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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE SANITARY DISTRICT OF HAMMOND,
et. al.

Defendants,

and

THE STATE OF INDIANA,
Statutory Defendant.

Civil Action No.
2:93 CV 225 JM

CONSENT DECREE

WHEREAS, this Consent Decree is entered into by the United States of America (the "United States"), the State of Indiana (the "State"), and the Sanitary District of Hammond, Indiana ("HSD");

WHEREAS, Plaintiff, the United States, on behalf of the United States Environmental Protection Agency ("EPA"), filed a Complaint on August 2, 1993, alleging, inter alia, that HSD has violated the Clean Water Act ("CWA"), 33 U.S.C. § 1251 et seq., and the Rivers and Harbors Act ("RHA"), 33 U.S.C. §§ 403 and 407;

WHEREAS, the State, which is named as a party in the Complaint pursuant to Section 309(e) of the CWA, 33 U.S.C. § 1319(e), filed cross claims against HSD on or about June 6, 1994;

WHEREAS, the State, through the Indiana Department of Environmental Management ("IDEM"), has established the Grand Calumet River Restoration Fund ("GCRRF") to address the effects of sediment contamination in the West Branch of the Grand Calumet River in accordance with the statement of purpose set forth in the GCRRF Trust Agreement in order to achieve the designated uses for the river; and

WHEREAS, the parties recognize that this Decree is a settlement of a contested matter, that participation in the settlement does not constitute or represent an admission of law or fact by any Party regarding fault, responsibility, liability, causation or damages asserted by any Party, and that except as provided in Section I below, there are no findings of fact or conclusions of law express or implied in this Decree and nothing in this Decree shall be construed to be, or to represent, any adjudication of any claim or admission of liability;

NOW THEREFORE, before the taking of any testimony, without any admission of liability, and with the consent of the parties, it is hereby ORDERED and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action and over the parties pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b). Venue is proper in this district also pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), Section 12 of the RHA, 33 U.S.C. § 406, and 28 U.S.C. § 1391(b).

II. PARTIES

2. HSD is the political subdivision which owns and operates a wastewater treatment plant in the City of Hammond, Indiana, and certain sewerage collection facilities in the municipalities of Hammond and Munster.

3. "The United States" means plaintiff, the United States, including each of its agencies, departments, divisions, and offices.

4. "The State" means statutory Defendant and Cross-Claimant the State of Indiana, including each of its agencies, departments, divisions, and offices. The State of Indiana was named as a party pursuant to Section 309(e) of the CWA, 33 U.S.C. § 1319(e).

III. BINDING EFFECT

5. This Consent Decree shall apply to and be binding upon the United States, the State, and HSD, including HSD's successors and assigns. In any action to enforce this Consent Decree, HSD shall not raise as a defense the failure of its officers, directors, agents, servants, contractors, or employees to take any actions necessary to comply with the provisions hereof except to the extent provided in Section XVI (Force Majeure).

IV. DEFINITIONS

6. 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,

and HSD's National Pollutant Elimination System ("NPDES") permit under the CWA.

V. COMPLIANCE PROGRAM

A. NPDES Permit Compliance

7. Subject to the interim limits for TDS, sulfates, chlorides, phenols, and fluorides set forth below, HSD shall comply with NPDES Permit No. IN 0023060. For purposes of this Paragraph, the parties agree that NPDES Permit No. IN 0023060 means the effective provisions of HSD's 1987 and 1996 NPDES Permits and of any new or modified NPDES Permit issued by IDEM that are not stayed pending appeal. The parties further agree that Schedule A to this Consent Decree sets forth those provisions of the 1987 and 1996 NPDES Permits that are not stayed and, therefore, are currently effective and enforceable.

8. With respect to HSD's discharge of TDS, sulfates, chlorides, phenols, and fluorides, HSD shall comply with the interim limits set forth below instead of the limits in NPDES Permit No. IN 0023060.

| | <u>Mass (lbs/day)</u> | | <u>Concentration (mg/l)</u> | |
|------------|-----------------------|-------------------|-----------------------------|------------------|
| | Monthly Average | Weekly Average | Monthly Average | Daily Maximum |
| TDS | 631,205 | -- | -- | -- |
| Sulfates: | 134,407 | -- | -- | -- |
| Chlorides: | 146,432 | -- | -- | -- |
| Phenols | -- | -- | 0.046 | 0.107 |
| Fluorides | 830 | -- | -- | -- |

If (A) the Indiana administrative law judge ("ALJ") enters a final order in HSD's pending permit appeal before the 1996 NPDES Permit expires on June 30, 1999, or (B) IDEM issues a final order on HSD's petition for a variance from certain requirements in its 1996 NPDES Permit before June, 1999, the interim limit for each of these parameters shall cease to apply upon the later of: (1) Final action with respect to the limit involved on HSD's appeal of its 1996 NPDES Permit, or (2) final action with respect to the limit involved on HSD petition for a variance. If the ALJ does not issue a final order in HSD's permit appeal before June 30, 1999, and IDEM does not issue a final order on HSD's variance petition before June 30, 1999, HSD shall dismiss its permit appeal and withdraw its variance petition. [In that event, the interim limits set forth in this Paragraph shall cease to apply upon the effectiveness of a new or modified NPDES Permit issued by IDEM to HSD that is not appealed or, if appealed, is not subject to a stay pending appeal with respect to the interim limit involved.]

