

UPPER CHATTAHOOCHEE RIVERKEEPER  
FUND, INC; THE CHATTAHOOCHEE  
RIVERKEEPER, INC; and W. ROBERT  
HANCOCK, Jr.,

v.

Defendant.

Plaintiffs,

v.

Defendant.

CIVIL ACTION FILE  
NO. \_\_\_\_\_ -TWT

CONSENT DECREE

## TABLE OF CONTENTS

	PAGE(S)
INTRODUCTION .....	4
I. JURISDICTION .....	8
II. VENUE .....	9
III. PARTIES .....	9
IV. BINDING EFFECT .....	10
V. OBJECTIVES .....	11
VI. DEFINITIONS .....	12
VII. REMEDIAL ACTIONS FOR THE COMBINED SEWER OVERFLOW FACILITIES .....	20
VIII. SUPPLEMENTAL ENVIRONMENTAL PROJECT .....	47
IX. EFFLUENT LIMITATIONS .....	68
X. CIVIL PENALTY .....	68
XI. STIPULATED PENALTIES .....	70
XII. FORCE MAJEURE .....	89
XIII. DISPUTE RESOLUTION .....	91
XIV. RIGHT OF ENTRY .....	97
XV. NOT A PERMIT/COMPLIANCE WITH OTHER STATUTES AND REGULATIONS .....	98
XVI. FAILURE OF COMPLIANCE .....	99
XVII. NON-WAIVER PROVISIONS .....	99
XVIII. COSTS OF SUIT .....	102

XIX.	CERTIFICATION OF SUBMISSIONS/REVIEW OF	
	SUBMISSIONS .....	103
XX.	FORM OF NOTICE .....	105
XXI.	MODIFICATION .....	107
XXII.	PUBLIC COMMENT .....	107
XXIII.	CONTINUING JURISDICTION OF THE COURT .....	108
XXIV.	TERMINATION .....	108
XXV.	SIGNATORIES .....	109

## INTRODUCTION

Plaintiffs, the United States of America, by the authority of the Attorney General of the United States and through its undersigned counsel, acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), and the State of Georgia, at the request of the Georgia Department of Natural Resources, Environmental Protection Division ("EPD"), filed a complaint in this action alleging that defendant, the City of Atlanta ("Defendant") is in violation of the Clean Water Act, 33 U.S.C. § 1251 et seq. ("the Act"). The United States and State of Georgia will hereinafter be referred to as "Government Plaintiffs," or EPA and EPD or United States and State. Citizen Plaintiffs Upper Chattahoochee Riverkeeper Fund, Inc., the Chattahoochee Riverkeeper, Inc., and W. Robert Hancock, Jr. filed their complaint on October 10, 1995. The Upper Chattahoochee Riverkeeper Fund, Inc., the Chattahoochee Riverkeeper, Inc. and W. Robert Hancock, Jr. will hereinafter be collectively referred to as "Citizen Plaintiffs." The Defendant is the City of Atlanta, the permit holder of National Pollution Discharge Elimination System ("NPDES") permits which are the subject of this action, and as such is responsible for managing, operating and maintaining the Defendant's wastewater collection system and treatment facilities.

The Government Plaintiffs' and the Citizen Plaintiffs' complaints seek injunctive relief and the assessment of civil penalties, pursuant to Sections 301, 309(b) and (d), and 402, of

the Clean Water Act, 33 U.S.C. §§ 1311, 1319(b) and (d), and 1342. The complaints allege that the Defendant has violated the terms of its NPDES permits issued by the EPD for the following Combined Sewer Overflow ("CSO") Control Facilities: Proctor Creek/North Avenue (Permit No. GA-0037117), Proctor Creek/Greensferry CSO (Permit No. GA-0037125), and Tanyard Creek CSO (Permit No. GA-0037109) Control Facilities. The complaints also allege that the Defendant has discharged untreated wastewater containing raw sewage and partially treated wastewater into the Chattahoochee and South Rivers and their tributaries. On November 17, 1997, the Court entered Summary Judgment against the Defendant and in favor of the Citizen Plaintiffs on the issue of liability for violating the terms of its NPDES permits for the Proctor Creek/North Avenue, Proctor Creek/Greensferry, and Tanyard Creek CSO Control Facilities.

The Government Plaintiffs' complaint further alleges that the Defendant is in violation of the terms and conditions of its NPDES permits respecting the following CSO Control Facilities: McDaniel Street (Permit No. GA-0037133), Custer Avenue (Permit No. GA-0037141), Intrenchment Creek (Permit No. GA-0037168), Utoy Creek (Permit No. GA-0037095), and Clear Creek (Permit No. GA-0036871). The Government Plaintiffs further allege that the Defendant is in violation of the terms and conditions of its NPDES permits issued by the EPD with respect to the following Wastewater Treatment Facilities ("WWTFs"): R.M. Clayton Wastewater Treatment Facility ("WWTF") (Permit No. GA-0021482),

Utoy Creek WWTF (Permit No. GA-0021458), and the South River WWTF (Permit No. GA-0024040). In addition, the Government Plaintiffs allege that the Defendant has violated the Clean Water Act by violating the pretreatment requirements of the Act, by discharging pollutants from unpermitted point sources, and by failing at all times to properly manage, operate and maintain all collection, treatment and/or control facilities or systems owned and operated by the Defendant.

Fulton County, Georgia is also a party to this consolidated action. On February 2, 1996, Fulton County, Georgia filed a motion to intervene in Upper Chattahoochee Riverkeeper Fund, Inc., et al. v. the City of Atlanta, 1:95-CV-2550-FMH. On May 16, 1996, the Court denied the motion as to the liability portion of the litigation, but found that Fulton County had a legally protectable interest in the remedial portion of the litigation not adequately protected by the Defendant, and allowed Fulton County to intervene in the remedial portion of the litigation. Fulton County has, therefore, participated in the negotiations regarding the terms and conditions of this Consent Decree. Fulton County is not, however, a signatory to this Consent Decree, nor does it possess any enforcement authority under this Consent Decree, or bear any responsibilities or obligations under this Consent Decree.

The Citizen Plaintiffs, Government Plaintiffs and the Defendant have consented to the entry of this Consent Decree without further adjudication of any issues relating to CSO

Control Facilities raised by the complaints herein. The parties to this Consent Decree stipulate that this Consent Decree furthers the public interest and is in accord with the Clean Water Act.

This Consent Decree resolves all claims brought by the Government Plaintiffs or the Citizen Plaintiffs relating to the CSO Control Facilities owned and operated by the Defendant, to wit:

Proctor Creek/North Avenue,  
Proctor Creek/Greensferry,  
Tanyard Creek,  
McDaniel Street,  
Custer Avenue,  
Intrenchment Creek, and  
Clear Creek.

The Citizen Plaintiffs are seeking injunctive relief and penalties only for those violations related to the Proctor Creek/North Avenue CSO Control Facility, Proctor Creek/Greensferry CSO Control Facility and the Tanyard Creek CSO Control Facility. Thus, the Citizen Plaintiffs will only participate in the injunctive relief that pertains to those CSO Control Facilities, and which is set forth in Section VII of this Consent Decree. The Citizen Plaintiffs will also participate in implementing the Supplemental Environmental Project described in Section VIII.

The United States, State of Georgia and City of Atlanta

intend to seek an amendment to this Consent Decree to incorporate the work to be performed with respect to the Wastewater Treatment R.M. Clayton, Utoy Creek, South River WWTFs, the City's Pretreatment program and the City's collection system.

NOW THEREFORE, without admission by the Defendant of the non-jurisdictional allegations in the complaints, without further adjudication of any issue of fact or law pertaining to these actions, and upon the consent and agreement of the parties to this Consent Decree, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I.

JURISDICTION

This Court has jurisdiction over the subject matter herein and the parties to this action pursuant to Section 309 of the Act, 33 U.S.C. § 1319, and 28 U.S.C. §§ 1331 and 1345. The complaints state claims upon which relief may be granted against the Defendant under Sections 309 and 505 of the Act, 33 U.S.C. §§ 1319 and 1365, for injunctive relief and civil penalties. Authority to bring the Citizen Plaintiffs' suit is pursuant to 33 U.S.C. § 1365(b). Authority to bring suit herein on behalf of the United States is vested in the United States Department of Justice by 28 U.S.C. §§ 516 and 519, and 33 U.S.C. §§ 1366 and 1369. Authority to bring suit herein on behalf of the State of Georgia is vested in the Georgia Department of Law by the Georgia Constitution, Article 5, Section 4.



## II.

### VENUE

Venue is proper in the United States District Court for the Northern District of Georgia, Atlanta Division, pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because it is the judicial district in which the Defendant is located, and in which the alleged violations occurred.

## III.

### PARTIES

A. Plaintiff the Upper Chattahoochee Riverkeeper Fund, Inc. is a membership organization devoted to the protection and preservation of the Chattahoochee River system from the headwaters to West Point Lake. Its members currently use and enjoy the Chattahoochee River system for a variety of recreational, esthetic, economic, and other purposes. The Upper Chattahoochee Riverkeeper Fund, Inc. brought its action on behalf of its members.

B. Plaintiff Chattahoochee Riverkeeper, Inc. is a *de facto* membership organization devoted to the protection and preservation of the Chattahoochee River system from the headwaters to Apalachicola Bay. Its members currently use and enjoy the Chattahoochee River system for a variety of recreational, esthetic, economic, and other purposes. The Chattahoochee Riverkeeper, Inc. brought its action on behalf of its members.

C. Plaintiff W. Robert Hancock, Jr. is a natural person who resides at 10 Sherwood Drive in Newnan, Georgia. Mr. Hancock is the owner of property along the Chattahoochee River in Heard County, Georgia.

