

IN THE UNITED STATES DISTRICT COURT FILED  
FOR THE DISTRICT OF MASSACHUSETTS CLERK'S OFFICE

UNITED STATES OF AMERICA, and )  
the COMMONWEALTH OF MASSACHUSETTS, )  
 )  
Plaintiffs, )  
 )  
v. )  
LYNN WATER AND SEWER COMMISSION, )  
 )  
Defendant. )

MAR 9 2 28 PM '01

US DISTRICT COURT  
MASSACHUSETTS

Civil Action  
No. 76-2184-G

SECOND MODIFIED CONSENT DECREE

WHEREAS, the plaintiff, United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), filed a complaint herein on June 2, 1976 (the "Complaint") alleging that the City of Lynn, Massachusetts ("Lynn") and Antonio J. Marino, as the Mayor of Lynn at that time (the "Mayor of Lynn"), were in ongoing violation of section 301(b), 33 U.S.C. §1311(b), of the Clean Water Act, 33 U.S.C. § 1251, et seq. (the "Act"), the requirements of a certain information request letter issued pursuant to section 308 of the Act, 33 U.S.C. § 1318, the requirements of a certain Administrative Order (EPA Docket No. I-76-20) issued pursuant to section 309 of the Act, 33 U.S.C. §1319, and the provisions of National Pollutant Discharge Elimination System ("NPDES") Permit No. MA 0100552, State No. M-37, issued pursuant to section 402 of the Act, 33 U.S.C. § 1342;

90-5-1-1-5458



WHEREAS, pursuant to section 309(e) of the Act, 33 U.S.C. § 1319(e), the Commonwealth of Massachusetts (the "Commonwealth") was joined in the Complaint as a party defendant in this action and the Commonwealth filed a cross-claim in this action, alleging that the municipal defendants had violated the Massachusetts Clean Waters Act, M.G.L. c. 21, §42 (the "Massachusetts Act") by failing to comply with the provisions of its permit (the "Cross-Claim");

WHEREAS, the Lynn Water and Sewer Commission (the "Commission") is a body politic and corporate and a political subdivision of the Commonwealth created pursuant to 1982 Massachusetts Act Chapter 381, Section 3, which owns and operates the water and sewer works systems, including but not limited to the publicly owned treatment works located at 2 Circle Avenue, Lynn, Massachusetts (the "POTW") and certain combined sewer overflows ("CSOs"), located in Lynn and formerly owned and operated by Lynn;

WHEREAS, the Commission took title to and control of Lynn's water and sewer works systems in December 1982 and has been a defendant to this action since its creation in December 1982 as a successor to Lynn's interest in Lynn's water and sewer works systems and in these proceedings;

WHEREAS, the City of Lynn and the Mayor of Lynn were dismissed as defendants by agreement of the parties, and the

Commonwealth of Massachusetts was realigned as a plaintiff by Order dated September 2, 1993;

WHEREAS, the United States of America, the Commonwealth, and the Commission agreed and consented to, and the Court entered, a Modified Consent Decree entered by the Court on November 2, 1987 (the "Modified Decree"); and

WHEREAS, the Commission completed a Combined Sewer Overflow Facilities Plan Phase 2 Report, dated March 1990 ("CSO Facilities Plan"); and

WHEREAS, by agreement of the parties, Amendments To Modified Consent Decree (Combined Sewer Overflows) were entered by the Court on February 5, 1995, which in turn were modified in an Amendment to Modified Consent Decree entered by the Court on September 26, 1997; and

WHEREAS, the defendant Lynn Water and Sewer Commission has completed certain of the obligations required under the consent decree, as previously modified; and

WHEREAS, the parties agree that certain further amendments are appropriate and that the Modified Consent Decree should be modified and replaced by this Second Modified Consent Decree;

WHEREAS, the parties agree, without adjudication of facts or law, that settlement of disputes between the parties relating to the Commission's obligations under the Act and the Modified Consent Decree is in the public interest and that entry of this

Second Modified Consent Decree is an appropriate way to resolve such disputes;

NOW, THEREFORE, upon consent of the parties to this action, as evidenced by the signatures of their attorneys and representatives below, it is hereby ordered, adjudged and decreed as follows:

**STATEMENT OF CLAIM**

1. The Complaint filed herein states claims upon which relief can be granted against the Commission pursuant to Sections 301 and 309 of the Act, 33 U.S.C. §§ 1311 and 1319. The Cross-Claim filed herein states claims upon which relief can be granted against the Commission thereunder pursuant to the Massachusetts Act, G.L. c. 21, §42.

