111.03, nor as a modification of any existing permit so issued, nor will it in any way relieve Lima of its obligations to obtain a permit

for the WWTP, Sewer System, or any other part of its Sewer System and to comply with the requirements of any NPDES permit and any other applicable federal or state law or regulation. Any new permit or modification of existing permits must be complied with in accordance with applicable federal and state laws and regulations. Nothing in the Consent Decree, however, will preclude Lima from raising defenses available under its NPDES Permit, or any renewals or modifications thereof, in any such actions.

91. Nothing herein will be construed as relieving Lima of the duty to comply with the CWA, the regulations promulgated under the CWA, and all applicable permits issued under the CWA and its regulations.

92. This Consent Decree does not authorize or approve the construction of any physical structure or facilities, or the modification of any existing treatment works or sewer system.

93. Notwithstanding any U.S. EPA review that may occur, Lima shall remain solely responsible for its compliance with the terms of this Consent Decree and all applicable laws, regulations, and permits. This Consent Decree does not relieve Lima of any obligation to apply for, obtain, and comply with the requirements of any new or existing NPDES permit or to comply with any federal, state, or local laws or regulations, including permits to install and /or plan approvals from Ohio EPA.

XVII. FAILURE OF COMPLIANCE

94. The United States and Ohio do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Lima's complete compliance with this Consent Decree will result in compliance with the provisions of the CWA, 33 U.S.C. §§ 1251 *et seq.*, or with Lima's NPDES Permit or any future modifications or renewals thereof. Notwithstanding

Plaintiffs' review or approval of any plans, reports, policies, or procedures formulated pursuant to this Consent Decree, Lima shall remain solely responsible for any non-compliance with the terms of this Consent Decree, all applicable permits, the CWA, and regulations promulgated under the CWA. Except as the Parties may agree otherwise, or this Court may order, the pendency or outcome of any proceeding concerning issuance, reissuance, or modification of any NPDES permit will neither affect nor postpone Lima's duties and obligations as set forth in this Consent Decree.

XVIII. CONTINGENT LIABILITY OF THE STATE OF OHIO

95. Ohio is a party plaintiff hereto pursuant to Section 309(e) of the CWA, 33 U.S.C. § 1319(e). Ohio will have no liability under this Consent Decree, except as required by Section 309(e) of the CWA in the event that the laws of Ohio prevent Lima from raising revenues needed to comply with this Consent Decree. The Attorney General of the State of Ohio hereby certifies that the present laws of Ohio do not prevent Lima from raising revenues needed to comply with this Consent Decree.

XIX. RIGHT OF ENTRY

96. U.S. EPA and Ohio EPA and their representatives – including contractors, consultants, and attorneys – will have the right of entry into and upon the Facilities, at all reasonable times, upon proper presentation of credentials, for the purposes of:

- a. Monitoring the progress of activities required by this Consent Decree;
- b. Verifying any data or information to be submitted pursuant to this Consent Decree;
- c. Obtaining samples and, upon request, splits of any samples taken by Lima or its consultants;

- d. Inspecting and evaluating any portions of Lima's WWTP and Sewer System;
- e. Obtaining documentary evidence, including photographs and similar data;
- f. Inspecting and reviewing any records required to be kept under the terms and conditions of the Consent Decree, the NPDES Permit, and the CWA; and
- g. Otherwise assessing Lima's compliance with this Consent Decree.

97. Lima may request splits of any samples taken by U.S. EPA or Ohio EPA pursuant to Subparagraph 96.c. Upon request and if practicable, U.S. EPA and Ohio EPA shall provide splits of any samples.

98. This Section in no way limits any right of entry and inspection held by the United States, U.S. EPA, Ohio, or Ohio EPA pursuant to applicable federal or state laws, regulations, or permits.

XX. RECORD RETENTION

99. Lima shall maintain copies of all data, documents, plans, records, studies, and reports, including any underlying research and data in its possession, custody, or control, submitted to U.S. EPA or Ohio EPA pursuant to this Consent Decree or Lima's NPDES Permit for a period of five years after the termination of the Consent Decree, unless a longer period is required by Lima's NPDES Permit. Lima will require any independent contractor implementing any portion of this Consent Decree to also retain such materials for a period of five years from termination of the Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or the State of Ohio, Lima shall provide

copies of any documents, records, or other information required to be maintained under this Paragraph.

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

101. Lima may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Lima seeks to protect as CBI, Lima shall follow the procedures set forth in 40 C.F.R. Part 2. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds that CBI protection is claimed.

102. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or the State pursuant to applicable

federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Lima to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XXI. NOTICES AND SUBMISSIONS

103. Except as specified otherwise, when written notification (including all reports) or communication with the United States, U.S. EPA, the United States Department of Justice, the State of Ohio, Ohio EPA, or Lima is required by the terms of this Consent Decree, it will be addressed as follows:

As to the United States or U.S. DOJ:

By U.S. Mail:

United States Department of Justice:
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Post Office Box 7611
Washington, D.C. 20044-7611
Reference Case No. 90-5-1-1-08433

By Courier:

United States Department of Justice:
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
ENRD Mail Room, Room 2121
601 D Street NW
Washington, DC 20004

As to Region 5 of U.S. EPA:

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

Nicole Cantello
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson, Blvd.
Chicago, Illinois 60604
Cantello.nicole@epa.gov

As to the State of Ohio:

Ohio Environmental Protection Agency
Division of Surface Water
Attn: Manager, Permits and Compliance
P.O. Box 1049
Columbus, Ohio 43216-1049
Paul.Novak@epa.state.oh.us

Ohio Environmental Protection Agency
Northwest District Office
Division of Surface Water
Attn: Enforcement Group Leader
347 Dunbridge Rd.
Bowling Green, Ohio 43402-0466,
Elizabeth.Wick@epa.state.oh.us

Chief
Environmental Enforcement Section
State of Ohio Office of Attorney General
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3400

Summer J. Koladin Plantz
Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3400
Summer.Plantz@OhioAttorneyGeneral.gov

As to Lima:

Mayor David J. Berger
50 Town Square
Lima, Ohio 45801
david.berger@cityhall.lima.oh.us

Anthony L. Geiger
Law Director
209 N. Main, FL 6
Lima, Ohio 45801-4458
tony.geiger@cityhall.lima.oh.us

Fredric P. Andes
Barnes & Thornburg LLP
One N. Wacker Drive, Suite 4400
Chicago, Illinois 60606-2809
fredric.andes@btlaw.com

All notifications or communications will be deemed submitted on the date they are postmarked and sent by first class mail, or certified mail, or electronic mail.

XXII. EFFECTIVE DATE

104. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court; provided, however, that Lima hereby agrees that it shall be bound to perform duties scheduled to occur prior to the Effective Date. In the event the United States withdraws or withholds consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall terminate.

XXIII. RETENTION OF JURISDICTION

105. This Court will retain jurisdiction of this matter until the termination of the Consent Decree for the purposes of construing, implementing, administering, 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.

XXIV. MODIFICATION

106. The terms of this Consent Decree, including any attached Appendices, may be modified only by a subsequent written agreement signed by all the Parties, or by order of the Court. Where the modification constitutes a material change to this Consent Decree, it shall be effective only upon approval by the Court. Any non-material modifications of this Consent Decree shall be in writing and signed by all Parties.

107. Unless otherwise provided herein, any disputes concerning modification of this Consent Decree shall be resolved pursuant to Section XIII (Dispute Resolution) of this Consent Decree, provided, however, that, the Party seeking modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with the grounds for relief specified in Fed. R. Civ. P. 60(b).

108. Following the filing of a motion under Rule 60(b), stipulated penalties shall accrue due to Lima's failure, if any, to continue performance of obligations under the Consent Decree that are necessarily the subject of the Rule 60(b) motion; provided, however, that such penalties need not be paid if the Court resolves the motion in Lima's favor, and Lima shall comply with the Consent Decree as modified.

XXV. TERMINATION

109. At least one year after the Lima has completed all construction required by its approved Long Term Control Plan and SSOAP and after submission of the Final Post Construction Monitoring Report required by Paragraph 14, Lima may seek, in writing, approval from the United States and Ohio for termination of this Decree. The Request for Termination shall include the following certifications: 1) that all required construction is complete; 2) that at least 12 months of post-construction monitoring shows the effectiveness of Lima's CSO and

SSO controls; 3) that Lima is and has been in compliance with its NPDES Permit for at least 12 months; 4) that all civil penalties due and all stipulated penalties demanded under this Decree (and any interest thereon) have been paid; and 5) that Lima has complied with all other requirements of this Decree. Upon request by the United States or the State of Ohio, Lima shall provide any supporting documentation demonstrating that Lima has satisfied the requirements in this Paragraph. Unless, within 90 days of receipt of Lima's certification under this Paragraph, either the United States or the State of Ohio objects in writing with specific reasons, the Court may, upon motion by Lima, order that this Consent Decree be terminated. If either the United States or the State of Ohio objects to the certification by Lima then the matter will be submitted for resolution under Section XIII (Dispute Resolution) of this Consent Decree. In such case, Lima will bear the burden of proving that this Consent Decree should be terminated.

XXVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

110. This Consent Decree will be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the public comments regarding this Decree disclose facts or considerations which indicate that this Decree is inappropriate, improper, or inadequate. Lima will not withdraw its consent to this Decree during the period of governmental and judicial review that occurs between lodging and entry of this Decree, and Lima hereby consents to the entry of this Decree without further notice.

111. If, for any reason, the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party, and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXVII. SIGNATORIES

112. The undersigned representative of each of the Parties certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally the Parties to this document.