D. Plaintiff, United States of America, is acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency.

E. Plaintiff, the State of Georgia, is acting at the request and on behalf of the Georgia Department of Natural Resources, Environmental Protection Division.

F. Defendant, the City of Atlanta, Georgia, is a political subdivision of the State of Georgia, formed under the laws of the State of Georgia, a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5), and a "municipality" within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4).

#### IV.

##### BINDING EFFECT

A. The provisions of this Consent Decree shall apply to, and be binding upon the Defendant and its officials, officers, directors, employees, agents, servants, successors and assigns, and upon all persons, firms and corporations who assist the Defendant in performing its obligations under this Consent Decree. The Consent Decree also applies to and is binding upon the United States and State and their representatives, and upon the Citizen Plaintiffs and their officers, directors and employees.

B. Effective seven (7) days from the Date of Lodging of this Consent Decree until its termination, the Defendant shall give written notice of this Consent Decree to any successors in interest prior to transfer of ownership, management, operation or maintenance of any portion of its Publicly Owned Treatment Works and shall provide a copy of this Consent Decree to any successor in interest. The Defendant shall notify EPA Region IV, the EPD, and the Citizen Plaintiffs in writing, as specified in Section XX, of any successor in interest at least twenty-one (21) days prior to any such transfer.

C. The Defendant shall provide a copy of this Consent Decree to each engineer, consultant and contractor to be retained to perform any activities required by this Consent Decree upon execution of any contract relating to such work, and shall provide a copy to each engineer, consultant and contractor already retained for such purpose no later than thirty (30) days after the Date of Lodging of this Consent Decree.

V.

**OBJECTIVES**

It is the express purpose of the parties entering into this Consent Decree to further the objectives set forth in Section 101 of the Clean Water Act, 33 U.S.C. § 1251, and to resolve certain issues alleged by the Citizen Plaintiffs and the Government Plaintiffs in their complaints. In light of these objectives, the Defendant agrees, inter alia, to comply with all conditions of its NPDES permits for its CSO Control Facilities; to use sound

engineering practices to design and construct any improvements to individual CSO Control Facilities required by this Consent Decree; to use sound management, operational, and maintenance practices to implement all the requirements of this Consent Decree; and to achieve expeditious implementation of the provisions of this Consent Decree for the purpose of (1) achieving full compliance with the NPDES Permits for the CSO Control Facilities, the Georgia Water Quality Control Act, and the Clean Water Act relating to all of the Defendant's CSO Control Facilities; and (2) eliminating all unpermitted discharges from the Combined Sewer System.

## VI.

### DEFINITIONS

A. Unless otherwise defined herein, terms used in this Consent Decree shall have the meaning given to those terms in the Clean Water Act, 33 U.S.C. §§ 1251 et seq., and the regulations promulgated thereunder.

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

1. "Best Management Practices" or "BMPs" shall mean schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs include practices that provide 60% or greater metals removal, such as infiltration basins, infiltration trenches, vegetated filter

strips, grass swales, porous pavement, concrete grid pavement, sand filter filtration basins, water quality inlet with sand filter, wet ponds, constructed stormwater wetlands, as well as treatment requirements, operating procedures, and practices to control runoff, including structural devices that temporarily store or treat urban stormwater runoff to reduce flooding, remove pollutants, and provide other amenities. BMPs include, at a minimum, all practices and procedures required by the Defendant's Municipal Separate Storm Sewer System NPDES Permit No. GAS00100, and those recommended by the Atlanta Region Storm Water Management Task Force, and CSO Control Facility permits.

2. "Calendar Quarter" shall mean the three-month periods ending on March 31st, June 30th, September 30th, and December 31st.

3. "Certification" or "certify" when used in this Consent Decree shall require the Defendant to comply with Section XIX of this Consent Decree.

4. "Collection System," as part of the Publicly Owned Treatment Works, shall mean the wastewater collection and transmission system owned or operated by the Defendant, including all force mains, gravity sewer lines, manholes, and appurtenances that are associated with the Defendant's Wastewater Treatment Facilities.

5. "Combined Sewer Overflow Control Facility" shall mean a facility constructed to control the discharge of a CSO

and which includes the following facilities: Clear Creek, Custer Avenue/Intrenchment Creek, McDaniel Street, Proctor Creek/North Avenue, Proctor Creek/Greensferry, and Tanyard Creek.

6. "Combined Sewer System" or "CSS" shall mean the portion of the Wastewater Collection System designed to convey municipal sewage (domestic, commercial and industrial wastewaters) and stormwater runoff through a single-pipe system to a Wastewater Treatment Facility, a Combined Sewer Overflow Control Facility, or a Combined Sewer Overflow.

7. "Combined Sewer Overflow" or "CSO" shall mean a designed discharge from a Combined Sewer System at a point prior to the Wastewater Treatment Facility.

8. "Combined Sewershed" or "Sewershed" shall mean the physical area within a Combined Sewer System, including the sanitary, storm, and combined sewer lines and appurtenances, that contributes flow to a Combined Sewer Overflow or to a Combined Sewer Overflow Control Facility.

9. "Consent Decree" shall mean this Consent Decree.

10. "City" or "Defendant" shall mean the City of Atlanta, Georgia.

11. "Date of Entry" shall mean the date the Consent Decree is approved and signed by a United States District Court Judge.

12. "Date of Lodging" shall mean the date the Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the Northern District of

Georgia, Atlanta Division.

13. "Day" or "Days" as used herein shall mean a calendar day or calendar days, unless otherwise indicated. 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 the City, the City shall have until the next calendar day that is not one of the aforementioned days for submittal of such report or other deliverable.

14. "Dry Weather Overflow" shall mean the flow in a combined sewer that results from domestic sewage, groundwater infiltration and industrial wastes with no contribution from stormwater, provided that groundwater that infiltrates down gradient of the point at which sewage is diverted to a Wastewater Treatment Facility shall not constitute dry weather overflow for compliance purposes.

15. "Georgia Water Quality Standards" refers to the "Water Use Classifications and Water Quality Standards" as contained in Chapter 391-3-6-.03 of the Georgia Rules and Regulations for Water Quality Control including, but not limited to, the General Criteria For All Waters Contained in Chapter 391-3-6-.03(5) and the "Specific Criteria For Classified Water Usage" as contained in Chapter 391-3-6-.03(6), and any subsequent amendments to these provisions. Nothing in this definition precludes the Defendant from exercising its rights to seek site-specific Water Quality Standards or water quality based effluent limitations in accordance with Chapter 391-3-6-.06 of the Georgia

## Rules and Regulations for Water Quality Control.

The applicable Water Quality Standards for metals now in effect are identified on the attached Exhibit H entitled "Priority Pollutants and Detection Limits" and "Permit Limitations for Metals," which is incorporated herein.

The current Water Quality Standards also include a fecal coliform bacteria limit not to exceed a geometric mean of 200 per 100 mililiters (ml) for the months of May through October, when water contact recreation activities are expected to occur, based on at least four (4) samples collected over a 30-day period at intervals not less than 24 hours. The Water Quality Standard provides that, for the months of November through April, fecal coliform bacteria shall not exceed 4,000 per 100 (ml) (maximum) per sample. Additionally, the Water Quality Standard provides that, for the months of November through April, the fecal coliform bacteria limit shall not exceed a geometric mean of 1,000 per 100 ml, based on at least four (4) samples collected over a 30-day period at intervals not less than 24 hours.

In addition, the Water Quality Standards provide that the following criteria are deemed to be necessary and applicable to all waters of the State and United States and the discharges must be controlled to prevent the following conditions downstream of the discharge(s):

- a. All waters shall be free from materials associated with municipal or domestic sewage, industrial waste or any other waste which will settle to form sludge deposits that become



putrescent, unsightly or otherwise objectionable;

b. All waters shall be free from oil, scum and floating debris associated with municipal or domestic sewage, industrial waste or other discharges in amounts sufficient to be unsightly or to interfere with legitimate water uses; and

c. All waters shall be free from materials related to municipal, industrial or other discharges which produce turbidity, color, odor or other objectionable conditions which interfere with legitimate water uses; and

d. All waters shall be free from toxic, corrosive, acidic or caustic substances discharged from municipalities, industries or other sources, such as non-point sources, in amounts, concentrations or combinations which are harmful to humans, animals or aquatic life.

16. "Municipal Sewage" shall mean sewage collected from residences, public buildings, industries, and commercial establishments and conveyed to a Publicly Owned Treatment Works.

17. "Paragraph" shall mean a portion of this Consent Decree identified by an upper case letter.

18. "Pollutant Parameter" shall mean any physical, chemical, biological, or other constituent of municipal sewage or urban stormwater runoff which can be measured or quantified, and for which a State of Georgia Water Quality Standard exists or is used to determine compliance with such a standard (e.g., biochemical oxygen demand).

19. "Primary Treatment" shall mean one or more unit

processes which achieve at least a 50% reduction in total suspended solids and a 25% reduction in biochemical oxygen demand.

20. "Public Document Repository" shall include City Hall East, 675 Ponce de Leon Avenue, N.E., Atlanta, Georgia, or any other place agreed upon in writing by EPA/EPD. Documents sent to a Public Document Repository pursuant to this Consent Decree are intended to be available for public review and copying. The Defendant shall bear sole responsibility for depositing documents in the Public Document Repository.

21. "Publicly Owned Treatment Works" (POTW) shall mean any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a "State" or "municipality." This definition includes the Collection System, the Combined Sewer System, the Wastewater Treatment Facilities, and the Combined Sewer Overflow Control Facilities.

22. "Qualified Consultant" shall mean a professional engineering firm with appropriate experience and adequate staff and resources to undertake the CSO evaluation.