**JURISDICTION AND VENUE**

2. The Court has personal jurisdiction over the parties to this Second Modified Consent Decree. The Court also has jurisdiction over the subject matter of this action pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331 and 1345. This Court is the proper venue for this action pursuant to 28 U.S.C. § 1391(b). The Commission waives all objections it might have raised to either such jurisdiction or venue. The parties to this action agree that every provision of this Second Modified Consent Decree is fully enforceable against the Commission.

### APPLICABILITY

3. The provisions of this Second Modified Consent Decree shall apply to and be binding upon the parties to this action, their officers, directors, agents, servants, employees, successors, assigns, and all persons, firms, and corporations in active concert or participation with them. The Commission shall give notice of this Second Modified Consent Decree to any successors in interest prior to any transfer of ownership or operation of the POTW and/or CSOs, and shall simultaneously notify the EPA Region 1, the United States Attorney for the District of Massachusetts, and the Chief of the Environmental Enforcement Section of the Environment and Natural Resources Division of the United States Department of Justice, and the Attorney General of the Commonwealth at the addresses specified in paragraph 23 of this Second Modified Consent Decree, that such notice has been given by the Commission.

### DEFINITIONS

4. The following definitions shall apply to this Second Modified Consent Decree:

- a. "Commence construction" as used herein shall mean to begin on-site physical construction work.
- b. "Complete construction" as used herein shall mean substantial completion of the separated sanitary and storm water collection system with the ability to accept design flows.
- c. "Sewer separation" and "separation of the collection system" as used herein shall mean construction of new

sanitary sewer collection systems and storm drain systems, and redirection of sanitary wastewater into the new sanitary sewer collection system for conveyance to the Commission's wastewater treatment plant.

#### COMPLIANCE

5. The Commission shall complete a program of projects to abate CSO discharges in accordance with this Second Modified Decree and to achieve and maintain compliance with all CSO discharge standards and restrictions under the Act, the Massachusetts Act, applicable regulations, and the Commission's NPDES permit, as provided in paragraphs 6 through 21 below.

#### Outfall 003

6. The Commission has completed the design and has partially completed construction of the Summer Street sewer separation project, as described in the CSO Facilities Plan. The Commission shall complete construction of approximately 66% of that project by January 1, 2002; and shall complete all construction of that project by December 31, 2003.

7. The Commission has completed the design and has partially completed the construction of the Cottage Street sewer separation project, as described in the CSO Facilities Plan. The Commission shall complete approximately 66% of that project by January 1, 2002; and shall complete all construction of that project by December 31, 2003.

8. To reduce the possibility of further discharges at outfall 003, the Commission has prepared, submitted to the Massachusetts Department of Environmental Protection ("DEP") and EPA, and partially implemented a plan to detect and eliminate inflow from sump pumps, roof drains, and other non-sewage inflow into the sewer collection system in areas served by existing or proposed storm drains. The Commission shall complete implementation of the plan as to areas tributary to Outfall 003 within the City of Lynn by December 31, 2004.

9. Upon completion of the Summer Street and Cottage Street sewer separation projects referred to in paragraphs 6 and 7 above, the Commission shall conduct monitoring at the outfall 003 weir during and after each CSO event to determine the volume and duration of any remaining discharges. Each quarterly report submitted pursuant to paragraph 22 of this Second Modified Consent Decree shall include the results of such monitoring for the preceding quarter. Reports shall be submitted until such time as there have been no CSO discharges from outfall 003 for 12 consecutive months.

10. In addition to the projects referred to above, the Commission's CSO facilities plan also includes a Lower Western Interceptor project to achieve full abatement of CSO discharges from outfall 003. After July 2004, the parties shall discuss the need for this project, and, if appropriate, commence negotiations

for a schedule for this project, and the parties reserve their rights in regard thereto.

Outfalls 004, 005, and 006

11. By October 2, 2000, the Commission shall submit to EPA and the DEP a Revised CSO Facilities Plan which shall comply with EPA and DEP CSO regulatory requirements. The Plan shall include, at a minimum, (a) a summary of CSO abatement activities in Lynn including a description of the design/build/operate procurement process; (b) a comparison of the costs of the sewer separation alternative with the updated costs of the CSO consolidation tunnel/treatment facility; (c) a description of the overall sewer separation program, including a breakdown of wastewater flow estimates, scheme for phasing the work, and milestones for completing the work; (d) a description of construction impacts and measures to mitigate adverse impacts; and (e) an assessment of the impact to ratepayers.