XXVIII. INTEGRATION/APPENDICES

113. This Consent Decree and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree and supersede all prior agreements and understandings, whether oral or written. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Decree or the settlement it represents, nor shall it be used in construing the terms of this Consent Decree.

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

“Appendix A” is the CSO/SSO Control Measures Plan.

“Appendix “B” is the Post Construction Monitoring Program requirements.

“Appendix “C” is the Procedures Applicable to Wet Weather Operation of Nitrification Towers.

“Appendix “D” is the Supplemental Information to be Considered in Evaluating Lima’s Financial Circumstances or Other Financial or Budgetary Issues.

“Appendix “E” is the CMOM Table of Contents.

“Appendix “F” is the Supplemental Environmental Project requirements.

XXIX. FINAL JUDGMENT

114. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between the United States, the State, and Lima. The

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

Dated and entered this ____ day of _____, 2014.

UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States, et al. v. City of Lima* (N.D. Ohio).

FOR PLAINTIFF UNITED STATES OF AMERICA



Date: 11/11/14

SAM HIRSCH
Acting Assistant Attorney General
Environmental and Natural Resources Division
United States Department of Justice



Date: 11/11/14

RANDALL M. STONE
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044
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STEVEN M. DETTELBACH
United States Attorney
Northern District of Ohio

By: s/Steven J. Paffilas
Steven J. Paffilas(0037376)
Assistant United States Attorney
United States Courthouse
801 West Superior Avenue
Suite 400
Cleveland, OH 44113
216-622-3698
Fax 216-522-4982
steven.paffilas@usdoj.gov

Date: 11/19/14

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States, et al. v. City of Lima* (N.D. Ohio).

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



SUSAN SHINKMAN
Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Date: 11-10-14



MARK POLLINS
Director, Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Date: 11/7/14

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States, et al. v. City of Lima* (N.D. Ohio).

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



SUSAN HEDMAN
Regional Administrator
United States Environmental Protection Agency

Date: 10/30/14



NICOLE CANTELLO
Associate Regional Counsel
United States Environmental Protection Agency
Region 5 (C-14J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Date: 21 Oct 2014

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States, et al. v. City of Lima* (N.D. Ohio).

FOR PLAINTIFF STATE OF OHIO

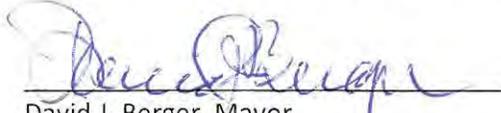
MIKE DEWINE
Ohio Attorney General

By:  DATE: 11.18.14

SUMMER J. KOLADIN PLANTZ (0072072)
L. SCOTT HELKOWSKI (0068622)
Assistant Attorney General
Environmental Enforcement Section
30 E. Broad Street - 25th Floor
Columbus, Ohio 43215-3400
Telephone: (614) 466-2766
Facsimile: (614) 644-1926
Summer.Plantz@OhioAttorneyGeneral.gov
Lawrence.Helkowski@OhioAttorneyGeneral.gov

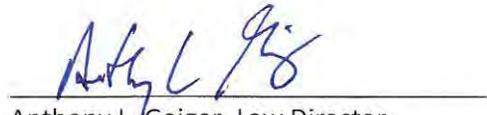
THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States, et al. v. City of Lima* (N.D. Ohio).

FOR DEFENDANT CITY OF LIMA



David J. Berger, Mayor

Date: 10/22/2014



Anthony L. Geiger, Law Director
Ordinance 246-14

Date: 10/22/14

INTRODUCTION

1.0 CONTROL MEASURES

The City of Lima's Integrated Plan consists of WWTP Improvements, CSO control facilities and SSO Abatement measures as shown in Figures A-1 through A-4. The Control Measures for each of these systems are described in this section.

1.1 SUMMARY OF WWTP IMPROVEMENTS

The WWTP Improvements include critical rehabilitation to existing headworks facilities needed to maintain the current treatment capacity, rehabilitation of the existing 54" diameter gravity interceptor that conveys flow to the WWTP, and upgrades to increase the secondary treatment capacity to 70 mgd.

Headworks Improvements

The Headworks project consists of removal of existing grit tanks, adding four new aerated grit tanks, renovation and expansion of the existing screening facility, and adding four new primary tanks. This project is needed to replace aging critical equipment, maintain the current flow capacity, and provide expanded preliminary treatment to treat peak wet-weather flows.

Interceptor Rehabilitation

The older of the twin 54" diameter gravity interceptors that currently convey flow from the Baxter Pump Station to the WWTP will be rehabilitated by cure in place lining.

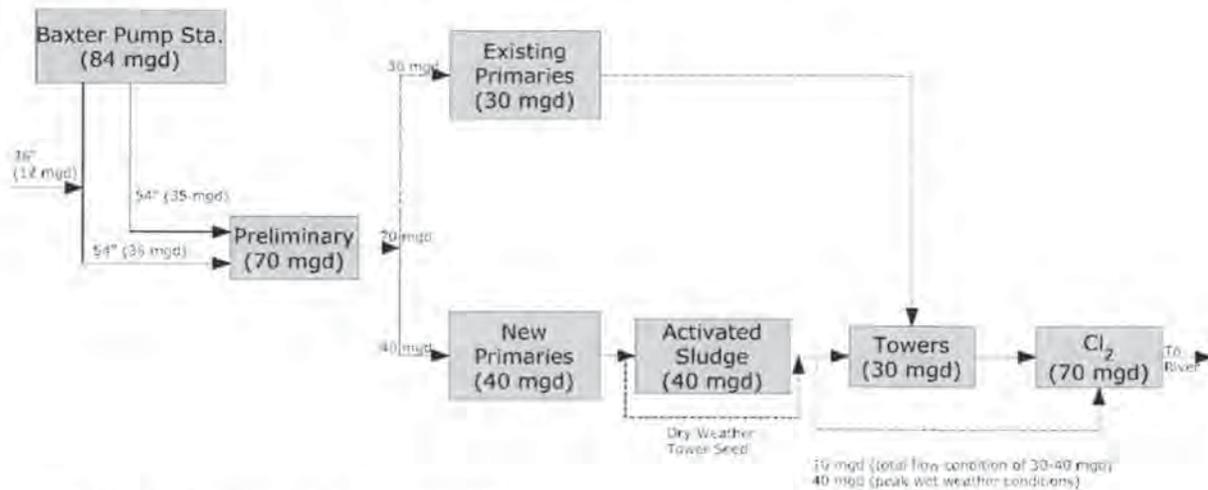
Waste Water Treatment Plant Upgrade

As part of the 70 mgd upgrade project, biological treatment will be provided by a combination of the activated sludge process and attached growth reactors (the converted nitrification towers). Disinfection is provided using chlorine compounds or another disinfection method that is accepted by Ohio EPA.

Dry weather flows and wet weather flows up to 30 mgd will go through the preliminary, primary, activated sludge, and nitrification towers. Flows from 30 to 40 mgd will be diverted around the nitrification towers. The new primaries, described under the Headworks Project above, are planned for flows up to 40 mgd, the effluent from which will be sent to the current activated sludge process as conditions allow. All recycle flows will go through the new primaries and the current activated sludge system. Flows above 40 mgd will go through the Peak Wet Weather Treatment Facilities as follows.

The existing primary clarifiers and nitrification towers will receive only flows between 40 and 70 mgd. Flow from activated sludge will bypass the nitrification tower. To seed the Towers to receive wet weather flow, some raw sewage or primary effluent will be diverted during dry weather. Figure A-1 shows the various proposed flow regimes.

Figure A-1
Peak Wet Weather Treatment Upgrade



Notes: All flow rates are peak flow capacity

Legend

- Dry weather flow route
- Peak wet weather flow route
- - - - - Tower seed (dry weather only)

1.2 SUMMARY OF CSO CONTROL MEASURES

The existing Ottawa River Interceptor (an in-line storage interceptor) will be relieved at its downstream end into a new CSO storage tank located at Simmons Field adjacent to CSO 002 and 003 (Collett and Heindel CSOs). It is expected that the completion of the WWTP upgrade and CSO storage tanks and pump will result in the City of Lima achieving the Performance Criterion of no more than five CSOs during the Typical Year. Remaining CSOs will discharge via the existing CSO structures along the Ottawa River (CSOs 002, 003, 004, 005 and 006).

Following each wet weather event, the City of Lima will dewater the tank by pumping the stored water across the river to the existing gravity interceptor to the WWTP for treatment. A new pump station will be constructed to dewater the Simmons Field tank.