9. To the extent that HSD's permit appeal or variance petition with respect to any parameter covered by an interim limit under this Consent Decree is pending at the close of any 6-monthly calendar period (as specified in Paragraph 46) following entry of this Decree, then HSD shall provide, in the semi-annual report for the period, a statement, including data and analysis, demonstrating that HSD's basis for its permit appeal and variance

petitions with respect to the limit in question has not materially changed.

10. a. HSD shall maximize the flow through HSD's collection system, including maximizing the use of pumps at each pump station before commencing to discharge through a CSO at the pump station.

b. HSD shall maximize the flow through HSD's treatment plant before commencing any discharge through Overflow Point 002. At a minimum, HSD shall not discharge through Overflow Point 002 in response to a wet weather event (i.e., wet weather discharges, as defined in Attachment A to HSD's 1998 NPDES Permit Amendment) unless it achieves a flow rate of at least 68 MGD prior to, or within one hour after, commencing such discharge. In addition, in such circumstances, HSD shall maintain the flow rate of 68 MGD through the treatment plant for at least one hour before it may reduce such flows to the treatment plant below 68 MGD.

c. At no time shall HSD discharge dry weather flows, as defined in Attachment A to HSD's 1998 NPDES Permit Amendment, through any CSO.

11. Nothing in this Consent Decree shall be construed as an admission by HSD that its treatment plant has a capacity greater than 37.8 MGD.

B. CSO Operations

12. Without limiting HSD's obligations under its approved CSO Operational Plan and the Indiana CSO Control Strategy, HSD

shall implement the specific measures described below in accordance with the following schedule:

| <u>Task</u> | <u>Completion Date</u> |
|--|---|
| a. Submit to EPA and IDEM for review and approval in accordance with the requirements of Section XIV of this Consent Decree (Reporting), a program for removing inflow sources from the sewer system | October 31, 1999 |
| b. Complete the improvements in the CSO Operational Plan for the Robertsdale Pump Station, including rebuilding or replacing sanitary pumps and storm pumps | October 31, 2002 |
| c. Install a metering and telemetry system for all pump stations | One-third of pump stations by June 1, 2001; two-thirds by June 1, 2003; and all pump stations by October 31, 2005 |
| d. complete implementation of program for removal of, as a minimum, public, non-residential private, and residential down spout inflow sources | October 31, 2002 |

Sherrille IN (good program) (Peter Swensen)

C. CSO Control

13. Without limiting HSD's obligations to implement its Long Term CSO Control Plan, in accordance with Attachment A to HSD's 1998 NPDES Permit Amendment, HSD shall construct facilities as needed to eliminate the use of the Columbia Ave, Sohl Ave., and Johnson Ave. CSOs, including (without limitation): a new wastewater storage reservoir; pump station improvements; sewer separations; and sewer interceptors and sewer-interceptor improvements, in accordance with the following schedule:

| <u>Task</u> | <u>Completion Date</u> |
|---|------------------------|
| a. Complete designs and construction schedules for new reservoir and pump station improvements; sewer separations; sewer interceptors; and sewer interceptor improvements | May 1, 2002 |
| b. Initiate construction | May 1, 2004 |
| c. Complete construction | May 1, 2009 |
| d. Achieve operational status for all new or modified components and cease all discharges from Columbia Ave, Sohl Ave., and Johnson Ave. CSOs | May 1, 2010 |

HSD shall submit to EPA and IDEM the design and construction schedule required in Paragraph 13a. at least 30 days prior to initiating construction.

14. Without limiting the United States' or the State's other remedies for noncompliance with this Consent Decree, should HSD fail to comply with any completion date specified in the preceding Paragraph and remain in noncompliance for more than 90 days, HSD shall not thereafter make any new hook-up, connection, or extension to its sewage system until HSD has certified to EPA and IDEM that it has completed the required Task and is otherwise in compliance with the schedule in the preceding Paragraph.

D. Sludge Lagoons

15. No later than one year after entry of this Consent Decree, HSD shall complete and submit to IDEM and EPA for review and approval in accordance with the requirements of Section XIV of this Decree (Reporting) a plan for its sludge lagoons that:

a. shall include a plan and schedule for closing the sludge lagoons and complying with the requirements of 40 C.F.R. Part 503; and

b. may include a feasibility study that examines the potential for conversion of the sludge lagoons, in a manner consistent with the requirements of 40 C.F.R. Part 503, to other beneficial uses, including, but not limited to flow equalization basins, CSO retention basins, basins for additional treatment of biosolids generated from the treatment plant's anaerobic treatment processes, and basins for dewatering sediments removed from the West Branch of the Grand Calumet River.

16. HSD shall complete the projects identified in the approved plan submitted pursuant to subparagraph a. of the preceding Paragraph, in accordance with the approved schedules set forth therein.