12. By October 2, 2000, the Commission shall submit to the Secretary of Environmental Affairs, in accordance with the Massachusetts Environmental Policy Act, G.L. c. 30, § 61-62H and the regulations at 301 CMR 11.00 et seq., a Facilities Plan Update and Notice of Project Change describing the changes to the CSO Facilities Plan and mitigation of adverse environmental impacts.

13. a. The Commission shall submit to EPA and DEP draft and final Preliminary Design Reports (PDRs) for the 004, 005, and 006 combined sewer areas as referenced in the map entitled "Preliminary Phasing Plan, September 25, 2000," on or before the dates in the following schedule:

<u>Subarea</u>	<u>Draft PDR</u>	<u>Final PDR</u>
006	January 1, 2001	April 1, 2001
005	March 31, 2003	October 15, 2003
004	March 31, 2006	October 15, 2006

Each PDR shall include technical information to support the proposed alignment, phasing, and sizing of new sanitary sewers and storm drains. The technical information shall include a discussion of field and geotechnical investigations, flow projections, permitting requirements, and design criteria used in developing design plans.

b. The Commission plans to construct the sewer separation for the area tributary to outfall 006 in four phases, Lower 006-1 area, Lower 006-2 area, Upper 006-1 area; Upper 006-2 area; for the area tributary to outfall 005 in three phases, 005-1 area, 005-2 area, and 005-3 area; and for the area tributary to outfall 004 in three phases, 004-1 area, 004-2 area, and 004-3 area. The Commission shall commence each phase of sewer separation construction work in sufficient time to allow it to meet the requirements of paragraph 14. For each phase of sewer

separation construction work, the Commission shall submit to the DEP plan and profile drawings, which shall, at a minimum, represent a thirty percent (30%) design level, at least 5 months prior to the date the Commission plans to commence construction of that phase, which date shall be consistent with the requirements of paragraph 14.

14. The Commission shall commence construction and complete construction of the separation of the collection systems tributary to outfalls 004, 005, and 006 in accordance with the following schedules:

i. Outfall 006

Commence construction of sewer separation for the collection system tributary to outfall 006	June 30, 2001
Complete construction of at least 10% of the sewer separation for outfall 006	December 31, 2001
Complete construction of at least 60% of the sewer separation for outfall 006	December 31, 2002
Complete construction of 100% of the sewer separation for outfall 006 and eliminate discharges of combined sewage to outfall 006	December 31, 2003

ii. Outfall 005

Commence construction of sewer separation for the collection system tributary to outfall 005

January 31, 2004

Complete construction of approximately 30% of the sewer separation for outfall 005

December 31, 2004

Complete construction of 100% of the sewer separation for outfall 005 and eliminate discharges of combined sewage to outfall 005

December 31, 2006

iii. Outfall 004

Commence construction of sewer separation for the collection system tributary to outfall 004

January 31, 2007

Complete construction of at least 20% of the sewer separation for outfall 004

December 31, 2007

Complete construction of 100% of the sewer separation for outfall 004 and eliminate discharges of combined sewage to outfall 004

December 31, 2009

15. Annually by January 15 of each year beginning January 2001, the Commission shall submit to the EPA and DEP a sewer separation design and construction plan for that calendar year.

Each such plan shall identify (i) the sections of the collection system to be separated; (ii) the approximate size and length of sewers and new drains to be installed; (iii) the approximate number of building sewer connections to be removed from the combined system; (iv) the approximate annual volume of inflow and infiltration to be separated from the system; (v) the approximate volume of sanitary flows remaining in that section of the collection system; and (vi) the approximate length of time necessary to complete construction. Additionally, each annual plan shall contain a schedule with appropriate design/build milestones for the following twelve months. The schedule shall include appropriate dates for design and construction of sewer separation for the Lower 006 Area, the Upper 006 Area, the 005 Area, and the 004 Area, and shall include dates for submissions of 30% and later design submissions, issuance of notice to proceed on individual projects, and completion of individual projects. Such milestones shall establish design and construction schedules which will, at a minimum, meet the requirements of paragraphs 13.b. and 14 above. Each annual plan shall also include, for information purposes, anticipated dates for submitting appropriate permit applications and obtaining permits. Each annual plan shall also report on the progress of the CSO abatement construction during the previous 12 months, and

shall contain documentation that established construction milestones have been met.