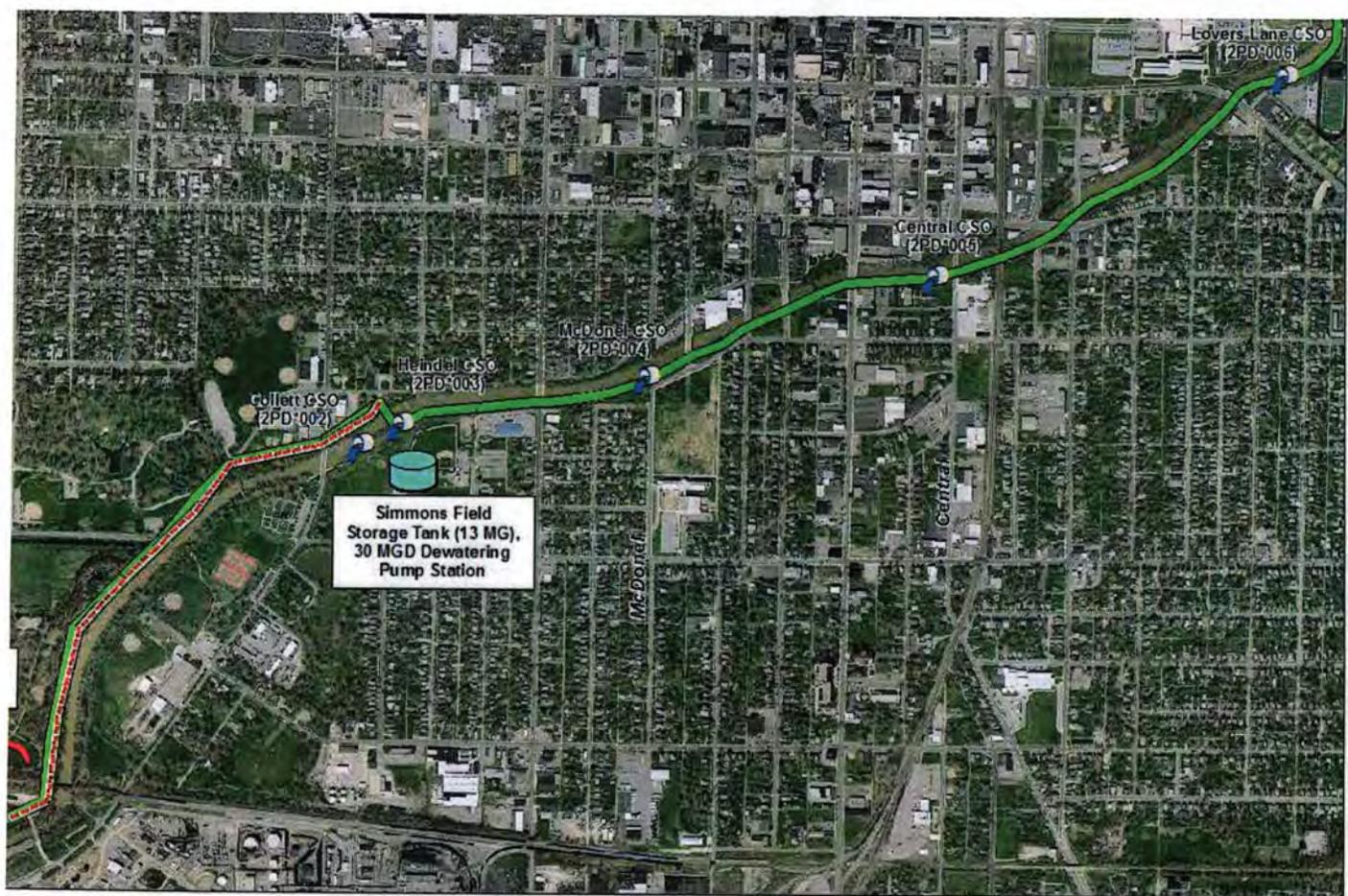
In addition to the CSO storage tank, the City of Lima will perform either full or partial separation of the sewers tributary to 10 CSOs located in the upstream portion of the combined sewer system, as shown in Figure A-3. These sewer separations are part of the Upstream Regulator Improvements, which also include the upsizing of a dry weather outlet pipe and weir modification at two other CSOs.

1.3 Summary of SSO Control Measures

In the separate sanitary sewer system, the City of Lima will upgrade pump stations and construct new force mains and relief sewers in each of the seven sanitary sewer basins shown in Figure A-4. It is expected that the completion of these improvements will result in the City of Lima achieving the Performance Criteria of controlling overflows for flow rates associated with up to the 25-year design storm in the Allentown, Koop and West Street basins and up to the 5-year design storm in the Lost Creek, Cole St., Findlay Road and Fifteenth Street basins.

1.4 Integrated Plan Requirements and Implementation Schedule

The City of Lima shall construct the CSO and SSO Control Measures specified in Table A.1 in accordance with the descriptions, Design Criteria, Performance Criteria, and implementation schedule in Table A.1. After completing construction of the CSO and SSO Control Measures, the City of Lima shall achieve the Performance Criteria specified in Table A.1.



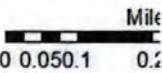
Simmons Field
Storage Tank (13 MG),
30 MGD Dewatering
Pump Station