F. Industrial User Permits/Headworks Analysis

17. No later than 90 days after entry of this Consent Decree, HSD shall to EPA and IDEM a report, together with supporting data and analysis, identifying the total capacity of HSD's treatment plant to treat BOD; identifying the portion of that capacity available for treating BOD from industrial sources; specifying each industrial user of the treatment plant; and assigning an allocation for BOD to each industrial user consistent with ensuring (for purposes of maintaining a compliance margin) that the aggregate of all such industrial allocations does exceed 70 percent of the portion of plant capacity otherwise available for treating industrial-source BOD. Nothing in this Paragraph shall be construed to preclude HSD from allocating BOD in industrial user permits in terms of COD.

18. No later than 180 days after entry of this Consent Decree, HSD shall take all actions within its powers to have enacted sewer use ordinances and shall issue modified IU permits consistent with ensuring compliance with the BOD allocations contained in the report submitted pursuant to the preceding Paragraph.

19. No later than 210 days after entry of this Consent Decree, HSD shall submit to EPA, for review and approval in accordance with the CWA and EPA's pretreatment regulations, a modification to HSD's pretreatment program incorporating the modified industrial-user allocations and sewer use ordinances.

20. HSD shall perform a headworks loading analysis based on actual plant monitoring data and in accordance with EPA's Guidance Manual on the Development and Implementation of Local Discharge Limitations Under the Pretreatment Program (December 1987) and EPA's Residential and Commercial Toxic Pollutant Loadings and POTW Removal Efficiency Estimation (May 1991) to determine industrial discharge limits for TDS, sulfates, and chlorides necessary to protect the treatment plant from overloads, pass through, or interference in accordance with the following schedule:

- | | |
|--|---|
| a. Submit headworks loading analysis and proposed revised IU limits for TDS, sulfates, chlorides, and total phenols for review and approval in accordance with the requirements of Section XIV (Reporting) | For each parameter, within 60 days of final action on HSD's permit appeal or variance petition for that parameter |
| b. Revise IU permits to incorporate revised limits for TDS, sulfates, | For each parameter, within 60 days after |

chlorides, and total phenols

IDEM and EPA
approval of proposed
limits

VI. CONTRIBUTION TO SEDIMENT CLEANUP

21. Within 180 days after the date of entry by the Court of this Consent Decree, HSD shall pay, in settlement of the claims against it for injunctive relief in the United States' Complaint and the State's Cross-Claims, \$2.1 million to the Grand Calumet River Restoration Fund (the "GCRRF"), which has been established by the State to address the effects of sediment contamination in the West Branch of the Grand Calumet River.

VII. FAILURE TO COMPLY

22. The following stipulated penalties shall be applicable for noncompliance with the numerical effluent limits of NPDES Permit No. IN 0023060 or the interim limits set forth in Paragraph 8 of this Consent Decree:

| <u>Parameter</u> | <u>Penalty</u> |
|--|---|
| Daily concentration and mass limits | \$500 per day for the first two days of violation in any month of an individual parameter and \$1000 per day after the first two days |
| 7-day average concentration and mass limits | \$4000 per week per parameter |
| 30-day average concentration and mass limits | \$10,000 per month per parameter |
| 30-day average loading limit | \$10,000 per month per parameter |

23. The following stipulated penalties shall be applicable for each noncompliance with any of the Compliance Program requirements of this Consent Decree set forth in Paragraphs 10a., 10b., 12a., 12b., 12c., 12d., 13a, 13b., 13c., 13d, 15a., 16, 17, 18, 19, 20a., or 20b.

| <u>Period of noncompliance</u> | <u>Penalty</u> |
|--|------------------------------|
| 1st to 30th day of continuous violation | \$500 per day per violation |
| 31st to 60th day of continuous violation | \$750 per day per violation |
| After 60 days of continuous violation | \$1000 per day per violation |

24. The following stipulated penalties shall be applicable for each dry weather CSO discharge in violation of the provisions of Paragraph 10c.

| <u>Period of noncompliance</u> | <u>Penalty</u> |
|--|------------------------------|
| 1st to 30th day of continuous violation | \$1000 per day per violation |
| 31st to 60th day of continuous violation | \$1500 per day per violation |
| After 60 days of continuous violation | \$2000 per day per violation |

25. The following stipulated penalties shall be applicable for each noncompliance with any monitoring or reporting requirements of NPDES Permit No. IN 0023060, or the reporting requirement set forth in Paragraphs 9, 45, and 46 of this Consent Decree.

| <u>Period of noncompliance</u> | <u>Penalty</u> |
|--|-----------------------------|
| 1st to 30th day of continuous violation | \$100 per day per violation |
| 31st to 60th day of continuous violation | \$150 per day per violation |
| After 60 days of continuous violation | \$200 per day per violation |

26. Nothing in this Decree shall (A) prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Decree or (B) preclude HSD from asserting any defense it may have under the CWA, its implementing regulations, or NPDES Permit No. IN 0023060 to any alleged violation of the terms of this Decree.

27. The stipulated penalties herein shall in no way limit other remedies or sanctions available to the United States and the State by reason of HSD's failure to comply with the requirements of this Decree, its NPDES permit or the CWA. However, if the United States or the State collects a stipulated penalty under this Decree and one or both subsequently seeks and is awarded a monetary penalty under the CWA for the same act or omission, HSD shall receive a credit against the judgment for the amount of the stipulated penalty paid by HSD.