16. By April 1, 2001, the Commission shall submit to EPA and MA DEP for review and approval a workplan describing the process and procedures to be employed in identifying and removing illegal wastewater connections to the stormdrain system in the CSO 004, 005, and 006 drainage areas. The workplan shall include: a discussion of any sampling programs, dye or smoke testing programs, inspections, or other means of identifying the presence of illegal wastewater connections; the procedures and timeframes for removal of identified illegal connections; and the criteria to be used to confirm that such connections have been eliminated.

17. Annually by January 15 of each year beginning in January 2002, the Commission shall submit to EPA and the DEP an Annual Report which describes the status of the illegal connection removal program, including the areas tributary to CSO Outfalls 004, 005, and 006 which have been evaluated, the findings, the location and number of illegal connections removed, and a schedule for the remaining investigation and construction activities. In addition to any rights available under this Second Modified Consent Decree, the United States and the Commonwealth reserve all available legal and administrative remedies to require the Commission to remove illicit sanitary

sewage connections to storm drain systems tributary to outfalls 003, 004, 005, and 006 or other outfalls in Lynn.

18. Until such time as all sewer separation work required by paragraph 14.i above has been completed, the Commission shall:

- (a) conduct continuous monitoring of the volume and duration of flow through the Sanderson Avenue overflow; and
- (b) during and after each activation of the Sanderson Avenue overflow between June 1 and September 30 of each year, conduct daily monitoring at King's Beach for coliform bacteria, until the concentration of such bacteria is below the level utilized by the Metropolitan District Commission ("MDC") to post King's beach, and immediately provide the results of such monitoring to the Lynn Board of Health and the MDC.

Each quarterly report submitted pursuant to paragraph 22 of this Second Modified Consent Decree shall include (i) a summary of the results of the monitoring required by subparagraph (a); (ii) the results of the monitoring required by subparagraph (b) for the preceding calendar quarter, if applicable; and (iii) any dates during which King's Beach is posted by the MDC or closed by the Lynn Board of Health.

19. The Commission shall implement the following Best Management Practices to reduce the impact of existing combined sewer overflows:

- (a) Until such time as all discharges from the corresponding CSO have been eliminated, each tidegate and combined sewer overflow regulator structure shall be in-

spected at least once every three months and, in addition, after each rain event that activates that CSO. By January 15 of each year, the Commission shall submit a report to EPA and DEP which describes each inspection, adjustment, repair or any other maintenance work performed on tidegate and combined sewer overflow regulator structures during the previous twelve months. The report shall indicate which structures were inspected; the date and time of each inspection; the condition of each structure at the time of inspection; the nature of any repairs performed; the date(s) on which the repairs were performed; the nature of any repairs planned but not yet performed; the reasons such repairs have not yet been performed; and the anticipated schedule for such repairs.

(b) By January 15 of each year, the Commission shall submit a summary report to EPA and DEP which describes each action taken to minimize infiltration/inflow into the sewer system during the previous twelve months.

(c) By January 15 of each year, the Commission shall submit a report to EPA and DEP which describes each CSO discharge which occurred during the previous twelve months. The report shall include the following information for each discharge event at each individual CSO outfall: (i) the date(s), time, and estimated duration of the discharge; (ii)

the estimated volume of the discharge; (iii) the precipitation data from the nearest gauge measuring precipitation at daily intervals and from the nearest gauge measuring precipitation at hourly intervals for the period of time relevant to the discharge; and (iv) a calculation of the cumulative precipitation.

(d) By January 15 of each year the Commission shall submit a report to EPA and DEP which describes the results of its continuing periodic examination of the Stacey Brook culvert to prevent any further illegal sewage connections from Lynn.

20. Upon completion of each sewer separation project for each of the outfalls 004, 005, and 006, referred to in paragraph 14 above, the Commission shall, in the next quarterly report submitted pursuant to paragraph 22 following such completion, notify EPA and DEP of the completion of the project and the results of inspections (with supporting documentation) confirming that no hydraulic interconnection, through a CSO regulator or otherwise, exists between the sanitary sewer system and the storm drain system, and that the sewers in the entire area tributary to each of outfalls 004, 005, and 006, respectively, have been separated.