Conserv
Appr

Legend

- CSO Or
- Ottawa
- Propos
- Old 54" to be lir



Figur
CSO Contr

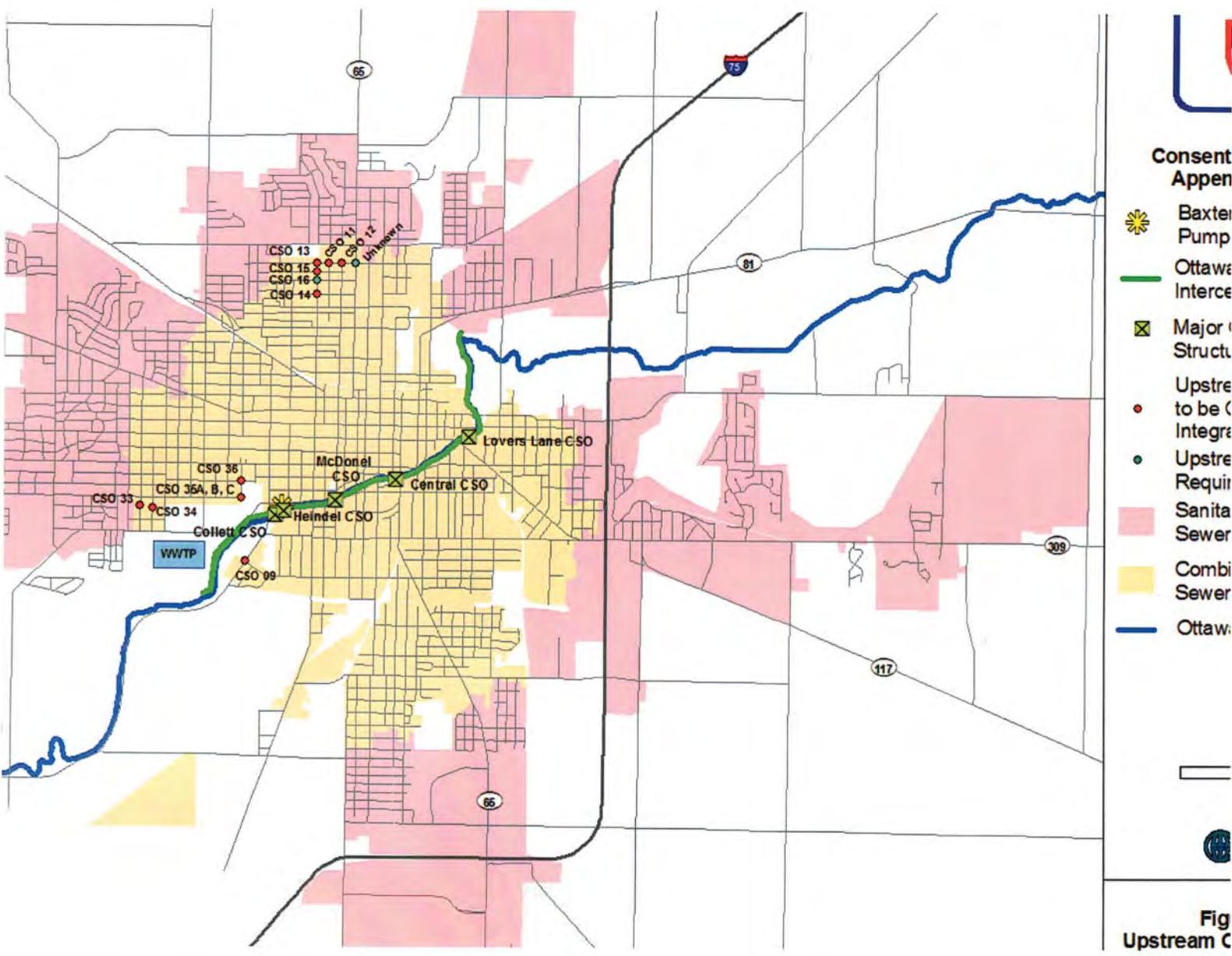


Fig
Upstream C

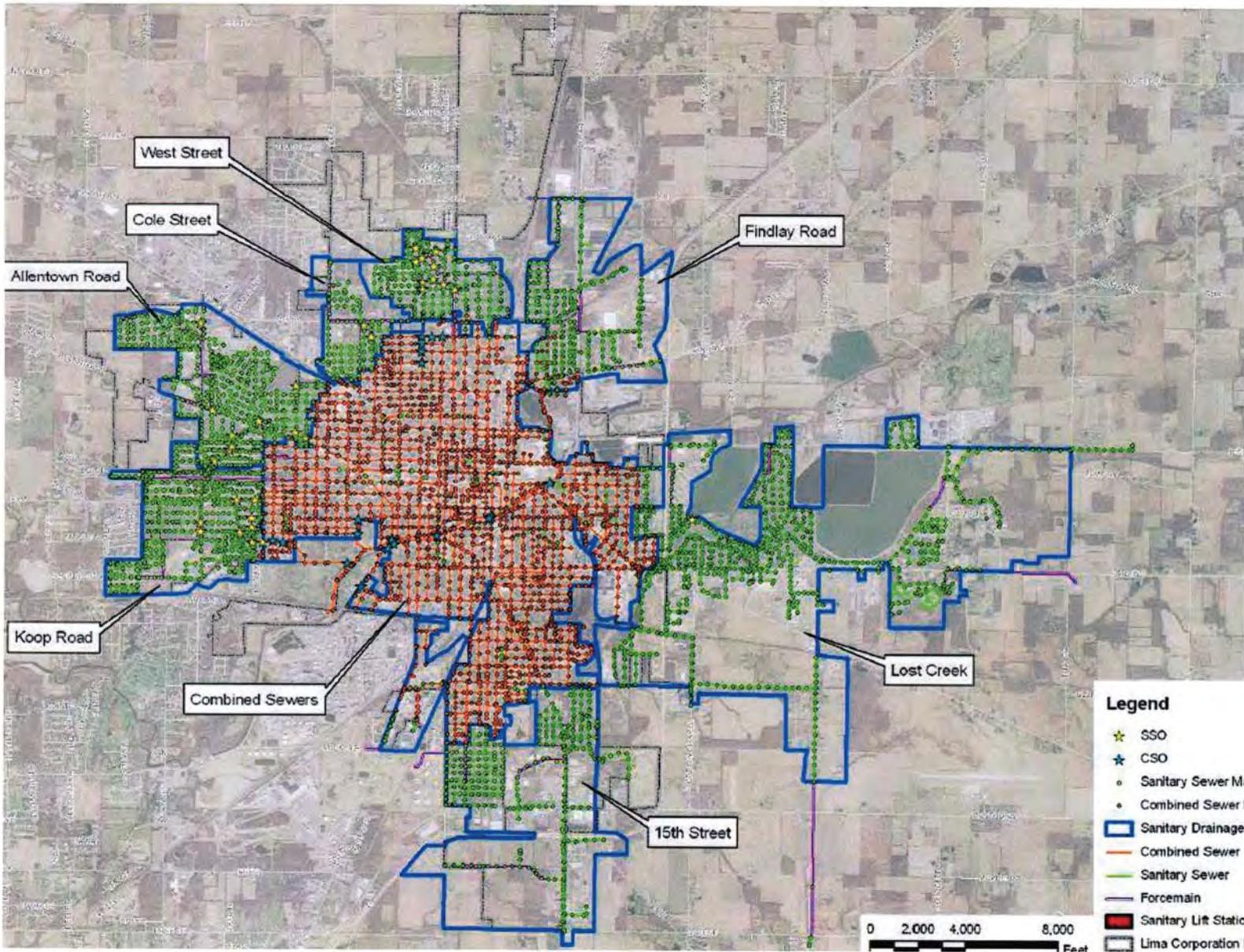


Table A.1 Control Measures and Design and Performance Criteria

Project	Description	CSOs/SSOs Controlled	Design Criteria	Performance Criteria	Critical Milestones ¹
Lima WWTP					
Headworks Improvements	Expansion of preliminary screening, replace grit system, and replace dry weather primaries	Increases treatment rate to reduce all CSOs	Preliminary treatment – 70 mgd; -new dry weather primaries – 40 mgd	Enable up to 70 mgd of flow to receive preliminary treatment and primary treatment required for subsequent treatment processes	Bid Date: 1/31/2016 Achieve Full Operation: 7/1/2018
Baxter Street Interceptor Rehabilitation	Rehabilitation by lining with cure in place	N/A	Line 3700 ft of sewer	Convey 35 mgd	Achieve Full Operation: 7/1/2014
Lima WWTP Upgrade	Add piping and pumping to enable the existing nitrification towers to be used for peak wet weather treatment, and expand disinfection	In conjunction with Headworks Improvements and Interceptor Rehabilitation project, provide treatment of captured CSO from CSOs 002,003,004,005, and 006 ¹ .	Provide treatment for flows from 40 mgd to 70 mgd	Provide treatment for flows from 40 mgd to 70 mgd. Lima must at all times provide the most effective treatment for flows up to 70 mgd. Flows must meet the following single sample maximum daily limits: TSS- 65 mg/ltr pH- between 6 and 9 BOD- 65 mg/ltr Flows less than 40 mgd receive better than secondary treatment	Bid Date: 1/31/2016 Achieve Full Operation: 7/1/2018

¹ Controlling CSOs 002, 003, 004, 005 and 006 to five or less overflows in a Typical Year requires completion of the Simmons Field CSO Storage Tank and associated Real Time Control Optimization.

Collection System (CSO)					
Simmons Field CSO Storage Tank	Simmons Field CSO storage tank and dewatering pump station, and optimization of RTC system	002, 003, 004, 005,006	Storage facility designed to capture 13.0 mg of CSO	Reduce overflow events to 5 or less in a typical year	Bid Date: 5/31/2019 Achieve Full Operation: 8/30/2024
Upstream Regulator Improvements	Full or partial sewer separation at 10 CSOs, DWO modifications at 2 CSOs	09, 11, 12, 13, 14, 15, 33, 34,35A, 35B, 35C, 36 (see Figure A-4)	Parallel sewer to provide separate conveyance for portion of combined system to be separated, increase dry weather outlet pipe size, modify weir	Reduce overflow events to 0 in a typical year	Bid Date: 6/30/2015 Achieve Full Operation: 6/30/2017
Collection System (SSO)					
Allentown SSO basin Improvements	Pump station upgrades and relief sewer construction	17, 18, 20, 21, 22, 50, 51, 61, 62, 63	Upgrades sized to convey 25-yr, 6-hour design storm flows.	Control SSOs in this basin up to 25-Year, 6-hour design event flow rates	Bid Date: 12/31/2027 Achieve Full Operation: 12/31/2029
West Street SSO basin improvements	Pump station upgrades and relief sewer construction	38, 39, 41, 42, 43, 44, 45, 46, 56, 60	Upgrades sized to convey 25-yr, 6-hour design storm flows.	Control SSOs in this basin up to 25-Year, 6-hour design event flow rates	Bid Date: 12/31/2029 Achieve Full Operation: 12/31/2031
Koop SSO basin improvements	Pump station upgrades and relief sewer construction	23, 24, 25, 26, 27, 29, 31, 32, 28	Upgrades sized to convey 25-yr, 6-hour design storm flows.	Control SSOs in this basin up to 25-Year, 6-hour design event flow rates	Bid Date: 12/31/2031 Achieve Full Operation: 12/31/2032

Lost Creek SSO basin improvements	Pump station upgrades and relief sewer construction	47	Upgrades sized to convey 5-yr design, 6-hour storm flows	Control SSOs in this basin up to 5-Year, 6-hour design event flow rates	Bid Date: 9/30/2033 Achieve Full Operation: 4/3/2035
Cole St. basin improvements	Pump station upgrades and relief sewer construction	49, 10	Upgrades sized to convey 5-yr, 6-hour design storm flows	Control SSOs in this basin up to 5-Year, 6-hour design event flow rates	Bid Date: 9/20/2034 Achieve Full Operation: 4/1/2036
Findlay Road SSO basin improvements	Pump station upgrades and relief sewer construction		Upgrades sized to convey 5-yr, 6-hour design storm flows	Control SSOs in this basin up to 5-Year, 6-hour design event flow rates	Bid Date: 9/28/2035 Achieve Full Operation: 3/31/2037
Fifteenth St. SSO basin improvements	Pump station upgrades and relief sewer construction		Upgrades sized to convey 5-yr, 6-hour design storm flows	Control SSOs in this basin up to 5-Year, 6-hour design event flow rates	Bid Date: 9/30/2036 Achieve Full Operation: 4/1/2038

1.0 POST-CONSTRUCTION COMPLIANCE MONITORING PROGRAM

1.1 Purpose and Deadline for Completion

The purpose of the Lima Post-Construction Compliance Monitoring Program (PCCMP) is to determine whether the projects constructed as part of the Integrated Plan and the Sanitary Sewer Overflow Abatement Plan (SSOAP) meet the Performance Criteria in Table A.1 of Appendix A, and to provide updated information on the improvements in Ottawa River water quality, and assess the effect of discharges from Lima's sewerage system on River water quality. The specific monitoring requirements applicable to CSOs, SSOs, and the WWTP are set forth in the following sections of Appendix B. The City of Lima shall complete all requirements of this Appendix B, including the requirement in Section 1.10 to submit to the United States and Ohio a Final Post-Construction Compliance Monitoring Report, on or before December 31, 2043.

1.2 CSO Activation Monitoring

After fully constructing and implementing the CSO Control Measures described in Table A.1 of Appendix A, the City of Lima shall continue to monitor rainfall volume and intensity for a 12-month post-construction monitoring period.

After the City of Lima constructs and fully implements all CSO Control Measures, Lima shall collect sewer response data for each constructed CSO Control Measure location, and use such data to update and calibrate a model of the combined sewer system. The rainfall and CSO activation monitoring plan is described below:

The City will monitor rainfall at a minimum of three locations at 5-minute intervals.

Each of the five major Ottawa River CSO structures, Lovers Lane, Central, McDonel, Heindel and Collett, are equipped with level sensors which enable real time monitoring of CSO activations and calculated overflow volume. These five CSOs will account for 100% of the average annual CSO volume after the Integrated Plan has been completed.

In addition to the monitoring at the five main Ottawa River CSOs, the City will monitor overflow activations at the four upstream CSO regulators not slated for separation or elimination: CSO 16, CSO 'Unknown', CSO 035A, and CSO 035C. The City currently monitors activations by placing a wooden block on the overflow weir. After rainfall events exceeding 0.25" (based on data from City's rain gauge located at the WWTP), the regulators are inspected to determine whether the block was displaced.