28. HSD shall pay stipulated penalties, upon written demand by EPA or IDEM, by the 15th day of the month following the month in which the demand is made. HSD shall pay 50 percent of each stipulated penalty to the United States and 50 percent to the State, each payment to be made by cashier's check. Stipulated

penalties to the United States shall be made payable to

"Treasurer of the United States", and delivered to:

Office of the United States Attorney
Northern District of Indiana
1001 Main Street, Suite A
Dyer, Indiana 46311

Stipulated penalties owed to the State shall be made payable to the GCRRF. HSD shall enclose with all checks a letter identifying the case name, court, docket number, specific stipulated penalty provision involved, and a description of the violation(s) of this Decree for which the stipulated penalties are being tendered. HSD shall send copies of each letter and check to both EPA and IDEM.

VIII. CIVIL PENALTY

29. Within 180 days after entry of this Consent Decree, HSD shall pay a civil penalty to the United States in the amount of \$112,500 Electronic Funds Transfer to the United States Department of Justice lockbox bank, referencing U.S.A.O. file number _____. Payment shall be made in accordance with payment instructions to be provided to HSD and its counsel by the United States upon entry of this Decree. HSD shall notify the United States and the State of this payment in accordance with Section XIV (Reporting), by correspondence identifying the case name, court and docket number.

30. Within 180 days after entry of this Decree, HSD shall pay a civil penalty to the State in the amount of \$112,500. Payment shall be made by certified check payable to Environmental

Management Special Fund and sent to IDEM, 100 North Senate Ave., P.O. Box 7060, Indianapolis, Indiana, 46207. HSD shall notify the United States and the State of this payment in accordance with Section XIV (Reporting), by correspondence identifying the case name, court and docket number.

IX. LATE PAYMENT CHARGE

31. Interest shall accrue on any amounts overdue to the United States or the State under the terms of this Decree at the rate established by the Secretary of the Treasury, pursuant to 31 U.S.C. § 3717. The rate shall be that in effect on the date on which the payment was due. Interest shall be computed beginning on the date that the amount in question is due. If interest is due to the United States, HSD shall submit a statement with this payment to the Office of the United States Attorney for the Northern District of Indiana setting forth its calculation of interest. Payment of interest shall not excuse any late payment, and shall not foreclose the United States from taking action to enforce HSD's obligations under this Decree.

X. RIGHT OF ENTRY

32. Until termination of this Decree, EPA and IDEM and their representatives, contractors, consultants, and attorneys shall have the authority to enter HSD's facilities at all times upon proper presentation of credentials to the manager or managers of HSD's facilities for the purposes of:

- a. monitoring the progress of activities required by this Decree or undertaken by the GCRRF Trustee;

- b. verifying any data or information submitted to EPA and IDEM in accordance with the terms of this Decree;
- c. obtaining samples and, upon request, splits of any samples taken by HSD or its consultants; or
- d. assessing HSD's compliance with this Decree.

This provision in no way limits or affects any rights of entry and inspection held by either EPA or IDEM pursuant to applicable federal or state laws or regulations.

XI. EFFECT OF COMPLIANCE

33. The United States and the State, by their consent to the entry of this Decree, neither warrant nor aver in any manner that HSD's compliance with this Consent Decree, implementation of any plan, or completion of any analysis, construction project, or treatment plant improvements required by this Consent Decree or HSD's NPDES permit will necessarily result in compliance with the provisions of the CWA or of U.S. EPA pretreatment regulations or with any other provision of federal or state law.

Notwithstanding EPA's and IDEM's review and approval of any plans, HSD shall remain solely responsible for compliance with the terms of this Consent Decree and all other applicable provisions of federal and state law.

XII. NON-WAIVER PROVISIONS

34. Nothing herein shall preclude the United States or the State from seeking any legal or equitable relief for violations of this Consent Decree, including, but not limited to, injunctive relief and civil or criminal contempt sanctions. Nothing in this

Decree is intended to nor shall be construed to operate in any way to resolve any potential criminal liability of HSD.

35. Except as set forth in Paragraph 8 (interim limits) and Section XVII (Effect of Settlement) of this Decree, the United States and the State do not waive any rights or remedies available to them for any violation by HSD of federal or state laws or regulations during the term of this Consent Decree.

36. This Decree does not limit or affect the rights of HSD, the United States, or the State as against any third parties, including, without limitation, the rights of the United States or the State against any other party to this case.

37. Nothing herein shall be construed to limit the authority of EPA to obtain information from any person, including HSD, pursuant to Section 308 of the CWA, 33 U.S.C. § 1318. Moreover, nothing herein shall be construed to limit the authority of the United States to undertake any action against any person, including HSD, pursuant to Section 504 of the CWA, 33 U.S.C. § 1364; or limit the State from exercise of its police powers, in response to evidence indicating that HSD is, by itself or in combination with other sources, presenting an imminent and substantial endangerment to the health or welfare of any person.

38. This Decree is not and shall not be interpreted to be a permit issued pursuant to either Sections 307 or 402 of the CWA, 33 U.S.C. § 1317 or 1342, or any other provision of federal or state law.