23. "Sampling Point" for each CSO Control Facility shall mean the point at which the wastewaters, stormwater or combination thereof that are discharged from each CSO Control Facility must meet the terms and conditions of the applicable NPDES permits. Unless the discharge point is relocated or the CSO Control Facility is modified pursuant to the provisions of

this Consent Decree and such relocation or modification is approved by EPA/EPD, the Sampling point for each of the CSO Control Facilities is as follows:

a. Proctor Creek/North Avenue CSO Control Facility--the Sampling Point shall be as designated on the map appended hereto as Exhibit A.

b. Proctor Creek/Greensferry CSO Control Facility--the Sampling Point shall be as designated on the map appended hereto as Exhibit B.

c. Tanyard Creek CSO Control Facility--the Sampling Point shall be as designated on the map appended hereto as Exhibit C.

d. Clear Creek CSO Control Facility --the Sampling Point shall be as designated on the map appended hereto as Exhibit D.

e. McDaniel Street CSO Control Facility--the Sampling Point shall be as designated on the map appended hereto as Exhibit E.

f. Custer Avenue CSO Control Facility--the Sampling Point shall be as designated on the map appended hereto as Exhibit F.

g. Intrenchment Creek CSO Control Facility--the Sampling Point shall be as designated on the map appended hereto as Exhibit G.

24. "Section" shall mean a portion of this Consent Decree specifically listed in the Table of Contents.

25. "Wastewater Treatment Facility" (WWTF) shall mean devices or systems used in the storage, treatment, recycling, and reclamation of municipal sewage. For purposes of this Consent Decree, this definition includes the following WWTFs owned, managed, operated, and maintained by the Defendant: R.M. Clayton Water Reclamation Center, South River Water Reclamation Center, Utoy Creek Water Reclamation Center, and the Intrenchment Creek Water Reclamation Center.

## VII.

### **REMEDIAL ACTIONS FOR THE COMBINED SEWER OVERFLOW FACILITIES**

Upon entry of this Consent Decree, the Defendant shall fully meet and comply with all conditions of this Consent Decree, the Clean Water Act, the Georgia Water Quality Control Act and the NPDES permits for all of its CSO Control Facilities, as such Permits are now and may hereafter be in effect.

#### **A. Evaluation Programs**

##### **1. System Evaluation**

a. By July 1, 1998, the Defendant shall enter into a contract with a Qualified Consultant to develop and implement a program to evaluate each Combined Sewer Overflow (CSO) Control Facility. The Defendant shall undertake a twelve (12) month program to: 1) determine the overall effectiveness of the existing CSO controls in achieving compliance with the Clean Water Act, the Georgia Water Quality Control Act, and the NPDES

permits for the CSO Control Facilities; 2) evaluate the pollutant removal efficiencies of the facilities; 3) determine dry and wet weather flows from the Combined Sewer Systems to the Wastewater Treatment Facilities; 4) determine the storage capacity of the current Collection System under dry and wet weather conditions; and 5) evaluate the response of the Combined Sewer System to rainfall events. The program will also include whole effluent toxicity testing.

b. By October 1, 1998, the Defendant shall develop and submit, for EPA/EPD's and the Citizen Plaintiff's review and comment, and EPA/EPD's approval, a program for the evaluation of each of the Defendant's CSO Control Facilities over a twelve (12) month period titled "The CSO Control Facility Evaluation Program." The Defendant agrees to perform the following tasks or their EPA/EPD approved equivalent for each CSO Control Facility in the Evaluation Program:

(i) Describe the Pollutant Parameters to be sampled and analyzed for each CSO Control Facility, which at a minimum shall include: ammonia, biochemical oxygen demand, fecal coliform bacteria, total residual chlorine, pH, phosphorus, temperature, total suspended solids, oil and grease, total and dissolved cadmium, total and dissolved lead, total and dissolved zinc, total and dissolved nickel, total and dissolved copper, and any other Pollutant Parameters in the monitoring requirements of the effective NPDES permit.

(ii) Describe the CSO Control Facility and how

pollutant removal efficiencies, where applicable, will be calculated.

(iii) Describe sampling locations for each CSO Control Facility, which shall include at a minimum, the facility influent, the facility effluent, and a location in the receiving stream that is downstream from the CSO Control Facility.

(iv) Describe sampling procedures, equipment, and analytical methods to be used for each CSO Control Facility, consistent with 40 CFR Part 136, or other standard operating procedures agreed upon by EPA/EPD and the Defendant, and quality assurance and quality control procedures. The analytical methods for metals analysis shall be capable of detecting concentrations down to or below the Georgia Water Quality Standard for each metal being evaluated.

(v) Monitor continuously all flow to the associated Wastewater Treatment Facility, and describe the flow monitoring equipment and its location.

(vi) Monitor all flow discharged, including bypass flow, from the CSO Control Facility to the receiving stream, and describe the flow monitoring equipment and its location.

(vii) Describe the techniques and methods for measuring the flow of the receiving stream at the instream sampling location(s).

(viii) Monitor rainfall continuously at a representative location(s) within each Combined Sewershed at no longer than 15 minute intervals, with gauges located so that no

point in a Sewershed is more than 6 kilometers from a rain gauge.

(ix) Monitor a minimum of ten overflows, representative of the intensity and duration of a range of storm events, for each CSO Control Facility during the twelve (12) month evaluation period. Monitoring shall be conducted as described in Section VII.A.1.b.xi and xii.

(x) Sample storm water runoff from streets or parking lots at two locations, runoff from yards or parks at two locations, and runoff from two other land uses typical of the Sewershed, all prior to entering the Collection System, that contributes to the first five overflows sampled under Section VII.A.1.b.ix above. In lieu of sampling, provide documentation that demonstrates the expected range for each of the Pollutant Parameters in storm water runoff from the land uses listed above and describe how the ranges were determined.

(xi) For each of the overflows in Section VII.A.1.b.ix, collect and analyze a minimum of four grab samples at a single sampling location, selected and approved for each Pollutant Parameter, in a manner that characterizes each Pollutant Parameter over the CSO hydrograph. At a minimum, grab samples must be collected during the first 30 minutes of overflow and every thirty minutes thereafter for the first 6 hours of overflow. Sampling at minimum intervals of 60 minutes may be used for the remaining portions of the storm. Sampling should continue until the overflow ceases or the overflow duration exceeds 24 hours.

(xii) For each of the overflows monitored under Section VII.A.1.b.ix, collect and analyze flow proportional samples from the overflow and downstream location for each Pollutant Parameter, except fecal coliform, pH, oil and grease, and temperature. The flow proportional samples shall be composited from the grab samples referenced in Section VII.A.1.b.xi.

(xiii) Collect and analyze twenty-four (24) hour flow proportional samples of the dry weather flows to the Wastewater Treatment Facility during two weekends (4 days total) and four weekdays. The samples shall be collected at least 48 hours after the last CSO discharge has ceased, or when the flow is clearly not influenced by surface runoff as determined by the continuous flow monitoring in place.

(xiv) Conduct whole effluent toxicity testing for at least one overflow at each CSO Control Facility. Sample collection shall be representative of the CSO Control Facility discharge hydrograph and shall include, at a minimum, a sample within the first 30 minutes of overflow and during the declining limb of the hydrograph. The Defendant shall perform acute static toxicity tests using daphnid (*Ceriodaphnia dubia*) and fathead minnow (*Pimephales promelas*). The Defendant shall at a minimum perform all of the tests on grab samples of 100 percent CSO and a control (0 percent CSO) based upon an agreed upon protocol, attached hereto as Exhibit I, for the purposes of examining exposure that represents the CSO discharge situation. If control



mortality exceeds 10 percent for either species in any test, the test(s) for that species (including the control) will be repeated. A test will be considered valid only if the control mortality does not exceed 10 percent for either species. All test species, procedures and quality assurance criteria used shall be in accordance with *Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms*, EPA/600/4-90/027F, or the most current edition. The dilution/control water used will have a total hardness of less than 100 mg/l (expressed as CaCO<sub>3</sub>). A standard reference toxicant quality assurance test shall be conducted at least monthly on each species used in the toxicity tests. All tests shall begin within 36 hours of the time the last grab sample was taken. If residual chlorine is present in the final effluent from a treatment and/or disinfection process, a prechlorination or dechlorinated sample shall be tested. If residual chlorine is present, a 48 hour acute static toxicity test shall be performed with the test organisms using the chlorinated sample of 100 percent CSO effluent from the first 30 minutes of the overflow and using a control.

(xv) Describe all hydrological, hydraulic and water quality model(s) which will be used for data analysis.

(xvi) Describe chain of custody procedures for all collected samples.

(xvii) Provide a map of the watershed above the instream sampling location that shows the Sewershed, the Combined

Sewer System, pipes that are thirty-six (36) inches in size and greater, the location of rain gauges, the location of flow monitoring stations, the location of storm water sampling, and the location of all discharges permitted under the Defendant's pretreatment program.