1.3 CSO Collection System Model Calibration and Validation

The City's collection system model will be used, together with best engineering judgment, to determine whether the City has achieved the Performance Criteria listed in Table A.1 of Appendix A. In order to ensure that the model is an appropriate tool for making this determination, a recalibration effort will be undertaken. Upon completion of the CSO control measures listed in Table A.1 of Appendix A, the following steps will be taken to recalibrate (or assess the need for recalibration of) the collection system model:

- Flow, rainfall and CSO activation data will be collected for a 12-month Post-Construction Monitoring Period as described in Section 1.2 above.
 - Flow meter and rain gauge locations include those used to perform the 2008 model calibration update. Three of the rain gauges will be the City's existing gauges and are shown in Figure B-1 as Fire Station #3, Fire Station #4 and the WWTP). Figure B-1 shows the locations of the proposed CSO system flow meters and rain gauges.
 - The rainfall and overflow data will be evaluated to determine whether the available data is sufficient for performing an initial model validation or re-calibration. If data are insufficient, the city will document this information in a report and propose an update to the PCMP approach and schedule.
- The collection system model will be updated to include collection system projects completed since the time of the Integrated Plan calibration effort.
- The rainfall data collected over the course of the 12-month Post Construction Monitoring period will be used to perform an initial model validation to enable comparison of modeled versus observed annual CSO activations. The model will be considered calibrated if system-wide, average annual overflow volume is within +/- 20 percent of observed data. If this criterion is not met, the model will be recalibrated. A report will be submitted to EPA documenting the results of this initial model validation effort.
- If needed, two or more rainfall events will be used for recalibration and the data from the PCMP will be used to re-run the model. Average CSO volumes calculated with the model will be compared with averages of actual data. This process will be repeated until an acceptable correlation is achieved.
- Upon achieving an acceptable correlation between simulated and observed CSO volumes, a report will be submitted to EPA documenting the recalibration effort.

1.4 COMBINED SEWER SYSTEM PERFORMANCE CRITERIA ANALYSIS

The measure of successful completion of the CSO Control Measures will be controlling annual CSO activations to meet the Performance Criteria in Table A.1

in Appendix A. Once the model recalibration effort and corresponding report have been accepted by EPA, the validated or recalibrated hydraulic model's results from a continuous simulation of the Typical Year of rainfall will be used to assess whether the Performance Criteria of five or fewer system-wide overflows per year is being met.

If the recalibrated model calculates more than five overflows per year, the City will first evaluate operating practices before considering further infrastructure improvements. As the recommended CSO control plan includes a Real Time Control system to manage flows to the WWTP and to the CSO storage tank, operation of this system will be re-evaluated. Alternate operating procedures and any additional facilities needed to achieve the Performance Criteria will be documented in the Final Post Construction Compliance Monitoring Report. This report will include details on any needed additional operational and structural improvements as well as a proposed implementation schedule. The schedule for additional corrective measures necessary to meet the Performance Criteria shall be consistent with the City's Integrated Plan.

1.5 SSO Performance Monitoring

After constructing and implementing the SSO Control Measures described in Table A.1 of Appendix A, the City of Lima shall continue to monitor rainfall volume and intensity for a 12-month post-construction monitoring period. The City of Lima shall also collect sewer response data in the pipe immediately upstream of the SSO location, where local hydraulics are favorable for such an installation, otherwise an alternative location will be selected using best engineering judgment. Such data will be used to properly calibrate the separate sewer collection system model. The rainfall and SSO control monitoring plan is described below:

The City will monitor rainfall at three locations with tipping bucket rain gauges. The rain gauges will be monitored continuously but report the rainfall data at 5-minute intervals.

Post-construction flow monitors shall be located upstream of the SSO structure(s) to monitor the dry and wet weather flow and level data.

1.6 SSO Collection System Model Calibration and Validation

The City's separate sewer collection system model will be used, together with best engineering judgment, to determine whether the City has achieved the Performance Criteria listed in Table A.1 of Appendix A. In order to ensure that the model is an appropriate tool for making this determination, a recalibration effort will be undertaken. Upon completion of the SSO control measures listed in

Table A.1, the following steps will be taken to recalibrate the separate sewer collection system model:

- Flow, rainfall and SSO control data will be collected for a 12-month Post-Construction Monitoring Period as described in Section 1.5 above. Rain gauge locations will be as outlined in Section 1.5 above.
- The separate sanitary sewer collection system model will be updated to include collection system projects not represented in the model.
- Using rainfall data collected over the course of the 12-month Post Construction Monitoring period, a minimum of three events will be selected for calibration purposes. The model will be considered calibrated if the modeled peaks and volumes are within +/- 20 percent of observed data. If this criterion is not met, the model will be recalibrated.

1.7 SANITARY SEWER SYSTEM PERFORMANCE CRITERIA ANALYSIS

The measure of successful completion of the SSO Control Measures will be controlling overflows during events up to and including the SSO design storm event outlined under the Performance Criteria in Table A.1 of Appendix A for each basin.

The calibrated separate sewer system model will simulate the design storm events associated with the SSO Performance Criteria listed in Table A.1 in Appendix A (the 5- and 25-year recurrence interval events). For the Allentown, Koop and West Street Basins, Performance Criteria will be considered met if the model predicts no SSOs in those basins for the 25-Year Design Storm. For the Lost Creek, Cole St., Findlay Rd., and Fifteenth St. Basins, Performance Criteria will be considered met if the model predicts no SSOs in those basins for the 5-Year Design Storm.

An SSO Post-Construction Compliance Monitoring Report shall be submitted six (6) months after completion of the monitoring period for the SSO Control Measures. The report shall either confirm that the desired level of protection is achieved or include a plan with details on the additional operational and structural improvements as well as a proposed implementation schedule. The schedule for additional corrective measures necessary to meet the Performance Criteria shall be consistent with the City's Integrated Plan.

1.8 WWTP PERFORMANCE MONITORING

Flow measurements shall be recorded and influent and effluent flow samples collected and tested for BOD, TSS, and pH so that permit compliance can be determined as well as compliance with secondary treatment criteria for the total flow.

Upon completion of the WWTP Control Measures, a monitoring period will occur over a two year period to collect sufficient data to perform the evaluation. An extended period of time for collecting data is required due to the operation in the peak wet weather mode being intermittent and performance can vary due to many varying factors such as rainfall characteristics, antecedent conditions, period of time since last peak wet weather event, and ambient temperature. During this period of time, operating parameters will be refined to improve performance. The WWTP Performance Monitoring Report will include the performance data, recommended operating parameters, and physical improvements, if required, to meet performance requirements or to enhance operation. The schedule for additional corrective measures necessary to meet the Performance Criteria shall be consistent with the City's Integrated Plan and shall consider the City's other water-related obligations.

The WWTP Performance Monitoring Report will be submitted six months after data collection ends.

1.9 RIVER WATER QUALITY MONITORING

One year before the final operation of the CSO control measures listed in Appendix A, Table A.1 is expected to be achieved (December 31, 2040), the City of Lima will submit a draft River Water Quality Monitoring Plan (RWQMP). The RWQMP will include quality assurance project plans (QAPPs), field sampling plans and standard operating procedures (SOPs). The RWQMP shall be designed to provide information on decreases in the density of E. coli in the Ottawa River resulting from the CSO controls and to provide data to compare to Table 7-13 of OAC 3745-1-07 (as in effect on the date of approval of the Integrated Plan). EPA will provide comment on the RWQMP within sixty days of receiving the draft plan. Lima shall initiate the RWQMP as soon as feasible after approval of it by EPA.

The RWQMP will include collection of samples at three locations during the recreation season (currently defined as May 1 to October 31):

1. High Street Bridge at river mile ~40.3 - upstream of the City boundary and CSO discharge area;
2. Lima WWTP access bridge at river mile ~37.9 - upstream of the City's WWTP and below CSOs (this site is currently sampled monthly as part of Lima's NPDES permit requirements); and
3. Downstream of the City's WWTP discharge (RM 37.6) – this site is currently sampled monthly as part of Lima's NPDES permit requirements.

1.10 FINAL POST CONSTRUCTION COMPLIANCE MONITORING REPORT

On or before December 31, 2043, Lima shall submit to the United States and Ohio a final Post-Construction Monitoring Compliance Report, which shall:

- a) demonstrate that Lima completed all of the requirements of the Post-Construction Monitoring Plan;
- b) provide the information required by Section 1.9;
- c) evaluate whether each CSO and SSO Control Measure implemented pursuant to Appendix A meets the Performance Criteria described in Appendix A, Table A.1, and is performing as designed;
- d) evaluate how well Lima's system is performing as a whole, following completion of all CSO and SSO Control Measures, and shall include an assessment of whether the CSO and SSO Control Measures implemented pursuant to Appendix A, as constructed, operated, or otherwise implemented, have achieved the Performance Criteria of no more than five CSO Events during the Typical Year, 25-Year SSO control at Allentown, Koop and West SSO basins; and 5-Year SSO control at the remaining SSO basins;
- e) summarize the data collected during the entirety of the 12-month post-construction monitoring period and include any new data relevant to the evaluation that Lima did not previously submit to EPA or OEPA;
- f) evaluate whether Lima's remaining CSO Discharges, if any, comply with all applicable requirements in Appendix A;
- g) if model or monitoring results of the CSOs and SSOs show that Lima's CSO or SSO Control Measures did not meet Performance Criteria, including the Performance Criteria of no more than five CSO Events during the Typical Year; 25-Year SSO control at Allentown, Koop and West SSO basins; and 5-Year SSO control at the remaining SSO basins; Lima shall identify and describe in detail deficiencies or performance-limiting factors in system design, process, operations, and maintenance that may have limited the ability of the CSO or SSO Control Measures to achieve their intended performance. Thereafter, Lima shall identify and describe in detail all necessary corrective measures, alternative operating strategies, structural modifications, and additional facilities and processes necessary to meet the Performance Criteria.
- h) If the data show that CSO discharges are causing exceedances of Table 7-13 of OAC 3745-1-07 (as in effect on the date of approval of the LTCP), Lima shall prepare a work plan for conducting a Use Attainable Analysis (UAA) or provide a plan for additional CSO Control Measures.