39. Performance of the terms of this Decree by HSD is not conditioned in any way on the receipt of any Federal or State grant or loan funds.

XIII. COSTS OF SUIT

40. Each party shall bear its own costs and attorney's fees in this action.

XIV. REPORTING

A. Format of Reports

41. Except as specified otherwise, when written notification to or communication with the United States, EPA, the State of Indiana, IDEM, or HSD is required by the terms of this Decree, it shall be addressed as follows:

As to the United States;

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Post Office Box 7611
Ben Franklin Station
Washington, D.C. 20044
DOJ No. 90-5-1-1-3308A

and

United States Attorney
Northern District of Indiana
1001 Main Street, Suite A
Dyer, Indiana 46311

As to EPA:

Chief, Water Enforcement
and Compliance Assurance
Branch (WCC-15J)
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604

As to the State of Indiana:

Environmental Section
Office of the Attorney General
Indiana Government Center South
5th Floor
402 North Washington Street
Indianapolis, Indiana 46220

As to IDEM;

Chief, Water Enforcement Section
Indiana Department of Environmental Management
100 North Senate Street
Post Office Box 6015
Indianapolis, Indiana 46206

As to HSD:

District Manager
Sanitary District of Hammond
5143 Columbia Avenue
Hammond, Indiana 46320

On each document submitted to U.S. EPA, HSD shall identify this Consent Decree and the applicable Paragraph(s) to which the submitted document relates.

42. Notifications or communications necessary to be submitted under this Decree shall be deemed submitted on the date they are mailed.

B. Approval of Reports

43. HSD shall submit two copies of any document requiring EPA and IDEM approval to each agency at the address listed in Paragraph 41 of this Decree. Within 60 days of receipt of any such submission by both EPA and IDEM, EPA and IDEM shall either approve or disapprove the submission and provide HSD with written notice of their action. If EPA and IDEM disapprove any submission, they shall provide written comments to HSD and, where

appropriate, identify needed changes or additional information necessary to make the submission approvable. HSD shall make the needed changes to address EPA's and IDEM's concerns and/or provide the additional information necessary to support the submission, within 30 days of receipt of such comments. HSD shall submit a modified submission or provide the additional information needed to make the submission approvable within 30 days of receipt of EPA's and IDEM's notice of disapproval.

44. Should EPA and IDEM fail to notify HSD of their approval or disapproval of any submission within sixty 60 days of when they both have received the submission, the completion dates for each milestone in the submission, once approved, shall be deemed extended by the number of days beyond 60 that EPA and IDEM took for such approval or disapproval.

C. Supplemental Reporting in MROs

45. HSD shall submit to EPA, in accordance with Section IV (Reporting) each MRO that it submits to IDEM pursuant to NPDES Permit No. IN 0023060. In the MRO that HSD submits for any month during which it discharged through any CSO, HSD shall report the volume of the CSO discharge and provide a statement of any operational factors that affected HSD's ability to maximize the flow to the treatment plant through the pump station where a CSO discharge occurred. HSD need not provide, however, a statement of operating factors with respect to a discharge to Overflow Point 002 where it achieved a flow rate of 68 MGD prior to, or within one hour after, commencing the overflow.

D. Semi-Annual Reports

46. Beginning within 30 days of the close of the 6-month calendar period in which this Consent Decree is entered, and within 30 days of the close of each 6-month period thereafter during the term of this Decree, HSD shall report fully in writing to EPA and IDEM on the status of HSD's compliance with all requirements of this Decree during the previous six months. At a minimum, the report shall contain the following: (a) to the extent not previously provided to EPA and IDEM, Discharge Monitoring Reports, Monthly Reports of Operation, and copies of all pretreatment reports required under HSD's NPDES Permit No. IN 0023060; (b) a projection of the work to be performed pursuant to this Decree during the following six month period; (c) status of any other actions being taken pursuant to Section V (Compliance Program) of this Decree; and (d) whether HSD is in compliance with requirements of this Decree and the reasons for any noncompliance, together with a plan to remedy any noncompliance.

XV. DISPUTE RESOLUTION

47. Any dispute between the United States or the State and HSD arising under or concerning this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to this Decree for a period of fifteen (15) days from the time when a written Notice of Dispute is first given. The period for negotiations may be extended by agreement of the parties to this Decree.

48. Formal dispute resolution shall proceed as follows:

- a. If a dispute between the parties cannot be resolved by informal negotiations under the preceding Paragraph, then the position advanced by EPA or IDEM shall be considered binding unless, within fifteen (15) working days after the end of the informal negotiations period, HSD invokes the formal dispute resolution procedures of this Section by serving on EPA and IDEM a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position, and any supporting documentation relied upon by HSD.
- b. Within fourteen (14) days after receipt of HSD's Statement of Position, EPA and/or IDEM shall serve on HSD a Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA and/or IDEM.
- c. An administrative record of the dispute shall be maintained by EPA or IDEM and shall contain all statements of position, including supporting documentation, submitted pursuant to this Paragraph.
- d. The Director of the Water Division in EPA Region 5 will issue a final administrative decision resolving the dispute based on the administrative record described in the preceding subparagraph. This decision shall be binding upon HSD, subject only to the right to seek judicial review pursuant to the following two subparagraphs.
- e. Any administrative decision made by EPA pursuant to the preceding subparagraph shall be reviewable by the Court provided that a notice of judicial appeal is filed by HSD with the Court and served on EPA and IDEM within 30 days of receipt of EPA's decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States or the State may file a response to HSD's notice of judicial appeal.
- f. In proceedings on any dispute governed by this Paragraph, HSD shall have the burden of demonstrating that the decision of the Director of the Water Division is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to this Paragraph.