(xviii) Describe the location(s) of data/information storage for all information collected pursuant to this Section.

c. Within thirty (30) days of receiving EPA/EPD's comments, the Defendant shall modify the CSO Control Facility Evaluation Program accordingly, and submit the modified program to EPA/EPD for final approval. Upon receiving EPA/EPD's final approval, the Defendant shall implement the program.

d. Within six (6) months of EPA/EPD's final approval of the program, the Defendant shall submit for EPA/EPD's and the Citizen Plaintiffs' review and comment, and EPA/EPD's approval, an uncertified report which shall include:

(i) the results of the whole effluent toxicity testing program;

(ii) a map of land use in the Combined Sewershed and a table of runoff coefficients for each land use to be used to develop the flow hydrographs;

(iii) an estimate of the storage capacity of each Combined Sewer System;

(iv) the monitoring results from at least four of the overflows monitored under Section VII.A.1.b.ix;

(v) all flow and rainfall data collected up to that

time;

(vi) a characterization of each permitted pretreatment discharger's contribution of the sampled pollutants;

(vii) a characterization of the storm water runoff based upon land use, runoff coefficients, and estimates of pollutant loadings, based upon sampling data or the documentation submitted in lieu of sampling; and

(viii) a deficiencies report identifying system deficiencies (design, structural, process, operations and maintenance) and performance limiting factors which may limit the overall effectiveness of the existing CSO controls in achieving compliance with the Clean Water Act, the Georgia Water Quality Control Act and the NPDES permits for the CSO Control Facilities.

e. Within fifteen (15) months of EPA/EPD's final approval of the program, the Defendant shall submit for EPA/EPD's and the Citizen Plaintiffs' review and comment, and EPA/EPD's approval, a report titled "CSO Control Facility Evaluation Report" which shall include:

(i) the monitoring results from the remaining six overflows monitored under Section VII.A.1.b.ix;

(ii) an analysis of the CSO removal efficiency for each pollutant evaluated, including summaries of all sample analyses and flow measurements, and graphs of influent, effluent, and downstream pollutant loadings;

(iii) a graph of the flow monitoring data for each overflow and rainfall hydrographs for each overflow;

(iv) a graph(s) of the flow monitoring data for flow to the Wastewater Treatment Facilities and a table comparing the flow to the Wastewater Treatment Facilities, the total CSO discharge flow, the flow either captured, screened or bypassed, and the rainfall amount;

(v) predicted CSO discharge hydrographs for rainfall events of 0.25, 0.50, and 1.00 inch per hour for durations of 1, 2, 4, and 8 hours (hydrographs shall be calibrated and verified from field data);

(vi) for each sampled overflow, a comparative analysis of the sampling data and the applicable Georgia Water Quality Standards;

(vii) for each sampled overflow: the date, time and intensity of the last rainfall in the Sewershed; a description of the last overflow prior to the sampled overflow; a description of all Best Management Practices undertaken (e.g., sewer cleanings, street cleanings, installation of structural controls) since the last rainfall; and minimum and average daily flow in the sanitary sewer since the end of the last rainfall;

(viii) an analysis of the response of the associated Wastewater Treatment Facility to wet weather flows from the Combined Sewer System, including compliance with effluent limits, capacity of individual unit processes, and any limiting factors or processes;

(ix) a characterization of the dry weather flow to each Wastewater Treatment Facility;

(x) an update of all information submitted under Section VII.A.1.d.

f. Within thirty (30) days of receiving EPA/EPD's comments, the Defendant shall modify the CSO Control Facility Evaluation Report accordingly, and submit the modified report to EPA/EPD for final approval.

g. All data and information collected and analyses performed by the Defendant or the Defendant's consultant pursuant to this System Evaluation shall be available during regular business hours to EPA/EPD and Citizen Plaintiffs for review and inspection. The EPA/EPD and Citizen Plaintiffs may request meetings with the Defendant and the Defendant's consultant to discuss aspects of this evaluation. The Defendant shall make available its consultant for such discussions on a reasonable basis, and the EPA/EPD and Citizen Plaintiffs shall provide the Defendant with two (2) days notice prior to such discussions.

## **2. Remedial Measures Report**

a. Within six (6) months of EPA/EPD approval of the CSO Control Facility Evaluation Report, the Defendant shall submit a document titled "Remedial Measures Report" for EPA/EPD's and the Citizen Plaintiff's review and comment and EPA/EPD's authorization to proceed with the implementation of remedial measures. The report shall provide a detailed analysis of the steps the Defendant shall undertake to bring all the CSO Control Facilities into compliance with the Clean Water Act, the Georgia Water Quality Control Act and the NPDES permits then in effect

for the CSO Control Facilities. This report, titled "CSO Control Facility Remedial Measures Report," shall:

(i) Evaluate all appropriate alternatives with preliminary cost estimates for each alternative and detailed cost estimates for the selected remedial measure(s). Alternatives shall be compared in life cycle costs, implementation time, and environmental benefits. Alternatives shall include, at a minimum, chlorination/dechlorination, alternative disinfection methods, sewer separation, storage to reduce overflows to no more than four per year, relocation of the CSO, Best Management Practices, and Primary Treatment of all flows.

(ii) Provide schedules and cost estimates for designing, constructing, and implementing each alternative or combination of alternatives which meet the objectives of this Consent Decree. The Defendant shall indicate the preferred alternative. Schedules shall be established so that compliance shall be achieved as quickly as sound engineering and construction practices permit. All construction necessary to meet the requirements of this Consent Decree pertaining to CSOs shall be completed by July 1, 2007, unless EPA and EPD jointly agree to a longer schedule. The proposed schedule shall include interim milestones (e.g., initiation of design, completion of preliminary engineering, one-third and two-thirds of design completion, submittal of plans and specifications to the State), as well as deadlines for completing design, advertising for bids, issuing a notice to proceed, completing construction, and

initiating operation. The interim milestones shall be at a sufficient frequency to ensure the ability of EPA and EPD to maintain oversight and to ensure compliance with the final compliance date. The report shall include descriptions of the resources necessary to fully support operation and maintenance of the alternatives and a schedule of when the resources will be required.

(iii) Evaluate environmental, financial and other impacts, taking into account Best Management Practices which have been or will be implemented.

b. Within thirty (30) days of receiving EPA/EPD's comments, the Defendant shall modify the report accordingly, and submit the modified report to EPA/EPD for final approval. Unless the modified report requires further revision, EPA/EPD shall review the modified report and (1) authorize the Defendant to implement the alternative preferred by the Defendant according to the schedule in the modified report, or (2) reject the preferred alternative and authorize the Defendant to implement one or more other alternatives according to the schedule(s) in the modified report. The Defendant shall implement the authorized alternative(s) according to the schedule approved by EPA/EPD.

### **3. Short Term Remedial Measures**

a. By June 1, 1998, the Defendant shall submit for EPA/EPD's and the Citizen Plaintiffs' review and comment, and EPA/EPD's approval, a Short Term Remedial Measures Plan. In this plan, the Defendant shall:

(i) Describe a study the Defendant will undertake to evaluate methods of optimizing disinfection at CSO Control Facilities that currently incorporate disinfection. The study will be called the Disinfection Optimization Study, and will be completed and submitted to EPA and EPD by November 1, 1998. The Disinfection Optimization Study shall include measurements of total residual chlorine.

(ii) Describe the tasks and schedules for the modifications necessary to improve disinfection at those CSO Control Facilities which currently incorporate disinfection.

(iii) Describe the tasks and schedules for the repair and upgrade of the Intrenchment Creek, Custer Avenue, and McDaniel Street CSO Control Facilities to optimize storage and treatment; for the installation of backup power (see Section VII.B.1.a.i); and for establishment of a system described in Section VII.B.2.a.iii.

(iv) Describe the facilities needed for providing disinfection at the Custer Avenue and McDaniel Street CSO Control Facilities and provide a schedule for the construction of these facilities.

b. Within thirty (30) days of receiving EPA/EPD's comments, the Defendant shall modify the plan accordingly, and submit the modified plan to EPA/EPD for final approval. Upon receipt of final approval, the Defendant shall implement the plan.

c. Within nine (9) months of completing construction of



disinfection facilities at the Custer Avenue CSO Control Facility and at the McDaniel Street CSO Control Facility, the Defendant shall complete and submit to EPA and EPD the CSO Control Facilities Disinfection Optimization Studies for these facilities.

d. After reviewing of the CSO Control Facilities Disinfection Optimization Studies (Section VII.A.3.a.i and 3.c), EPA/EPD shall establish total residual chlorine operational standards for each discharge, including the time period during the overflow when samples shall be taken.

#### **4. Sewer Separation Projects**

a. The Defendant shall make a preliminary evaluation of how completely it has separated sanitary sewer flows from storm sewer flows using the dry weather screening protocols that are used in the NPDES MS4 program. The Defendant shall submit a summary of this preliminary evaluation by August 1, 1998 for EPA/EPD's and the Citizen Plaintiffs' review and comment, and EPA/EPD's approval.

b. The Defendant shall undertake a more thorough evaluation and submit a report by January 1, 1999 for EPA/EPD's and the Citizen Plaintiffs' review and comment, and EPA/EPD's approval, that includes the following information pertaining to the Utoy Creek, Joyland, and Glidden-Fairmont combined sewer separation projects:

(i) a study of the completeness of sewer separation using closed circuit television reconnaissance, smoke

testing and/or dyed water testing, if necessary;

(ii) description and documentation of all locations where the sewer separation has not been completed, the separation has failed, or there are other cross connections between the sanitary sewers and the storm sewers;

(iii) a plan, including schedules, to correct all deficiencies found in the evaluation;

(iv) a detailed map showing the location and size of the separated sanitary sewers, the storm sewers and all deficiencies located.

c. Within thirty (30) days of receiving EPA/EPD's comments, the Defendant shall modify its report accordingly, and submit the modified report to EPA/EPD for final approval. Upon receiving EPA/EPD's final approval, the Defendant shall implement the approved plan and schedule.

#### **5. Identified Remedial Measure**

The Defendant has tentatively identified storage and treatment as the remedial measure for the Clear Creek, Proctor/Greensferry, Proctor/North Avenue and Tanyard Creek CSO Control Facilities. The Defendant proposes to construct storage and treatment facilities for these CSO Control Facilities, unless further study indicates that storage and treatment cannot achieve compliance with the NPDES permits, the Georgia Water Quality Control Act, and the Clean Water Act. Further study may also indicate that a different remedy is more appropriate for

achieving the objectives of this Consent Decree. The Defendant shall evaluate all appropriate remedial alternatives in the Remedial Measures Report and submit that report to EPA/EPD for review and comment. Based on information in the Remedial Measures Report, EPA/EPD may authorize the Defendant to implement one of the remedial alternatives. The Defendant's obligation to prepare a Remedial Measures Report, and EPA's and EPD's role in authorizing remedial measures, are discussed elsewhere in this Consent Decree.