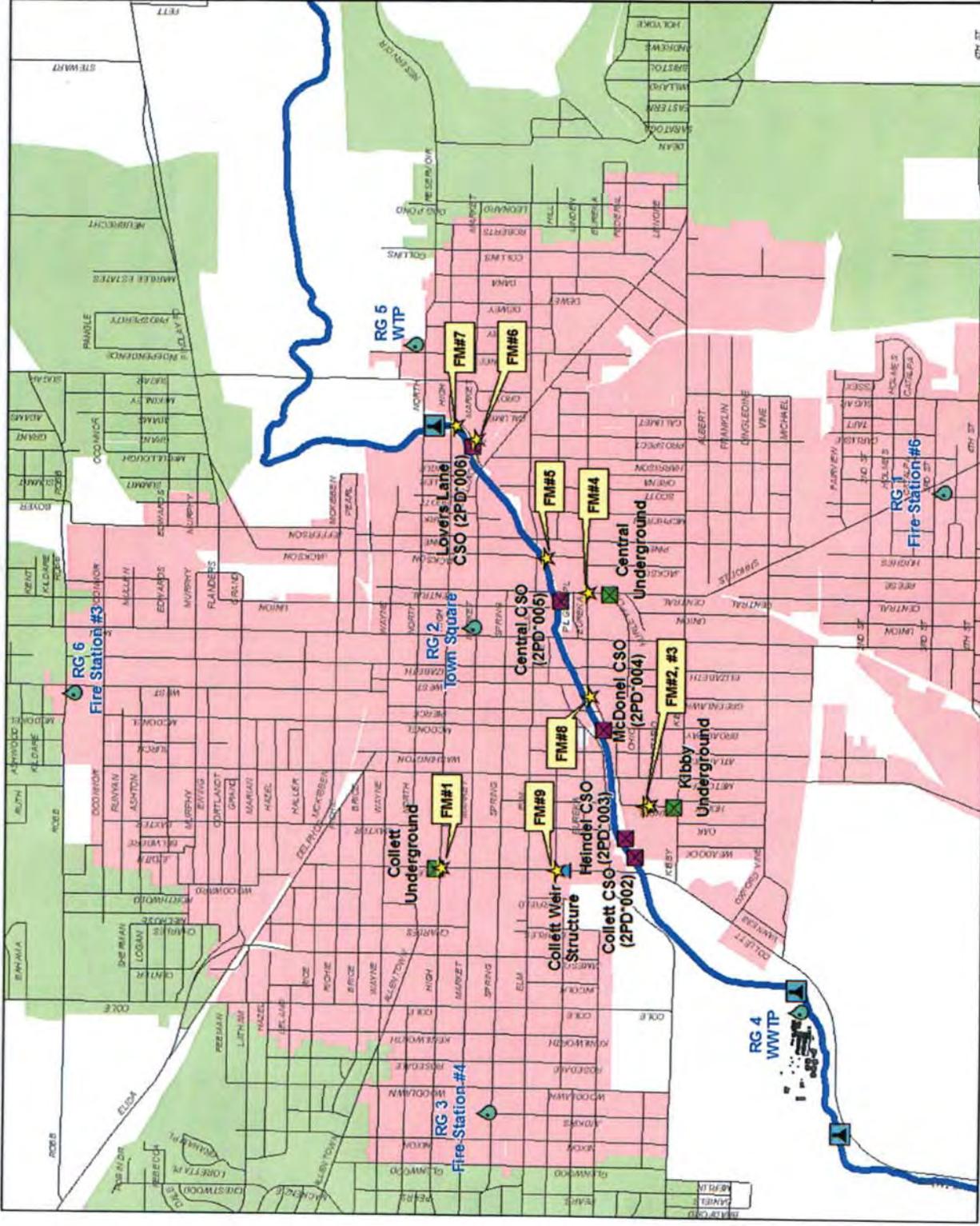
**Consent Decree
Appendix B**

Legend

- Proposed Flow Meter Locations
- Proposed Rain Gauges
- Proposed Sampling Location
- CSO Structure
- Flow Divider
- Underground Gate Structure
- Combined Sewer Area
- Sanitary Sewer Area



**Figure B-1
Flow Meter, Rain Gauge &
Sampling Locations**



APPENDIX C

APPROVAL AND IMPLEMENTATION OF TREATMENT AT NITRIFICATION TOWERS

Defendant shall assess the performance of the nitrification towers and demonstrate that Defendant is providing treatment for flows up to 70 MGD, consistent with the Performance Criteria in Appendix A to the Consent Decree.

(A) Sampling: Defendant shall perform sampling from July 2018 through July 2019, when operating the Nitrification Towers to determine the effectiveness of treating flows during wet weather events and demonstrate that Defendant meets Performance Criteria in Appendix A for flows from 40 mgd to 70 mgd at Defendant's WWTP, prior to discharge from 604. By May 31, 2019, Defendant must determine if the sampling period of July 2018 through July 2019 is sufficient to determine compliance with the Performance Criteria. If Defendant contends that the sampling period of July 2018 through July 2019 is not sufficient to determine compliance with the Performance Criteria because of inadequate sampling events, Defendant may request that EPA and Defendant allow for an additional period of sampling, not to exceed a year. If EPA and Defendant agree that an additional period of sampling is needed, EPA and Ohio EPA shall approve, in writing, one additional period of sampling. The decision to approve an additional period of sampling shall be subject to dispute resolution under Section XIII of the Decree.

(B) Nitrification Towers Performance Criteria: The following not to exceed 7-day average values are included in Performance Criteria in Appendix A:

- (1) CBOD- 65 mg/liter
- (2) SS- 65 mg/liter
- (3) pH- shall be maintained between the limits of 6 and 9

The 7 day average shall apply to any 7 consecutive days of operation. If a wet weather event does not produce flow for seven consecutive days of operation, Lima shall sample the number of days within a 7-day period that the nitrification towers treated flow, and average those samples to produce the 7-day average value.

The following not to exceed 30-day average values are included in Performance Criteria in Appendix A:

- (1) CBOD- 45 mg/liter
- (2) SS- 45 mg/liter
- (3) pH- shall be maintained between the limits of 6 and 9

The 30-day average shall apply to any 30 consecutive days of operation.

Samples shall be collected and analyzed in accordance with 40 CFR Part 136.

(C) Nitrification Towers Performance Report: By November 30, 2019, or by November 30, 2020 if the sampling period is extended under Paragraph A , Defendant shall submit to U.S. EPA and Ohio EPA for review, comment, and approval in accordance with the terms of Section VI.C (Plaintiff's Review and Approval of Submissions) of the Consent Decree, a Report that contains the following:

(1) The relevant information and supporting documentation that demonstrates that Defendant sampled and analyzed the effluent from the nitrification towers in accordance with Paragraph A and B, above;

(2) The results of the sampling, including, but not limited to, an evaluation of whether the sampling results at the WWTP meets all Performance Criteria in Appendix A for treating wet weather flows in accordance with Paragraphs A and B, above;

(3) All operational and performance monitoring data collected during sampling pursuant to Paragraphs A and B, provided as attachments; and

(4) An analysis of additional feasible measures identified during the sampling that can be taken to maximize treatment at the Nitrification Towers. The analysis shall: (i) describe in detail such additional or alternative measures to maximize treatment, including the measures' predicted impact on the Nitrification Towers; (ii) estimate the capital and operation and maintenance costs of the additional or alternative measures; and (iii) recommend those additional or alternative control measures for Defendant to construct or install that will allow Defendant to maximize treatment.

(D) Sampling Results: If the evaluation of sampling conducted in accordance with Paragraphs A and B show that the nitrification towers effluent meets the Performance Criteria in Appendix A at least 95% of the time, Defendant shall continue to operate the nitrification towers and associated treatment equipment, in accordance with the criteria set forth in Appendix A.

(E) U.S. EPA and Ohio EPA Review of Nitrification Towers Performance Report: The submission of Defendant's Nitrification Towers Performance Report shall be governed by the provisions of Section VI.C (Plaintiff's Review and Approval of Submissions) of the Consent Decree, except that within 60 days of receiving comments from U.S. EPA and Ohio EPA, Defendant shall submit a revised Nitrification Towers Performance Report that answers and responds fully to U.S. EPA and Ohio EPA's comments. Upon receipt of U.S. EPA and Ohio EPA's final approval of the Nitrification Towers Performance Report, as applicable, Defendant shall operate the nitrification towers at the WWTP in accordance with the approved plans and all schedules contained therein.

(F) Supplemental Treatment Plan: If the results of the sampling pursuant to Paragraphs A and B show that the nitrification towers do not meet the Performance Criteria at least 95% of the time for CBOD, TSS or pH set forth in Paragraph B, above, and in Appendix A, Defendant shall, within 60 days of U.S. EPA and Ohio EPA approval of the Nitrification Towers Performance Report, submit a Supplemental Treatment Plan (the “Supplemental Plan”), which shall include the plans and schedules for construction or completion of one of the following alternatives for clarification after the nitrification towers: (1) recirculation and rerouting; use of Primary Clarifiers 5, 6 and 7; or (2) addition of microstrainers, unless informed by U.S. EPA and Ohio EPA that such Supplemental Plan is not required. The selected treatment alternative shall meet the design criteria and time deadlines set forth in Appendix A. Defendant may select a treatment alternative other than clarification, if Defendant can demonstrate that the selected alternative will meet the design criteria and time deadlines set forth in Appendix A. Defendant shall also include with the Supplemental Plan a description of the additional monitoring needed to assess the operation of the selected treatment alternative, including an analysis as to whether Defendant has achieved Performance Criteria in Appendix A and a schedule for performing such monitoring and analysis. U.S. EPA and Ohio EPA’s review of the Supplemental Plan shall be governed in accordance with the provisions of Section VI.C (Plaintiff’s Review and Approval of Submissions) of the Consent Decree.