49. The invocation of formal dispute resolution procedures under this Section shall not of itself extend or postpone any

obligation of HSD under this Consent Decree, but the payment of stipulated penalties with respect to the disputed matter shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall continue to accrue from the first day of noncompliance with any provision of this Consent Decree and shall be paid within fifteen (15) calendar days after the Court issues an order resolving the dispute or after the resolution of any appeal concerning the dispute. To the extent that HSD prevails on the disputed issue, stipulated penalties shall be excused.

XVI. FORCE MAJEURE

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

51. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, HSD shall notify EPA and

IDEM in writing in accordance with the requirements of Section XIV of this Decree (Reporting) within 10 days of when HSD first knew or should have known that the event would cause a delay. HSD's written notification shall include an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; and, HSD's rationale for attributing such delay to a force majeure event if it intends to assert such a claim. HSD shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude HSD from asserting any claim of force majeure for that event.

52. If EPA and IDEM agree that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If either EPA or IDEM does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, it will, within 60 days, notify HSD in writing of its decision. If either EPA or IDEM agrees

that the delay is attributable to a force majeure event, it will notify HSD in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

53. In any proceeding concerning the applicability of the force majeure provisions of this Section, HSD shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that HSD complied with the requirements of Paragraphs 50 and 51. If HSD carries this burden, the delay at issue shall be deemed not to be a violation by HSD of the affected obligation of this Consent Decree.

XVII. EFFECT OF SETTLEMENT

54. United States' Covenant. Subject to the reservation of rights under Paragraph 56 of this Decree, upon payment by HSD of all amounts, including interest, required by Section VI of this Decree, the United States covenants not to sue or take administrative action against HSD for civil liability arising from wastewater discharges from HSD's treatment plant through the date of lodging of this Decree as alleged in the United States' Complaint and State's Cross-Claims for: (a) relief pursuant to Sections 309 or 311 of the CWA, 33 U.S.C. § 1319 and 1321; (b) relief pursuant to the RHA, 33 U.S.C. § 401 et seq.; (c)

reimbursement of response costs or other legal or equitable relief resulting from wastewater discharges from HSD's treatment plant pursuant to CERCLA Sections 106 or 107, 42 U.S.C. §§ 9606 and 9607, or Section 7003 of RCRA, 42 U.S.C. § 6973.

55. State's Covenant. Subject to the reservation of rights under Paragraph 57 of this Decree, upon payment by HSD of all amounts, including interest, required by Section VI of this Decree, the State covenants not to sue or take administrative action against HSD for any civil liability arising from wastewater discharges from HSD's treatment plant through the date of lodging of this Decree as alleged in the United States' Complaint and State's Cross-Claims for: (a) relief pursuant to 327 IAC 5-12-2, 327 IAC 5-11-5, 327 IAC 2-1, 327 IAC 5-2-4(a)(3), Ind. Code §§ 13-2-22-13, 13-30-2-1, 13-18-4-5, 34-1-52; (b) relief pursuant to Sections 309 or 505 of the CWA, 33 U.S.C. §§ 1319 and 1365; and (c) reimbursement of response costs or other legal or equitable relief pursuant to CERCLA Sections 107 or 113, 42 U.S.C. §§ 9607 or 9613.

56. United States' Reservation of Rights. The covenant not to sue set forth in Paragraph 54 above shall apply only to matters expressly set forth in that Paragraph, and shall not apply to any other matter including any of the following claims:

- (1) Claims based on HSD's failure to satisfy any requirement of this Decree;
- (2) Claims for criminal liability;

(3) CERCLA claims for liability arising from information previously unknown to EPA about the nature, characteristics or volume of any wastewater discharges from HSD through the date of lodging of this Decree as alleged in the United States' Complaint and State's Cross-Claims. For purposes of this reservation, the information known to EPA shall include only that information in the possession of EPA as of the date of lodging of this Consent Decree; and

(4) Claims for damages for injury to, destruction of, or loss of natural resources, resulting from wastewater discharges from HSD' treatment plant (including but not limited to the reasonable costs of assessing such injury, destruction or loss), pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a), or Oil Pollution Act Section 1002(b)(2), 33 U.S.C. § 2702(b)(2).

57. State's Reservation of Rights. The covenant not to sue set forth in Paragraph 55 above shall apply only to matters expressly set forth in that Paragraph and shall not apply to any other matter including any of the following claims:

(1) Claims based on HSD's failure to satisfy any requirement of this Decree;

(2) Claims for criminal liability;

(3) Claims for liability arising from information previously unknown to the State about the nature, characteristics or volume of any wastewater discharges from HSD through the date of lodging of this Decree as alleged in the United States' Complaint and State's Cross-Claims. For purposes of this

reservation, the information known to the State shall include only that information in the possession of the State as of the date of lodging of this Consent Decree; and

(4) Claims for damages for injury to, destruction of, or loss of natural resources, including but not limited to the reasonable costs of assessing such injury, destruction or loss resulting from wastewater discharges from HSD's treatment plant pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a), or Oil Pollution Act Section 1002(b)(2), 33 U.S.C. § 2702(b)(2).