**6. Site-specific Study**

a. If by May 15, 1998, the Defendant submits, for EPA/EPD's and the Citizen Plaintiffs' review and comment, and EPA/EPD's approval, a protocol for performing site-specific studies for metals, then EPA/EPD will undertake to provide an approved protocol by the date of approval of the CSO Control Facility Evaluation Program (Section VII.A.1.c). Such protocol shall be in accordance with Georgia Rules and Regulations Chapter 391-3-6-.06(4)(d)5(ii)(d). The site-specific studies shall consist of whole effluent biomonitoring, water-effect ratio tests, stream studies, or other appropriate studies and calculations.

b. Within thirty (30) days of receiving EPA/EPD's comments, the Defendant shall modify its protocol accordingly, and submit the modified protocol to EPA/EPD for final approval.

c. On or before the submittal of the CSO Control

Facility Evaluation Report (Section VII.A.1.e.) the Defendant shall submit, for EPA/EPD's and the Citizen Plaintiffs' review and comment, a draft data analysis based upon the approved protocol.

d. Within thirty (30) days of receiving EPA/EPD's comments, the Defendant shall modify its draft data analysis accordingly, and submit a final data analysis and request for site-specific limits, for EPA/EPD's and the Citizen Plaintiffs' review and comment, and EPA/EPD's approval.

e. EPA/EPD shall endeavor to issue a final decision regarding the application for site-specific water quality standards within four (4) months of the submission of the final data analysis.

f. Failure by the Defendant to submit a protocol in accordance with Section VII.A.6., shall not, in any way, affect any of the requirements and schedules set forth in this Consent Decree. Failure to submit a protocol, in accordance with Section VII.A.6., shall not preclude the Defendant from submitting and undertaking a site-specific study at a later date.

## **B. Management, Operations and Maintenance Programs**

### **1. CSO Management Plan**

a. By December 1, 1998, the Defendant shall develop and submit, for EPA/EPD's and the Citizen Plaintiffs' review and comment, and EPA/EPD's approval, a plan for the management of its Combined Sewer Systems and CSO Control Facilities titled "CSO Management Plan." This plan will be developed to ensure that

facilities are managed in such a way as to achieve compliance with the Clean Water Act, the Georgia Water Quality Control Act and the NPDES permits for the CSO Control Facilities then in effect. The plan shall include:

(i) a schedule providing for the installation of back-up power with automatic switch-over at all of the CSO Control Facilities;

(ii) a program to monitor for and report all Dry Weather Overflows from the CSO Control Facilities;

(iii) a strategy to eliminate all Dry Weather Overflows from the CSO Control Facilities;

(iv) a program for the regular cleaning and maintenance of sanitary sewers that convey wastewater from the Combined Sewer System to the Wastewater Treatment Facilities using hydraulic, mechanical, chemical or bioaugmentation methods;

(v) a program to identify all facilities subject to industrial pretreatment requirements that discharge into the Combined Sewer Systems, and a program to reduce or eliminate pollutant discharges from these facilities;

(vi) a program to identify all facilities that discharge stormwater into the Combined Sewer Systems and which would be subject to stormwater requirements in a municipal separate storm sewer system, and a program to reduce or eliminate pollutant discharges from these facilities;

(vii) a program to identify and implement Best Management Practices to reduce or eliminate flow and pollutant

loading from stormwater runoff to the Combined Sewer System (such program will relate each Best Management Practice to the specific pollutant(s) to be controlled);

(viii) a program to ensure that all forms and records required by the NPDES permits are fully and accurately maintained in such a manner as to be readily available;

(ix) a program for controlling and preventing the discharge of solids and floatables from the CSOs, including a description of the current controls for removing solid and floatable materials at each CSO Control Facility, an analysis of the effectiveness of these controls, and a proposal and schedule for implementing any additional controls;

(x) a program for the cleaning of all streets in the Combined Sewersheds, including a description of any current programs and schedules, anti-litter enforcement strategies, and public education programs;

(xi) a schedule for completing any proposed structural controls, other than the structural controls the Defendant must propose in other submittals required by this Consent Decree.

b. Within thirty (30) days of receiving EPA/EPD's comments, the Defendant shall modify the CSO Management Plan accordingly, and submit the modified CSO Management Plan to EPA/EPD for final approval. Upon receiving EPA/EPD's final approval, the Defendant shall implement the CSO Management Plan. The Defendant shall implement the non-structural measures/

controls and the structural controls according to the short-term remedial measures schedule submitted as a component of this plan.

## **2. CSO Operation Plan**

a. By December 1, 1998, the Defendant shall develop and submit, for EPA/EPD's and the Citizen Plaintiff's review and comment, and EPA/EPD's approval, a plan for the operation of each of its CSO Control Facilities titled "CSO Operation Plan". This plan will be developed to ensure that the facilities are operated in a proper manner and in such a way as to achieve compliance with the Clean Water Act, the Georgia Water Quality Control Act and the NPDES permits for the CSO Control Facilities then in effect, and that sampling is conducted in accordance with NPDES permit requirements. For each CSO Control Facility the plan shall include:

(i) a description of operational controls at each facility;

(ii) detailed operating procedures for all major equipment and processes;

(iii) a system for the monitoring, storing, and retrieving of equipment operational parameters, process control data, and monitoring data, including a schedule for the implementation of the system;

(iv) a strategy for the maximum use of the Combined Sewer System for storage during periods of wet weather to reduce the magnitude, frequency, and duration of CSO discharges so that the permittee delivers flows to the treatment plant within the

constraints of the treatment capacity of the POTW;

(v) a detailed, representative monitoring and sampling program for the Pollutant Parameters required in the NPDES permit, such monitoring being representative of the volume and nature of the monitored waste stream;

(vi) a description of sampling procedures, equipment, and analytical methods to be used, consistent with 40 CFR Part 136 or other sampling and analytical procedures approved by EPA/EPD, and quality assurance and quality control procedures;

(vii) a description of the flow monitoring equipment/methods to be used at each facility and for in-stream flow measurements;

(viii) chain of custody procedures for all samples taken for compliance purposes;

(ix) an organizational chart, with names, positions, telephone numbers, and responsibilities of all operations personnel and supervisors assigned to each facility, including the percentage of time each person spends on CSO Control Facilities;

(x) documentation of a safety program to ensure proper operation of the CSO Control Facilities, including safety procedures specific to the facility and tasks being performed and, where appropriate, confined space entry and lock-out and tag-out procedures;

(xi) a training program that ensures that all designated personnel are knowledgeable about the operation plan



and know how to respond efficiently and effectively in the operation of the facilities.

b. Within thirty (30) days of receiving EPA/EPD's comments, the Defendant shall modify the CSO Operation Plan accordingly, and submit the modified operations plan to EPA/EPD for final approval. Upon receiving EPA/EPD's final approval, the Defendant shall implement the CSO Operation Plan. Within thirty (30) days of implementing the training program, the Defendant shall certify to EPA/EPD that the program has been undertaken.

c. Thirty (30) days prior to commencing the operation of new or upgraded facilities or appurtenances at the CSO Control Facilities, the Defendant shall modify the CSO Operation Plan to incorporate the new or upgraded facilities or components at the CSO Control Facilities and shall submit a certification to EPA/EPD that the plan has been modified and implemented.

d. For any new or upgraded facilities constructed pursuant to Section VII.A.2.b, the Defendant shall submit for EPA/EPD's and the Citizen Plaintiffs' review and comment, and EPA/EPD's approval, the CSO Operation Plan for those facilities. Within thirty (30) days of receiving EPA/EPD's comments on the CSO Operation Plan for these new or upgraded facilities, the Defendant shall modify the plans accordingly, and submit the plans to EPA/EPD for final approval. Upon receiving EPA/EPD's final approval of the modified Operation Plans, the Defendant shall implement the modified CSO Operation Plans.

e. The Defendant shall update the CSO Operation Plans

annually by the anniversary of the approval date for the original plan and program. By the same date, the Defendant shall submit a Certification to EPA/EPD that the plan has been updated and implemented. These updates shall be made throughout the life of this Consent Decree.