(G) Upon receipt of U.S. EPA and Ohio EPA’s final approval of the applicable Supplemental Plan(s), if any, described in Paragraph F, above, Defendant shall complete the construction and/or installation of such treatment alternative facilities and equipment to be constructed or installed at the WWTP (as applicable) in accordance with Appendix A, the approved plans, and all schedules contained in such Plan(s).

Appendix D

Supplemental Information to be Considered in Evaluating Lima's Financial
Circumstances or Other Financial or Budgetary Issues

In accordance with Consent Decree Paragraph 20, Lima may submit for the United States' and State of Ohio's consideration, any of the following information to be used in evaluating a specific request by Lima for a modification of a Control Measure and/or an extension of a Critical Milestone under Consent Decree Subparagraphs 18.b-18.d. The information may include:

- Any factor referenced in U.S. EPA's "Combined Sewer Overflows Guidance for Financial Capability Assessment and Schedule Development," EPA 832-B-97-004, published February 1997 ("FCA Guidance"), including but not limited to the Residential Indicator (the cost per household expressed as a percentage of the Median Household Income for Lima's service area);
- Economic conditions and trends, such as service area poverty levels;
- Service area unemployment data and trends ;
- Service area population data and trends;
- Service area size, including any changes in size or boundaries such as realignment of part of the service area to Allen County or other service providers;
- Service area revenue data and trends, including changes such as water conservation efforts;
- Lima's account base data and trends, including changes such as closure of major industrial or institutional wastewater accounts;
- Changes in the costs of wastewater operations;
- Evidence that the actual or expected costs of implementation significantly exceed the estimated cost set forth in the LTCP and SSOAP;
- Additional compliance cost or financial obligations such as changes to Lima's NPDES permit, or the water quality standards applicable to such permit, or issuance of a total maximum daily load ("TMDL") affecting Lima's water-related obligations; and
- Any other factor relevant to changes in financial circumstances or other financial or budgetary issues.

APPENDIX E
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APPENDIX F

SUPPLEMENTAL ENVIRONMENTAL PROJECT

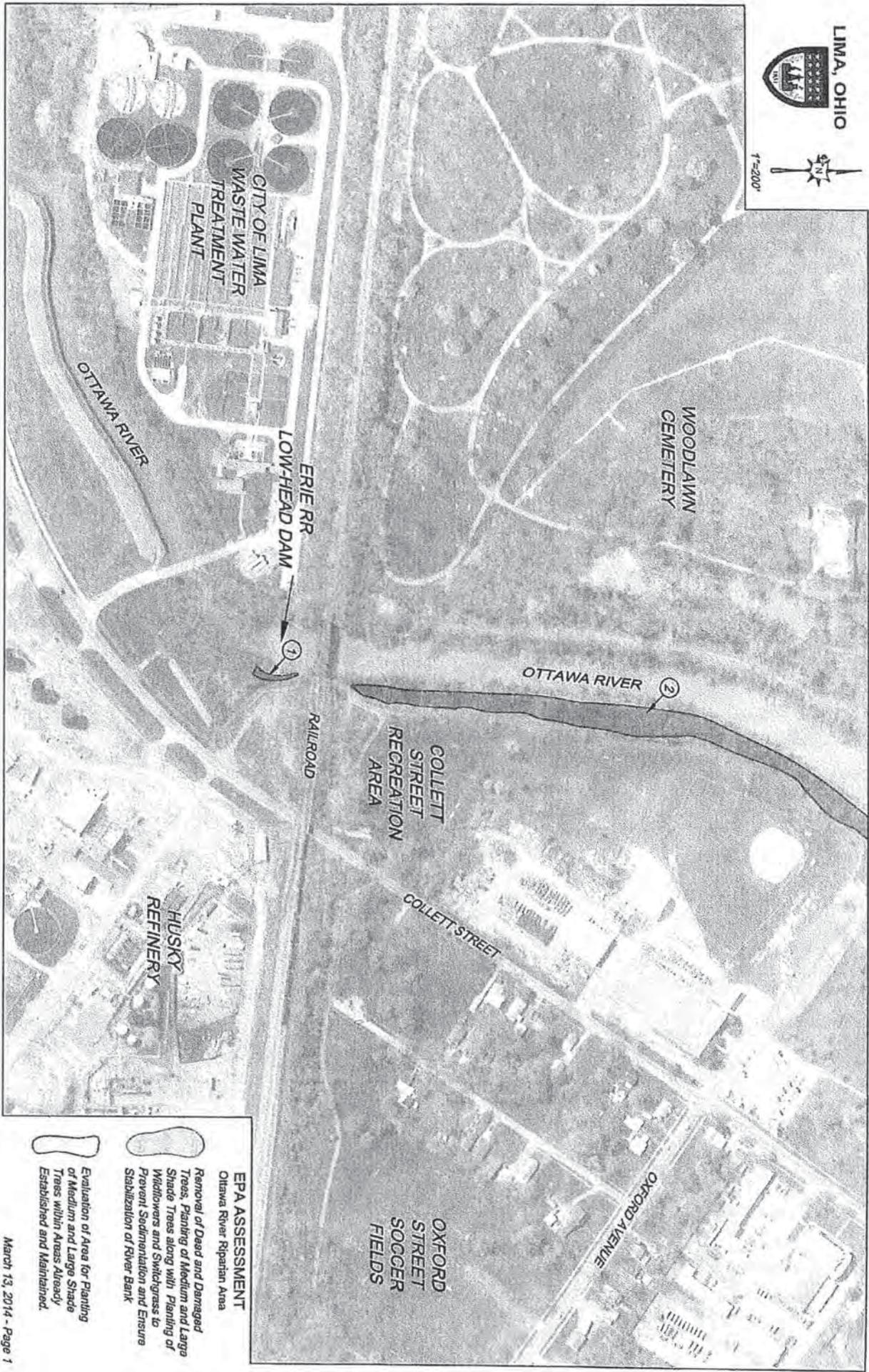
1. Lima shall perform a Supplemental Environmental Project (SEP) to revitalize the banks of the Ottawa River in twenty (20) designated areas in the City beginning near the City of Lima Wastewater Treatment Plant and continuing to the Main Street Crossing (The Riverbank Revitalization SEP). The 20 designated areas are shown on the figures in Attachment 1.
2. The SEP shall include an ECOSystem evaluation in the designated areas to determine the extent of existing plant life that should be retained and that which should be removed to support the river bank revitalization.
3. The SEP will also include, as a preliminary step, removal of dead, diseased, and compromised trees (especially those that are more than 12 inches in diameter). Removal of these trees cannot occur between April 1 and September 30 in any given year due to the possible presence of the Indiana Bat, an endangered species.
4. After the ECOSystem evaluation and removal of large trees, there will be clearing and grubbing activities in each of the designated areas to prepare the areas for plantings.
5. Following the clearing and grubbing activities, Lima shall plant wild flowers, grasses, and replacement trees to revitalize the river bank. The estimated types and quantities of wild flowers, grasses, and trees for planting in each of the 20 designated areas are listed in the Engineer's Estimate in Attachment 2. The City will use a mix of native and semi-native species depending on survivability, availability, maintenance requirements, and cost considerations. Wildflower species will be selected using the US Wildflower's Database of Wildflowers for Ohio; grasses will include species such as switchgrass; and trees will be selected based on consultation with American Forests and local suppliers to help reduce re-

infestation of the area with invasive species. Lima shall maintain the plantings in good condition through the life of the Consent Decree.