58. HSD's Covenants. HSD covenants not to sue or commence any proceeding or exercise any right against the United States or the State for any claim, counter-claim, cross-claim, cause of action or demand arising from the matters addressed in this Decree, including but not limited to any direct or indirect claim pursuant to 33 U.S.C. § 1321(i), or any provision of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., for reimbursement for any costs associated with the implementation of this Decree.

59. Effect of Settlement and Contribution Protection.

A. With regard to claims for contribution against HSD for the matters addressed in this Decree, the Parties agree that HSD is entitled to such protection from contribution actions or claims as is provided by 42 U.S.C. § 9613(f)(2).

B. Nothing in this Decree shall constitute or be construed as a release or a covenant not to sue regarding any claim or cause of action against any person not a party to this

Decree for any liability it may have arising out of the matters addressed in this Decree. The United States, the State and HSD expressly reserve their rights to sue or take any other action against any other person or entity.

60. This Consent Decree contains the entire agreement of the parties and shall not be modified by any prior oral or written agreement, representation, or understanding.

XVIII. RETENTION OF JURISDICTION

61. The Court shall retain jurisdiction over the subject matter of this action and over the parties for the purpose of enforcing the terms of this Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of the terms of this Decree.

XIX. TERMINATION

62. The provisions of Paragraph 22 of this Consent Decree (stipulated penalties for non-compliance with the applicable effluent limits set forth in Paragraphs 7 and 8) shall terminate 3 years after the date of entry, provided that HSD: (i) has made all payments due under this Consent Decree, including payment of the civil penalty, GCRRF contribution, and any stipulated penalties for which a demand has been made pursuant to Paragraph 28; and (ii) has otherwise been in compliance with all provisions of the Decree for at least one year. At that time, HSD shall notify EPA and IDEM in writing that HSD is in compliance with such provisions and has paid all such stipulated penalties. If EPA and IDEM agree, the United States, the State, and HSD shall

jointly notify the Court that the provisions of Paragraph 21 of the Consent Decree have terminated.

63. Provided that the requirements for termination of Paragraph 22 above have previously been met, all other provisions of the Consent Decree may be terminated upon HSD's completion of all the requirements set forth in Section V of this Consent Decree (Compliance Program), provided that HSD has been in compliance with all provisions of this Consent Decree (other than Paragraph 22) for at least one year and has paid all stipulated penalties for which a demand has been made pursuant to Paragraph 28. At that time, HSD shall notify EPA and IDEM in writing that HSD is in compliance with such provisions and has paid all such stipulated penalties. If EPA and IDEM agree, the United States, the State, and HSD shall jointly notify the Court that the Consent Decree has terminated.

XX. AUTHORIZATIONS

64. Each undersigned representative of HSD certifies that he or she is fully authorized to enter into the terms and conditions of this Decree and to execute and legally bind HSD to this Decree.

XX. PUBLIC COMMENT

65. The parties agree and acknowledge that final approval by the United States and entry of this Decree is subject to the requirement of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Decree, opportunity for public comment, and the consideration of any public comment. The United States reserves

SCHEDULE A TO CONSENT DECREE

| Hammond Sanitary District Permit Limitations Currently in Effect | | | | | | |
|--|-------------------------------|----------------|---------------|----------------------|----------------|---------------|
| Parameter | Quantity or Loading (lbs/day) | | | Concentration (mg/l) | | |
| | Monthly Average | Weekly Average | Daily Maximum | Monthly Average | Weekly Average | Daily Maximum |
| CBOD5 | | | | | | |
| Summer | 2238 (87) | 3373 (87) | | 7.1 (87) | 10.7 (87) | |
| Winter | 4026 (96) | 6068 (96) | | 7.1 (87) | 10.7 (87) | |
| TSS | | | | | | |
| Summer | 2680 (87) | 4035 (87) | | 8.5 (87) | 12.8 (87) | |
| Winter | 4821 (96) | 7259 (96) | | 8.5 (87) | 12.8 (87) | |
| Ammonia-N | | | | | | |
| Summer | 788 (87) | 1198 (87) | | 2.5 (87) | 3.8 (87) | |
| Winter | 2836 (96) | 4253 (96) | | 5.0 (87) | 7.5 (87) | |
| Sulfate | 56,700 (87) | | | | | |
| Chlorides | 60,000 (87) | | | | | |
| Fluride | 500 (87) | | | | | |
| TDS | | | | | | |
| | 400,000 (87) | | | | | |
| | | | | | | |
| T.R. Chlorine | | | | | | 0.05 (87) |
| Cadmium | | | | | | 0.20 (87) |
| | | | | | | |