21. The Commission shall continue to implement the best management practices and the recommendations included in the following approved Reports:

- a. High Flow Management Plan (January 1995)
- b. Solids and Floatables Control - Draft Report for Combined Sewer Outfalls Nos. 003, 004, 005, 006 (April 1995)
- c. Best Management Plan for King's Beach Outfall (January 1995)
- d. Operation and Maintenance Program (Annual Report for 1994)

#### REPORTING

22. In addition to the reporting requirements of paragraphs 9 and 18 through 20 above, on or before the 25th day of each January, April, July, and October, following the calendar month in which this Second Modified Consent Decree is entered, and continuing until completion of all actions required of it by this Second Modified Consent Decree, the Commission shall submit in writing to the EPA and DEP a quarterly compliance report concerning the projects required by this Second Modified Consent Decree. The report shall describe in detail the status, progress, and work performed during the three months preceeding the month in which the report is due, and shall also include a description of the work to be performed during the following two quarters. Notification to EPA or DEP pursuant to this paragraph of any anticipated delay shall not excuse the delay.

23. Reports and/or notices required by this Second Modified Consent Decree to be sent by the Commission to EPA; the United States Attorney for the District of Massachusetts; the Chief of

the Environmental Enforcement Section of the Environment and Natural Resources Division; the DEP; and the Attorney General of the Commonwealth, shall be made in writing to the following addresses, respectively, unless the United States or the Commonwealth gives the Commission written notice that another person has been designated to receive such report or notice:

To EPA

Michael Wagner (SEL)  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
One Congress Street, Suite 1100  
Boston, MA 02114-2023

George Harding (SEW)  
U.S. Environmental Protection Agency  
One Congress Street, Suite 1100  
Boston, MA 02114-2023

To the United States Attorney for the District of Massachusetts

George B. Henderson, II  
Assistant U.S. Attorney  
One Courthouse Way, Suite 9200  
Boston, MA 02210

To the Environmental Enforcement Section, Environment and Natural Resources Division

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

To the DEP

Madelyn Morris  
Deputy Regional Director  
Bureau of Resource Protection  
Northeast Regional Office  
Department of Environmental Protection  
205A Lowell St.  
Wilmington, MA 01887

To the Attorney General of the Commonwealth

Andrew Goldberg  
Assistant Attorney General  
Environmental Protection Division  
200 Portland Street  
Boston, MA 02114

The aforementioned reporting requirements, including the reporting requirements in paragraphs 9 and 18 through 20, do not relieve the Commission of its obligation to submit any other reports or information required by the Act or the Massachusetts Act, the regulations promulgated under each Act, respectively, any applicable NPDES permit, or any local requirements.

FORCE MAJEURE

24. If any violation of any provision of this Second Modified Consent Decree by the Commission occurs, the Commission shall notify the United States Attorney, EPA Region I, and the Attorney General of the Commonwealth in writing within fifteen days of the violation of any event or events which have caused the violation. The notice shall describe in detail the anticipated length of time the violation may persist, the precise cause or causes of the violation, the measures taken or to be

taken by the Commission to prevent or minimize the violation, and the timetable by which those measures will be implemented. The Commission shall adopt all reasonable measures to avoid or minimize any such violation. Failure by the Commission to comply with the notice requirements of this section shall render paragraphs 25 and 26 void and of no effect as to the particular incident involved, and shall constitute a waiver of the Commission's right to obtain an extension of time for their obligations under this section based on the incident. The Commission shall also notify the persons and entities specified above in accordance with the requirements of this paragraph as soon as the Commission has reason to believe that a situation has occurred that will cause a violation of any provision of this Second Modified Consent Decree.

25. If the parties agree that the violation of a provision of this Second Modified Consent Decree has been or will be caused by circumstances beyond the control of the Commission and of any entity controlled by the Commission, including the Commission's consultants and contractors, and that such entities could not have reasonably foreseen and prevented such violation, the time for performance of such provision shall be extended for a period equal to the actual delay resulting from such circumstances, and stipulated penalties shall not be due for the delay.

26. If the parties are unable to agree whether the violation was caused by circumstances beyond the control of the Commission and of any entity controlled by the Commission, or whether the length of time for fulfilling the provision should be extended, the matter may be submitted by either party to the Court for resolution. If the violation is then determined to have been caused by circumstances beyond the control of the Commission and of any entity controlled by the Commission, including the Commission's consultants and contractors, and it is determined that the Commission could not have reasonably foreseen and prevented such violation, the Commission shall be excused as to that violation for the period of time the violation continues due to such circumstances.