### **3. CSO Maintenance Plan**

a. By December 1, 1998, the Defendant shall develop and submit, for EPA/EPD's and the Citizen Plaintiff's review and comment, and EPA/EPD's approval, a plan for the maintenance of each of its CSO Control Facilities titled "CSO Maintenance Plan." This plan will be developed to ensure that routine and preventive maintenance is conducted in a proper and timely manner and in such a way as to achieve compliance with the Clean Water Act, the Georgia Water Quality Control Act and the NPDES permits for the CSO Control Facilities then in effect. For each CSO Control Facility, the plan shall include:

(i) an inventory, including nameplate information, of all equipment integral to the proper operation and maintenance of the facility (mechanical and electrical, instrumentation and control) and an assessment of the condition of all equipment (including the probability and consequences of equipment failure);

(ii) a written maintenance plan, including standard maintenance procedures identifying tasks, frequencies and procedures for all major equipment, channels, buildings, and associated facilities;

(iii) a written schedule for conducting routine maintenance and cleaning associated with discharge events;

(iv) a written schedule for conducting preventive maintenance of all equipment, including tasks, frequencies, estimated labor time for each task, and equipment and tools needed;

(v) a documented schedule and procedures for the calibration of all instrumentation and controls;

(vi) the identification of all equipment and facilities in current need of repair or replacement;

(vii) a schedule for the immediate repair or replacement of identified equipment;

(viii) an organizational chart, with names, positions, telephone numbers, and responsibilities of all maintenance personnel and supervisors assigned to each facility, including the percentage of time each person spends on CSO Control Facilities;

(ix) the location of the as-built drawings for the major components of the facility and a schedule for the development of additional drawings where necessary;

(x) a critical spare parts inventory, including the location of such parts, and procedures for the reordering of critical parts and other parts as needed;

(xi) a maintenance management system for planning and scheduling maintenance; prioritizing maintenance tasks; keeping an inventory of equipment; tracking the maintenance

history of equipment, buildings, and facilities; listing uncompleted work orders or scheduled maintenance; and summarizing maintenance costs, including parts and labor, and the current status and condition of equipment;

(xii) a schedule for implementing the maintenance management system;

(xiii) documentation that the Defendant has a safety program adequate to ensure the proper maintenance of the CSO Control Facilities, including safety procedures specific to the facility and tasks being performed and, where appropriate, confined space entry and lock-out and tag-out procedures;

(xiv) written procedures, including procurement procedures when applicable, for responding to emergency situations;

(xv) a formal training program that ensures that all designated personnel are knowledgeable about the maintenance plan and know how to respond efficiently and effectively in the maintenance of the facilities.

b. Within thirty (30) days of receiving EPA/EPD's comments, the Defendant shall modify the CSO Maintenance Plan accordingly, and submit the modified plan to EPA/EPD for final approval. Upon receiving EPA/EPD's final approval, the Defendant shall implement the plan and shall complete all repairs and replacements within one hundred and eighty (180) days or upon the schedule submitted by the Defendant. Within thirty (30) days after implementation of the training program, the Defendant shall

certify to EPA/EPD that the program has been undertaken.

c. Thirty (30) days prior to the commencement of operation of new or upgraded facilities or appurtenances at the CSO Control Facilities, the Defendant shall modify the CSO Maintenance Plan to incorporate the new or upgraded facilities or components at the CSO Control Facilities and shall submit a certification to EPA/EPD that the plan has been modified and implemented.

d. For any new or upgraded facilities constructed pursuant to Section VII.A.2.b, the Defendant shall submit for EPA/EPD's and the Citizen Plaintiffs' review and comment, and EPA/EPD's approval, the CSO Maintenance Plan for those facilities. Within thirty (30) days of receiving EPA/EPD's comments on the CSO Maintenance Plan for these facilities, the Defendant shall modify the plans and program accordingly, and submit the plans and program to EPA/EPD for final approval. Upon receiving EPA/EPD's final approval of the modified plan, the Defendant shall commence implementation of the modified plan.

e. The Defendant shall update the CSO Maintenance Plans annually by the anniversary of the approval date of the original plan and program. The Defendant shall submit a certification to EPA/EPD that the plans have been modified and implemented. These updates shall be made throughout the life of this Consent Decree.

#### **C. Public Notification**

By October 1, 1998, the Defendant shall erect signs

posting all streams receiving CSO discharges. Defendant shall maintain the signs throughout the life of this Consent Decree. Such postings shall be within one hundred (100) feet downstream of all discharge locations, unless otherwise approved by EPA/EPD, and shall be placed at public access points at approximately one hundred (100) yard intervals for a distance of two miles downstream from the discharge. Signs shall be placed on both sides of the stream and shall be placed so as to be visible to the public. Any parks, golf courses or other recreation areas within the posting area shall have signs prominently displayed. Signs shall also be placed at one hundred (100) yard intervals from the Boulevard Regulator and the Confederate Avenue Regulator to the Custer Avenue CSO Control Facility. The signs shall be a minimum of 12" x 18" and shall be consistent with the example attached hereto as Exhibit J. .

#### **D. City Ordinances**

In the event that the Defendant needs to pass specific ordinances to implement any of the above programs, a draft of such ordinances shall be included in the draft CSO Management Plan submittal. Within thirty (30) days of receiving EPA/EPD's final approval of the draft CSO Management Plan and ordinance(s), the Commissioner of Public Works shall propose the draft ordinance(s) to the City Council for the first reading of the ordinance(s) at the regularly scheduled meeting of the Council.

#### **E. Reporting Requirements**

By October 30, 1998 and within 30 days after the end of each

subsequent Calendar Quarter, the Defendant shall submit to EPA/EPD and the Citizen Plaintiffs, and simultaneously place in the Public Document Repository, a report containing the following information pertaining to the Calendar Quarter just concluded: the status of the remedial actions specified in Section VII of this Consent Decree and progress made with respect to such remedial actions since the last report; a summary listing all Combined Sewer Overflows which occurred during the reporting quarter; a report of any Dry Weather Overflows from the CSO Control Facilities; a description of any BMPs implemented; a summary of the status of the Management, Operations and Maintenance Programs required by this Consent Decree; and a description of compliance and non-compliance with the requirements of this Consent Decree and, if applicable, the reasons for non-compliance. This report shall also include a summary of the work projected to be performed pursuant to this Consent Decree during the then-current Calendar Quarter. Notification to EPA/EPD pursuant to this Paragraph of any anticipated delay, shall not, by itself, excuse the delay.

#### VIII.

##### SUPPLEMENTAL ENVIRONMENTAL PROJECT

###### **A. Preface**

In consideration of the settlement of the enforcement action under the Clean Water Act resolved by this Consent Decree, the Defendant shall complete the Supplemental Environmental Project

("SEP") described below. The Defendant will fully and faithfully perform all obligations and observe and fulfill all conditions with respect to the SEP as set forth in this Consent Decree. The provisions of the Greenway Acquisition Plan (Section VIII.D.) and the Stream Cleanup Plan (Section VIII.E.) are hereby incorporated by reference into this Consent Decree as if fully set out herein. The failure of the Defendant to perform any obligation, or to observe or fulfill any condition of either Plan shall be deemed a failure to comply with the requirements of this Consent Decree.

**B. Project Descriptions**

The Defendant agrees to implement the SEP described below. The SEP consist of two (2) projects: (1) the Greenway Acquisition Project; and (2) the Stream Cleanup Project. Both projects include an environmental justice component which provides for the establishment of a SEP Advisory Committee ("SAC").

The SAC shall provide advice to the Defendant regarding the development, management and implementation of the SEP. The SAC will be appointed from a broad cross-section of community stakeholders that includes community leaders, neighborhood planning units, business community leaders, minority representatives and other interested community members.

The SAC will provide advice and recommendations to the Defendant regarding suggestions from minority neighborhood groups in the development of the Greenway Acquisition Plan and the



Stream Cleanup Plan. Particular emphasis will be placed on input from minority communities adjacent to the Designated Streams and other streams affected by the discharges from the Defendant's CSO Control Facilities.

**1. Greenway Acquisition Project**

The Defendant agrees to acquire and maintain protected areas, called Greenway Properties, along selected portions of the Designated Streams defined in Section VIII.D. The primary purpose of this project will be to reduce and/or prevent erosion and non-point source pollution loads from entering the Designated Streams, by setting aside land in perpetuity for the protection of the Designated Streams, such that the Designated Streams may be maintained in, or be restored to, their natural condition.

**2. Stream Cleanup Project**

The purpose of the Stream Cleanup Project is to provide a one-time cleanup of trash and debris from the banks of the CSO Streams as defined in Section VIII.E.2. and the CSO Stream Beds. The Stream Cleanup Project shall be conducted in accordance with Section VIII.E.

**C. SEP Advisory Committee**

1. The Mayor of Atlanta shall appoint a SEP Advisory Committee (SAC) of not more than ten (10) members as follows: two (2) members designated by the Citizen Plaintiffs; one (1) member designated by the EPD; one (1) member designated by Fulton County; and six (6) members, including the Chairperson,

designated by the Mayor of Atlanta, at least one (1) of whom shall reside in Fulton County. The SAC members to be designated by the Mayor shall be selected from a broad cross-section of community stakeholders that includes community leaders, neighborhood planning units, business community leaders, minority representation and other interested community members. The Defendant shall coordinate the selection of the SAC with the Citizen Plaintiffs and Fulton County to assure attainment of a broad-based SAC.

2. The members of the SAC shall serve terms not to exceed four (4) years. In order to provide for continuity, the terms of the initial SAC members shall be staggered as follows:

a. Designees of the Mayor

(i) Two members shall serve a one (1) year term;

(ii) Two members shall serve a two (2) year term;

(iii) Two members shall serve a three (3) year term.

b. Designees of the Citizen Plaintiffs, EPD, and Fulton County shall serve initial four (4) year terms.

c. Nothing in this Paragraph shall preclude reappointment of a member for an additional term. Should a vacancy arise at any time, the party that designated the SAC member shall designate a substitute SAC member, whom the Mayor shall appoint to complete the unexpired term.

3. The purpose of the SAC is to:

a. Review the submissions of the Consultant(s) and provide advice and make recommendations to the Defendant regarding the development, management and implementation of the Greenway Acquisition Project, including the acquisition of land or interest therein and restoration projects;

b. Provide advice to the Defendant regarding the development, management and implementation of the Stream Cleanup Project;

c. Provide advice and recommendations to the Defendant regarding suggestions from minority neighborhood groups pertaining to the development of the Greenway Acquisition Plan and the Stream Cleanup Plan. Particular emphasis will be placed on input from minority communities adjacent to the Designated Streams and other streams affected by the discharges from the Defendant's CSO Control Facilities; and

d. Review and comment on the draft Greenway Acquisition Plan and the Stream Cleanup Plan (Section VIII.D.2. and VIII.E.2.).

4. The Mayor shall appoint the SAC members within sixty (60) days from the Date of Entry and within sixty (60) days after a vacancy arises.