(96) disputed
(87) left alone

| | | | | | | |
|---------------|----------|--|----------|--|------------------------|----------------|
| | | | | | | |
| | 5.0 (87) | | | | | 0.025 (87) |
| | | | | | | 0.3 (87) |
| | | | | | | 0.04 (87) |
| Lead | | | | | | |
| Mercury | | | | | | 0.0005 (87) |
| | | | | | | 1.0 (87) |
| | | | | | | 0.10 (87) |
| T. Phosphorus | | | 1.0 (87) | | | |
| | | | | | | 0.01 (87) |
| E. Coli | | | | | | 235/100ml (96) |
| | | | | | | |
| Summer | | | | | 6.0 Daily Minimum (87) | |
| | | | | | | 10 (87) |

Permit Limits that
are not stayed

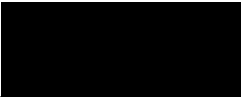
the right to withdraw its consent to this Decree if any comment discloses facts or considerations that indicate the proposed settlement is inappropriate, improper or inadequate. HSD consents to the entry of this Consent Decree without further notice.

CONSENT DECREE among the United States,
the State of Indiana, and the Sanitary District of Hammond in
United States v. Sanitary District of Hammond et al.

THE UNITED STATES OF AMERICA


DATE: 4/21/99

By:


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

DATE: 4-23-99

By:


THOMAS P. CARROLL, Senior Attorney
ESPERANZA ANDERSON
ROBERT LEE
STACY O'BRYAN
Trial Attorneys
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20530
(202) 514-4059

CONSENT DECREE among the United States,
the State of Indiana, and the Sanitary District of Hammond in
United States v. Sanitary District of Hammond et al.

JON E. DeGUILIO
United States Attorney
Northern District of Indiana


DATE: 4-23-99

By: _____


MICHELLE D. JORDAN
Assistant United States Attorney
Northern District of Indiana
1001 Main Street, Suite A
Dyer, Indiana 46311

CONSENT DECREE among the United States,
the State of Indiana, and the Sanitary District of Hammond in
United States v. Sanitary District of Hammond et al.

DATE: 4/21/99

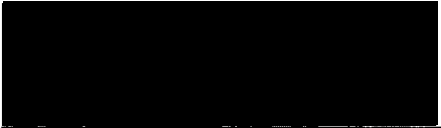

for DAVID A. ULLRICH
Acting Regional Administrator
U.S. Environmental Protection
Agency, Region 5
Chicago, Illinois 60604

DATE: 19 April 99


NICOLE CANTELLO
Assistant Regional Counsel
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Blvd. (CA-29A)
Chicago, Illinois 60604

CONSENT DECREE among the United States,
the State of Indiana, and the Sanitary District of Hammond in
United States v. Sanitary District of Hammond et al.

DATE: 4/1/79


STEVEN A. HERMAN
Assistant Administrator for
Enforcement
United States Environmental
Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

CONSENT DECREE among the United States,
the State of Indiana, and the Sanitary District of Hammond in
United States v. Sanitary District of Hammond et al.

THE STATE OF INDIANA

[REDACTED]

OFFICE OF THE GOVERNOR

[REDACTED]

LORI KAPLAN
Commissioner, Indiana Department
of Environmental Management

JEFFREY MODISETT
Attorney General, State of
Indiana

By:

[REDACTED]

ANITA WYLIE
Deputy Attorney General
Office of the Attorney General
Indiana Government Center South
5th Floor
402 North Washington Street
Indianapolis, Indiana 46220

CONSENT DECREE among the United States,
the State of Indiana, and the Sanitary District of Hammond in
United States v. Sanitary District of Hammond et al.


THE SANITARY DISTRICT OF HAMMOND

DATE: 4-12-99

By: 

ALFRED J. KUHN

IT IS SO ORDERED. JUDGMENT ENTERED IN ACCORDANCE WITH THE
FOREGOING CONSENT DECREE, THIS 17 DAY OF JUN, 1999.


JAMES T. MOODY
United States District Judge

Applicable Narrative Provisions for Hammond Sanitary District

All of the narrative provisions for Hammond Sanitary District's 1996 Permit, Number IN0023060, are effective, except for the provisions on appeal. The following table lists which provisions are stayed pending appeal and lists corresponding provisions, if any, that are currently effective for the appealed provisions.

| <u>STAYED</u> | <u>EFFECTIVE</u> |
|--------------------|-----------------------------|
| I.A.1[1]..... | I.A.1[5] (1987 Permit) |
| I.A.1[2]..... | I.A.1[5] (1987 Permit) |
| I.A.1[3]..... | I.A.1.b[1] (1987 Permit) |
| I.A.1[4]..... | |
| I.A.1[7-10] | |
| I.A.2 | |
| I.A.3[1]..... | I.A.2.a (1987 Permit) |
| I.A.4 | |
| I.B.4.b[4] | |
| I.C.6 | |
| I.D. | |
| I.E.1.a(iii) | |
| I.E.1.c | |
| I.E.1.d | |
| I.E.1.e(i),(iii) | |
| II.A.7 | II.A.7 (1987 Permit) |
| II.A.9.b..... | II.A.9.B (1987 Permit) |
| III.A.8.b | |
| III.A.4-6 | |
| III.B | |
| III.B.1,2,4 | |
| Attachment A | 1998 Attachment A supplants |
| Attachment B | 1987 Attachment A controls |