27. Unanticipated or increased costs or expenses associated with the implementation of actions called for by this Second Modified Consent Decree, changed financial circumstances or decreased revenues, and/or reasonably foreseeable technical problems shall not serve as the basis for changes in this Second Modified Consent Decree or extensions of time for the performance of the requirements of this Second Modified Consent Decree.

28. Compliance with any requirement of this Second Modified Consent Decree by itself shall not constitute compliance with any other requirement. An extension of one compliance date based on

a particular incident shall not necessarily result in the extension of a subsequent compliance date or dates.

29. The Commission shall bear the burden of proving that any delay was caused by circumstances beyond the control of the Commission and of any entity controlled by the Commission, including its contractors and consultants, and that the Commission could not have reasonably foreseen and prevented such violation, and the number of days of noncompliance that were caused by such circumstances.

30. The United States and the Commonwealth reserve any and all legal and equitable remedies available to enforce the provisions of this Second Modified Consent Decree and applicable law.

#### FUNDING

31. Performance of the terms of this Second Modified Consent Decree by the Commission is not conditioned on the receipt of any Federal or State grant funds. In addition, performance is not excused by the lack of any Federal or State grant funds.

#### STIPULATED PENALTIES

32. Failure by the Commission to comply with any requirement in this decree shall require the Commission to pay stipulated civil penalties as follows to both the United States and the Commonwealth:

- A. Two hundred dollars (\$200.00) per day for each day that the Commission is late in submitting to EPA, DEP, the

United States Attorney for the District of Massachusetts or the Attorney General for the Commonwealth any report or notification required to be submitted by this Second Modified Consent Decree;

- B. One thousand eight hundred dollars (\$1,800.00) per day per violation for each day of violation of the compliance schedules in this Second Modified Consent Decree.

Stipulated penalties are payable by the Commission to the United States by certified check payable to "Treasurer of the United States of America" and are to be tendered to the United States Attorney for the District of Massachusetts. Stipulated penalties are payable by the Commission to the Commonwealth by certified check payable to the "Commonwealth of Massachusetts" and are to be tendered to the Attorney General for the Commonwealth. All penalties must be tendered by the 15<sup>th</sup> day of the month following the month in which the violations occurred, together with a letter describing the basis for the penalties. A copy of the letter shall be sent to EPA, Region I, and the DEP.

#### RIGHT OF ENTRY

33. Until termination of the provisions of this Second Modified Consent Decree, EPA, DEP and their contractors, consultants, and attorneys, shall have the authority to enter any facility covered by this Second Modified Consent Decree, at all times, upon proper presentation of credentials to the highest ranking representative present on the premises, for the purposes of monitoring the progress of activity required by this Second

Modified Consent Decree, verifying any data or information submitted in accordance with the terms of this Second Modified Consent Decree, and for obtaining any samples, and on request, splits of any samples taken by the Commission or its consultants. This provision in no way limits or otherwise affects any right of entry held by the United States or the Commonwealth pursuant to applicable Federal or State laws, regulations, or permits.

NOT A PERMIT

34. This Second Modified Consent Decree is not and shall not be interpreted to be a permit, or a modification of the Commission's NPDES permit, issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342, or M.G.L. c. 21, §43, nor shall it in any way relieve the Commission of its obligation to comply with the requirements of any applicable NPDES permit or with any other Federal or State law or regulation.

OBLIGATION TO COMPLY

35. The pendency of any proceeding concerning the issuance, reissuance, or modification of any NPDES permit shall neither affect nor postpone the Commission's duties and liabilities as set forth herein. Further, notwithstanding any other provisions of this Second Modified Consent Decree, the obligations to achieve and maintain complete compliance with the terms, provisions, and requirements of this Second Modified Consent

Decree, the Act, the Massachusetts Act, and applicable regulations rest solely with the Commission.