6. The general tasks and schedule are summarized in the table below:

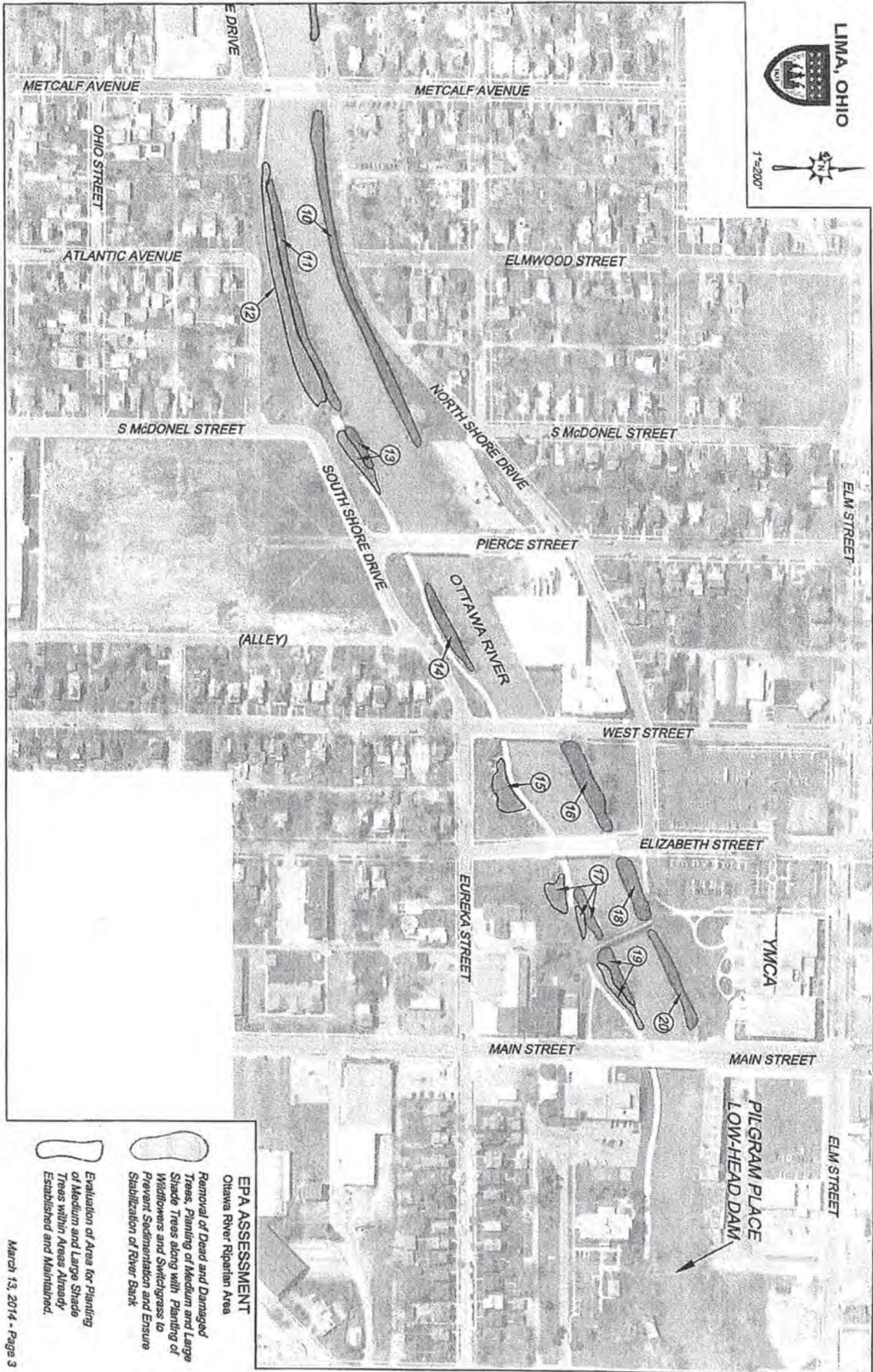
Task	Description	Schedule
1. ECOSystem Evaluation	Determine the extent of existing plant life that should be retained and that which should be removed.	February 1, 2015
2. Removing Large Trees	Removal of trees that are more than 12 inches in diameter.	March 30, 2015
3. Clearing and Grubbing	Clearing and grubbing of other plant life designated for removal to support plantings.	August 30, 2015
4. Planting	Planting of trees, grasses, and wildflowers to revitalize the river bank.	November 30, 2015

7. Lima's Riverbank Revitalization SEP shall improve water quality and benefit the aquatic ecosystem in the Ottawa River. The root systems from newly-planted grasses, native wildflowers, and healthy trees should stabilize the river banks and reduce the runoff of sediment and nutrients into the river. The native prairie switchgrass that shall be planted in designated areas has an especially deep, fibrous root system that holds soil in place and its above ground growth provides an effective wind erosion barrier. Once re-established, a healthy riparian tree canopy shall provide river shading and water temperature control benefits and it will also harbor insects and contribute leaf litter to support the riverine food chain.
8. Any subsequent modification to this Appendix or to Attachment 1 or 2 shall be deemed a minor modification of the Decree.



- EPA ASSESSMENT**
Ottawa River Riparian Area
- Removal of Dead and Damaged Trees, Planting of Medium and Large Shade Trees along with Planting of Wetlanders and Switchgrass to Prevent Sedimentation and Ensure Stabilization of River Bank
 - Evaluation of Area for Planting of Medium and Large Shade Trees within Areas Already Established and Maintained.





PROJECT:		OTTAWA RIVER BANK REVITALIZATION PROJECT - USEPA ENGINEER'S ESTIMATE - PLANTING ONLY			CITY OF LIMA	
REF. NO.	ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL PRICE
AREA 1 - (1,450 sq.ft.)						\$ 1,170
1		Wild Flower Mix	1	Unit	\$330	\$ 330
2		Switchgrass	0.5	Unit	\$320	\$ 160
3		Trees (average price)	2	Each	\$340	\$ 680
AREA 2 - (106,910 sq.ft. - 2,581 lin.ft.)						\$ 58,738
4		Wild Flower Mix	54	Unit	\$330	\$ 17,820
5		Switchgrass	54	Unit	\$317	\$ 17,118
6		Trees (average price)	70	Each	\$340	\$ 23,800
AREA 3 - (17,405 sq.ft. - 505 lin.ft.)						\$ 9,913
7		Wild Flower Mix	8	Unit	\$330	\$ 2,640
8		Switchgrass	9	Unit	\$317	\$ 2,853
9		Trees (average price)	13	Each	\$340	\$ 4,420
AREA 4 - (20,200 sq.ft. - 500 lin.ft.)						\$ 7,216
10		Wild Flower Mix	8	Unit	\$330	\$ 2,640
11		Switchgrass	8	Unit	\$317	\$ 2,536
12		Trees (average price)	6	Each	\$340	\$ 2,040
AREA 5 - (8,465 sq.ft. - 200 lin.ft.)						\$ 2,671
10		Wild Flower Mix	1.5	Unit	\$330	\$ 495
11		Switchgrass	1.5	Unit	\$317	\$ 476
12		Trees (average price)	5	Each	\$340	\$ 1,700
AREA 6 - (6,070 sq.ft. - 265 lin.ft.)						\$ 3,987
13		Wild Flower Mix	3	Unit	\$330	\$ 990
14		Switchgrass	3	Unit	\$317	\$ 951
15		Trees (average price)	6	Each	\$340	\$ 2,040
AREA 7 - (9,700 sq.ft. - 585 lin.ft.)						\$ 8,335
16		Wild Flower Mix	5	Unit	\$330	\$ 1,650
17		Switchgrass	5	Unit	\$317	\$ 1,585
18		Trees (average price)	15	Each	\$340	\$ 5,100
AREA 8 - (25,535 sq.ft.)						\$ 2,720
19		Wild Flower Mix	0	Unit	\$330	\$ 0
20		Switchgrass	0	Unit	\$317	\$ 0
21		Trees (average price)	8	Each	\$340	\$ 2,720
AREA 9 - (9,925 sq.ft. - 780 lin.ft.)						\$ 7,315
22		Wild Flower Mix	5	Unit	\$330	\$ 1,650
23		Switchgrass	5	Unit	\$317	\$ 1,585
24		Trees (average price)	12	Each	\$340	\$ 4,080
AREA 10 - (19,600 sq.ft. - 850 lin.ft.)						\$ 13,270
25		Wild Flower Mix	10	Unit	\$330	\$ 3,300
26		Switchgrass	10	Unit	\$317	\$ 3,170
27		Trees (average price)	20	Each	\$340	\$ 6,800
AREA 11 - (10,210 sq.ft. - 585 lin.ft.)						\$ 8,335
28		Wild Flower Mix	5	Unit	\$330	\$ 1,650
29		Switchgrass	5	Unit	\$317	\$ 1,585
30		Trees (average price)	15	Each	\$340	\$ 5,100
AREA 12 - (16,180 sq.ft. - 520 lin.ft.)						\$ 7,216
31		Wild Flower Mix	8	Unit	\$330	\$ 2,640
32		Switchgrass	8	Unit	\$317	\$ 2,536
33		Trees (average price)	6	Each	\$340	\$ 2,040

AREA 13 - (2,150 sq.ft. - 110 lin.ft.)						\$ 2,493
34	Wild Flower Mix	0	Unit	\$330		\$ 0
35	Switchgrass	2.5	Unit	\$317		\$ 793
36	Trees (average price)	5	Each	\$340		\$ 1,700
AREA 14 - (2,250 sq.ft. - 235 lin.ft.)						\$ 3,173
31	Wild Flower Mix	0	Unit	\$330		\$ 0
32	Switchgrass	2.5	Unit	\$317		\$ 793
33	Trees (average price)	7	Each	\$340		\$ 2,380
AREA 15 - (4,900 sq.ft.)						\$ 680
31	Wild Flower Mix	0	Unit	\$330		\$ 0
32	Switchgrass	0	Unit	\$317		\$ 0
33	Trees (average price)	2	Each	\$340		\$ 680
AREA 16 - (8,730 sq.ft. - 240 lin.ft.)						\$ 3,585
31	Wild Flower Mix	4	Unit	\$330		\$ 1,320
32	Switchgrass	5	Unit	\$317		\$ 1,585
33	Trees (average price)	2	Each	\$340		\$ 680
AREA 17 - (2,815 sq.ft. - 100 lin.ft.)						\$ 2,172
34	Wild Flower Mix	1.5	Unit	\$330		\$ 495
35	Switchgrass	1	Unit	\$317		\$ 317
36	Trees (average price)	4	Each	\$340		\$ 1,360
AREA 18 - (5,615 sq.ft. - 160 lin.ft.)						\$ 3,301
34	Wild Flower Mix	3	Unit	\$330		\$ 990
35	Switchgrass	3	Unit	\$317		\$ 951
36	Trees (average price)	4	Each	\$340		\$ 1,360
AREA 19 - (3,525 sq.ft. - 155 lin.ft.)						\$ 3,169
37	Wild Flower Mix	1.5	Unit	\$330		\$ 495
38	Switchgrass	2	Unit	\$317		\$ 634
39	Trees (average price)	6	Each	\$340		\$ 2,040
AREA 20 - (5,650 sq.ft. - 260 lin.ft.)						\$ 3,641
34	Wild Flower Mix	3	Unit	\$330		\$ 990
35	Switchgrass	3	Unit	\$317		\$ 951
36	Trees (average price)	5	Each	\$340		\$ 1,700

TOTAL PLANTING ESTIMATE \$ 153,093

ECOSystem evaluation and existing tree canopy assessment
CONTINGENCY & CONSULTING FEES (10%) \$15,309

ESTIMATED CLEARING & GRUBBING COST \$50,000

ESTIMATED TOTAL PROJECT COSTS \$ 218,402