5. The SAC shall meet at least quarterly at a time and place to be determined by the SAC.

#### D. Greenway Acquisition Project

##### 1. Project Description

a. The Defendant agrees to acquire and maintain protected areas called Greenway Properties along selected portions of the "Designated Streams." The term Designated Streams shall mean:

(i) The Chattahoochee River corridor from the crossing of Interstate 75 in Fulton County to the crossing of U.S. 27 in Heard County, including all tributary streams in that corridor;

(ii) All tributaries of the Chattahoochee River originating in or flowing through the City of Atlanta from their headwaters or the point they enter the City to their confluence with the Chattahoochee River, including, but not limited to Peachtree Creek, Nancy Creek, Proctor Creek and Utoy Creek;

(iii) The South River corridor for its entire length, including all tributary streams in that corridor; and

(iv) All tributaries of the South River originating in or flowing through the City of Atlanta from their headwaters or the point they enter the City to their confluence with the South River, including, but not limited to, Intrenchment Creek.

b. The Defendant will hold the Greenway Properties in perpetuity, or for as long as legally permissible, for the purpose of improving, restoring and protecting the water quality of the Designated Streams. The Greenway Acquisition Project

shall also address erosion and sedimentation control and the restoration of stream banks along the Greenway Properties. For purposes of Section VIII, the term "restoration" shall mean the planting of native flora and plants to act as natural buffers, the removal of structures and debris and the repair of stream banks impaired by erosion. Restoration projects that involve natural, nonstructural solutions shall have a high priority.

## **2. General Obligations**

a. The Defendant hereby agrees to implement the Greenway Acquisition Project for the purpose of reducing or preventing pollution to the Designated Streams, with primary emphasis on non-point sources. The Defendant shall expend funds deposited in the Greenway Account for the development, management and implementation of the Greenway Acquisition Project. (See Section VIII.D.2.c regarding limitations on management costs, consultants' fees and reimbursement for City employees to be paid from the Greenway Account). These activities specifically include the preparation of the Greenway Acquisition Plan, land acquisition, and the restoration of acquired properties.

b. Within one hundred and eighty (180) days of the Date of Entry, the Defendant shall enter into a contract with one or more professional consultant(s) with expertise in the planning, acquisition and management of natural resources-based Greenway systems, and with expertise in environmental justice community outreach and participation, to perform the following functions:

(i) develop a draft and final Greenway Acquisition Plan in accordance with the provisions and requirements contained in this Consent Decree;

(ii) manage the implementation of and re-evaluate the Greenway Acquisition Plan as necessary, during implementation;

(iii) prepare semi-annual reports for submission to EPA/EPD and the Citizen Plaintiffs that describe the progress in implementing the Greenway Acquisition Project, including an accounting of funds expended during the reporting period; and

(iv) promote and coordinate the full participation of the SAC and the public in the development, management, and implementation of the Greenway Acquisition Project in accordance with Section VIII.C.

c. The cost for consultants and contractors and reimbursement of City employees who perform work on the development, management, and implementation of the Greenway Acquisition Project, including (i) the preparation of a draft Greenway Acquisition Plan, and (ii) SAC expenses incurred in connection with the Greenway Acquisition Project and Stream Cleanup Project (see Section VIII.E.3), shall not exceed ten (10%) percent of the total \$25 million corpus deposited into the Greenway Account. The limitations on expenditures and reimbursement for contractors and City employees who perform acquisition and restoration work pursuant to the Greenway Acquisition Project shall not apply if prior written approval is

granted by EPA/EPD after review and comment by the Citizen Plaintiffs.

d. The Consultant(s) identified in subparagraph b. shall report quarterly to the SAC. The Consultant(s) shall submit the quarterly reports to the SAC for its review and for the SAC to make recommendations in accordance with Section VIII.C.

e. The Defendant shall submit a draft Greenway Acquisition Plan to the SAC for review and comment. After consideration of the SAC comments, the Defendant shall submit for review and approval by EPA/EPD a Greenway Acquisition Plan no later than two (2) years after the Date of Entry.

f. The Defendant shall submit a draft Greenway Acquisition Plan to EPA/EPD for review and approval before the Defendant expends Greenway Account funds for the acquisition or restoration of any property or interest therein.

g. EPA/EPD shall review the draft Greenway Acquisition Plan and notify the Defendant, in writing, of their approval or provide a list of deficiencies.

h. Within sixty (60) days of receipt of EPA/EPD comments regarding the draft Greenway Acquisition Plan, the Defendant shall modify the Plan and resubmit the Plan to EPA/EPD for final approval.

i. The Defendant shall begin implementation of the Greenway Acquisition Plan within thirty (30) days of receiving the final approval for the Plan.

j. The Greenway Acquisition Plan shall contain or provide for the following minimum elements:

(i) relevant criteria specified in sub-paragraph k of this Paragraph for evaluating properties as candidates for protection;

(ii) acquisition of interests in or title to Greenway Properties along the banks of the Designated Streams that are contiguous and that generally extend laterally a distance of at least 100 feet from the top of the banks of the Designated Streams;

(iii) restoration of Greenway Properties as necessary to restore or maintain their function as natural open spaces that reduce or prevent pollution;

(iv) assurance that no more than ten (10%) percent of the area of Greenway Properties acquired may be developed for public access or use, such as bicycle and hiking paths;

(v) assurance that at least fifteen (15%) percent of the funds in the Greenway Account are used to acquire Greenway Properties located along the Chattahoochee River corridor, south of Utoy Creek;

(vi) assurance that if a leasehold or easement is acquired, it must extend for at least one hundred (100) years, or as long as legally permissible;

(vii) perpetual maintenance of the Greenway Properties as a protected area through deed restrictions or covenants consistent with the Greenway Acquisition Project



Program and free from uses that are not consistent with ecosystem protection;

(viii) public participation processes that involve the SAC and include minority outreach in the development, implementation, and management of the Greenway Acquisition Project in accordance with Section VIII.C.;

(ix) budgets for the acquisition and any restoration of Greenway Properties and easements;

(x) inventory of potentially available Greenway Properties, their size, location, current environmental condition, and any needed restoration work;

(xi) estimates of the cost and efficacy of restoring areas suffering from prior environmental degradation with a priority for restoration projects that require natural, nonstructural solutions; and

(xii) schedules for all activities contemplated by the Greenway Acquisition Plan so that the activities are completed on or before March 31, 2007.

k. Criteria for the evaluation and prioritization of properties as candidates for protection under the Greenway Acquisition Plan shall, at a minimum, include the following:

(i) potential for preventing or reducing non-point source pollution;

(ii) protection or improvement of water quality in the Designated Streams;

(iii) potential connection with other Greenway

Properties;

- (iv) desirable natural state;
- (v) need for restoration;
- (vi) value as wildlife habitat;
- (vii) potential for aquatic and wildlife habitat protection or restoration;
- (viii) protection of ecologically significant or environmentally sensitive areas (e.g., wetlands and areas inhabited by endangered or threatened species of plants or animals);
- (ix) preservation of existing natural beauty;
- (x) near term likelihood for alternative development;
- (xi) compatibility for possible use as a Greenway Property with utilization of surrounding areas;
- (xii) environmental education potential;
- (xiii) cost and probable efficacy of restoring environmental integrity that had been impaired by prior degradation within the Designated Stream corridors;
- (xiv) relative acquisition costs of various categories and parcels of potential Greenway Properties; and
- (xv) suitability and availability of conservation easements for potential Greenway Properties.

1. Upon approval of the final Greenway Acquisition Plan, the Defendant shall implement the Plan so that the Greenway Acquisition Plan activities are completed on or before March 31,

2007.

m. Any infrastructure for human activity within the Greenway Properties shall be designed and constructed with prevention of non-point source pollution as the primary consideration.

n. Bicycle and hiking trails, canoe launch ramps, and picnic facilities and other public access facilities located within Greenway Properties shall be designed and constructed with non-point source pollution prevention as a primary consideration. Location and construction of such facilities shall be subject to the approval of EPA/EPD.

o. The Defendant covenants that it will not take any action pursuant to state or local law, if such action or omission would result in, facilitate or in any way contribute to, any alienation of the Greenway Properties or change their use in a manner that is not consistent with the purpose of the Greenway Acquisition Project as set forth in this Consent Decree and the Greenway Acquisition Plan unless approved by EPA/EPD.

p. None of the Defendant's \$25 million commitment to the Greenway Acquisition Project will be used for operation and maintenance of the Greenway Properties, except as provided in Section VIII.D.2.c. The Defendant shall maintain the Greenway Properties in a manner that preserves environmental value and furthers the purposes of the Greenway Acquisition Project.

### **3. Funding Obligations**

a. On or before March 31, 2006, the Defendant shall

deposit \$25 million in cash into a separate Greenway sub-account of the City Trust Account (the "Greenway Account") for the purpose of implementing the Greenway Acquisition Project.

b. The Defendant shall submit a draft of the documents establishing the Greenway Account to EPA/EPD review and approval within thirty (30) days of the Date of Entry. The Defendant shall create the Greenway Account within thirty (30) days of receiving final approval of the draft account documents from EPA/EPD.

c. The Defendant shall make deposits into the Greenway Account according to the following schedule:

(i) At least \$4 million will be deposited in the Greenway Account on or before March 31, 1999;

(ii) At least \$3 million will be deposited each year on or before the anniversary date of the first deposit for seven (7) years thereafter, beginning March 31, 2000, and ending with the deposit which shall be made on or before March 31, 2006. Interest earned on the principal of the SEP sub-account shall not be credited toward the minimum annual deposit.

d. Subject to the limitations contained in Section VIII.D.2.c., all funds, and interest earned therefrom, deposited in the Greenway Account shall be expended to meet the Defendant's obligations regarding the Greenway Acquisition Project including:

(i) The development, management and implementation of the Greenway Acquisition Project;

(ii) The acquisition of interest in or title to

Greenway Properties along the banks of the Designated Streams;  
and

(iii) The restoration of those Greenway Properties, as necessary, so that the lands function as natural open or buffer spaces that reduce or prevent pollution.

e. The Defendant shall not invest or expend funds deposited into the Greenway Account for payment of other obligations of the Defendant. The Defendant shall invest continuously any unexpended funds deposited into the Greenway Account. Reimbursement of City employees for their time and work in support of their work for the Greenway Acquisition Project shall be subject to the restrictions of Section VIII.D.2.c.