NON-WAIVER PROVISION

36. The United States and the Commonwealth do not waive any rights or remedies available to them for any violation by the Commission of the Act or Massachusetts Act and associated regulations or permit conditions following completion of the requirements of this Second Modified Consent Decree. Further, this Second Modified Consent Decree in no way affects the ability of the United States or the Commonwealth to bring an action for further relief pursuant to Federal or State law for any violations not specifically the subject of this decree. This Second Modified Consent Decree in no way affects or relieves defendants of responsibility to comply with any other Federal, State, or local law, regulations or permit conditions. Nothing herein shall be construed to limit the power of the United States or the Commonwealth, consistent with their respective authorities, to undertake any action against any person, including the Commission, in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

COSTS OF SUIT

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

### SEVERABILITY

38. The provisions of this Second Modified Consent Decree shall be severable and should any provision be declared by a court of competent jurisdiction to be inconsistent with Federal law or Massachusetts law, and therefore unenforceable, the remaining provisions of this decree shall remain in full force and effect.

### RETENTION OF JURISDICTION

39. The Court shall retain jurisdiction to enforce the terms and conditions of this Second Modified Consent Decree, to make modifications necessary to effectuate compliance with the Act and the Massachusetts Act, this Second Modified Consent Decree, applicable NPDES permits, and any applicable Federal or State regulations, and to resolve all disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Second Modified Consent Decree or to reflect modifications of or amendments to existing laws and regulations relating to the subject matter of this Second Modified Consent Decree.

### TERMINATION OF DECREE

40. With the exception of payment of any outstanding penalties, when the Commission has completed all remedial measures specified herein and has achieved compliance with all requirements of this Second Modified Consent Decree for a period

of one year, any party may move the Court to terminate this Second Modified Consent Decree.

PUBLIC COMMENT; EFFECTIVENESS; ENTRY

41. The parties agree and acknowledge that final approval by the United States and entry of this Second Modified Consent Decree are subject to the requirements of 28 C.F.R. § 50.7, which provides for notice and an opportunity for public comment. The Commission and the Commonwealth consent to the entry of this Second Modified Consent Decree without further notice. The United States consents to the entry of this Second Modified Consent Decree, subject to publication of notice thereof in the Federal Register, pursuant to 28 C.F.R. § 50.7, and an opportunity to consider comments thereon.

42. Each signatory to this Second Modified Consent Decree (excepting the Court) represents that he or she is fully authorized to sign this Second Modified Consent Decree on behalf of the party for whom the signature is made.

43. The Court finds this Second Modified Consent Decree to be a reasonable and fair settlement of matters pending among the

parties which adequately protects the public interest in accordance with the Clean Water Act, 33 U.S.C. §§ 1251, et seq.

Dated and entered this 29<sup>th</sup> day of June, 2001.

Dated:

Richard B. Stearns  
United States District Judge

FOR THE LYNN WATER AND SEWER COMMISSION:

Stephen Smith  
STEPHEN SMITH, Executive Director  
Lynn Water and Sewer Commission

1/23/01  
Dated

Peter L. Koff  
PETER L. KOFF, Esq.  
Engel & Schultz, P.C.  
125 High Street, Suite 2601  
Boston, MA 02110

Jan 25, 2001  
Dated

FOR THE UNITED STATES OF AMERICA:



JOHN C. CRUDEN  
Acting Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice

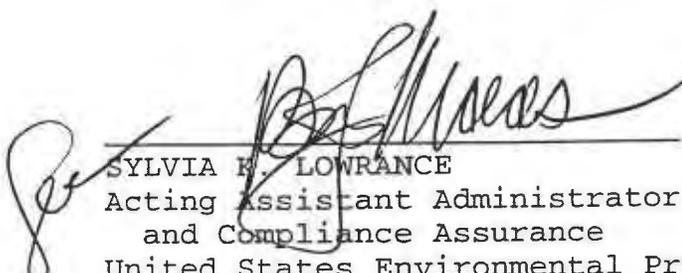
Dated 2-26-01

DONALD K. STERN  
United States Attorney



GEORGE B. HENDERSON, II  
Assistant United States Attorney  
One Courthouse Way, Suite 9200  
Boston, MA 02210  
(617) 748-3272

Dated 3/9/01



SYLVIA R. LOWRANCE  
Acting Assistant Administrator for Enforcement  
and Compliance Assurance  
United States Environmental Protection Agency  
401 M Street, S.W.  
Washington, D.C. 20460

2/6/01  
Dated



MICHAEL WAGNER  
Enforcement Counsel  
U.S. Environmental Protection Agency  
One Congress Street, Suite 1100  
Boston, MA 02114-2023

February 1, 2001  
Dated