#### **E. Stream Cleanup Project**

##### **1. Project Description**

The purpose of the Stream Cleanup Project is to provide a one-time cleanup of trash and debris as described in the Defendant's Stream Cleanup Plan, from the banks of the CSO Streams and their stream beds. The Stream Cleanup Project will target the streams affected by discharges from the CSO Control Facilities ("CSO Streams"), as listed in Section VIII.E.2.a. The Stream Cleanup Project shall include an environmental justice outreach program in the affected communities in accordance with the terms of Section VIII.C.

##### **2. General Obligations**

a. The Defendant agrees to conduct a one-time cleanup

of the CSO Streams and their stream beds. For purposes of Section VIII, CSO Streams and CSO Stream beds include the entire lengths of Clear Creek, Tanyard Creek, Proctor Creek, Utoy Creek and Intrenchment Creek, and the branch of the South River into which the McDaniel Street CSO Control Facility discharges down the South River to its confluence with Intrenchment Creek.

b. By October 1, 1998, the Defendant shall prepare a Stream Cleanup Plan and submit the plan to EPA/EPD for review and approval. At a minimum, the Plan shall contain the Defendant's strategy for implementing the Stream Cleanup Project, including the cleanup schedule, the cost of the Project, and the Defendant's proposal for instituting a public awareness/educational program in connection with the Stream Cleanup Project. The goal of the public awareness/educational program will be to promote community participation in cleaning up the streams and maintaining the streams in a clean condition. The Defendant shall appoint a liaison to coordinate the Stream Cleanup Project with the SAC. The Plan shall also be submitted to the SAC for review and comment prior to implementation.

c. By October 1, 1998, the Defendant shall retain personnel, secure necessary federal, state and local permits, and begin to conduct a one-time cleanup of the CSO Streams and stream beds. The Defendant shall complete the Stream Cleanup on or before October 1, 1999.

d. For purposes of this Consent Decree, the Stream Cleanup shall consist of removing debris including trash,

household appliances, automobile engines and parts, and shopping carts, where appropriate, from the stream beds.

e. The Defendant shall certify to EPA/EPD and the Citizen Plaintiffs the completion of the cleanup of each CSO Stream segment and its stream bed within ten (10) days of completion.

### **3. Funding Obligations**

a. The Defendant shall fund the Stream Cleanup Project in the amount of \$2.5 million, which shall be fully used by the Defendant to implement the Stream Cleanup Project. The Defendant is not required to set aside these funds in a separate account. The Defendant may utilize its own employees to perform the Stream Cleanup with proper credits given against the \$2.5 million funding obligation for work performed by the Defendant's own employees. Any such credit for work performed by the Defendant's own employees must be supported by time and expense records which are subject to review by EPA/EPD and the Citizen Plaintiffs. The Defendant shall not pay any SAC costs from the \$2.5 million obligated for the Stream Cleanup Project. SAC costs may, however, be paid from the Greenway Acquisition Fund in accordance with the limitations set forth in Section VIII.D.2.c.

b. The Defendant shall complete the Stream Cleanup Project regardless of the cost to the Defendant. If the cost of the Stream Cleanup Project is less than \$2.5 million, the priority by which the Cleanup will be extended to additional streams ("extended stream cleanup project") will be Peachtree

Creek and its tributaries, Sandy Creek, Camp Creek and other urban streams within the City. The Defendant shall complete the extended stream cleanup project no later than October 1, 2000.

**F. Schedule**

Activity	Date
Submit Greenway Account Documents	Within thirty (30) days from the Date of Entry
Create the Greenway Account	Within thirty (30) days from EPA/EPD approval of the Greenway Account documents
Appoint the SEP Advisory Committee	Within sixty (60) days from the Date of Entry
Retain Consultant(s)	Within one hundred and eighty (180) days from the Date of Entry
Initial Deposit into the Greenway Account	On or before March 31, 1999.
Submit Progress Reports	Semi-annually.
Submit a draft Greenway Acquisition Plan to EPA/EPD for review and approval	Within two (2) years from the Date of Entry
Implement Greenway Acquisition Plan	Within thirty (30) days of EPA/EPD approval
Deposit \$3 million into Greenway Account	Each year, on or before March 31, beginning March 31, 2000 through March 31, 2006.
Submit Final SEP Completion Reports	Within one hundred and twenty (120) days of completion of each SEP Project



**G. General Provisions Applicable to All SEPS**

1. The Defendant hereby certifies that:

a. As of the Date of Entry of this Consent Decree, it is not required by any federal, state or local law or regulation to perform or develop the SEP.

b. It is not required to perform or develop the SEP by any agreement or grant, or as injunctive relief in any other case, or by any state or local law;

c. It has not received, and is not presently negotiating to receive, credit in any other enforcement action for any of the SEP; and,

d. Funding for the Greenway Acquisition Project and Stream Cleanup Project will not include funds from private donations, state or federal loans, contracts, or grants.

2. Beginning with the first full calendar year following the Date of Entry, the Defendant shall submit semi-annual reports to EPA/EPD and the Citizen Plaintiffs regarding the progress of implementation of the SEP. The Reports are due on or before March 31 and September 30 of each year. Such reports shall include the following:

a. descriptions of the SEP Project activities undertaken during the previous year, including the status of compliance with the Greenway Acquisition Project and Stream Cleanup Project;

b. a financial report for the previous year that

provides information on the amount of money placed into the Greenway Account, on the expenditures made during that period and on the funding sources for the Greenway Acquisition Project; and

c. a schedule of activities and anticipated expenditures for the coming year to implement the SEP.

3. Within one hundred and twenty (120) days of completing each SEP project, the Defendant shall submit a SEP Completion Report to EPA/EPD and the Citizen Plaintiffs that contains a detailed account of how the Defendant implemented the SEP Project. The SEP Completion Report shall contain the following information:

a. a detailed description of the SEP Project as implemented;

b. a detailed financial accounting, including itemized costs documented by copies of purchase orders and receipts or canceled checks;

c. certification that the SEP Project has been fully implemented pursuant to the provisions of this Consent Decree;

d. certification that funding for the SEP did not include funds from private donations, state or federal loans, contracts, or grants; and

e. a description of the environmental and/or public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

4. Following receipt of the SEP Completion Report, EPA/EPD will do one of the following: (a) accept the Report, (b) reject the Report, in which case EPA/EPD will notify the Defendant in writing of deficiencies in the SEP Completion Report and grant the Defendant an additional thirty (30) days in which to correct any deficiencies; or (c) reject the SEP Completion Report and seek stipulated penalties in accordance with Section XI.

5. Any public statement, oral or written, in print, film or other media, made by the Defendant, its contractors, or representatives making reference to the SEP shall include the following language:

This project was undertaken in connection with the settlement of an enforcement action taken jointly by the United States Environmental Protection Agency, the Georgia Environmental Protection Division and Upper Chattahoochee Riverkeeper Fund, Inc., the Chattahoochee Riverkeeper Inc., and W. Robert Hancock, Jr., for violations of the Federal Water Pollution Control Act and Georgia Water Quality Control Act.

6. All submittals required under Section VIII shall be subject to review and approval by EPA/EPD, and EPA/EPD shall have the right to submit comments to be incorporated into the submittal. Document submittals required under Section VIII shall contain the Certification set forth in Section XIX of this Consent Decree and all such submissions shall be placed in the Public Document Repository described in Section VI of this Consent Decree.

7. Disputes regarding the SEP, including the approval or

rejection of plans by EPA/EPD, are subject to the Dispute Resolution Provisions of Section XIII.

8. Failure by the Defendant to perform any obligation of the SEP set forth in Section VIII of this Consent Decree or any obligation established subsequently through the implementation plans shall constitute a violation of this Consent Decree.

9. The Defendant shall provide copies of all documentation relating to the development and implementation of the SEP to EPA/EPD within fourteen (14) days of receiving a request for such documentation, provided the request is sent to the attention of the Commissioner of Public Works, City of Atlanta. EPA/EPD will not make repeated requests for documents that previously have been provided to them pursuant to other provisions of this Consent Decree.

## **IX.**

### **EFFLUENT LIMITATIONS**

Nothing in this Consent Decree shall relieve the Defendant of its obligation to comply at all times with all effluent limitations in its NPDES Permits, including any modifications, extensions or reissuances.

## **X.**

### **CIVIL PENALTY**

A. Defendant shall pay a civil penalty of \$2.5 million as follows:

1. Within sixty days of the Date of Entry of this Consent Decree, Defendant shall pay the United States \$500,000.

2. Within sixty days of the Date of Entry of this Consent Decree the Defendant shall pay the State of Georgia \$500,000.

3. On or before the one year anniversary of the Date of Entry of this Consent Decree, the Defendant shall pay the United States \$750,000.

4. On or before the one year anniversary of the Date of Entry of this Consent Decree, the Defendant shall pay the State of Georgia \$750,000.

B. The Defendant shall also pay interest on the \$1.5 million penalty to be paid pursuant to sub-paragraphs 3 and 4 above at the rate provided in 28 U.S.C. § 1961(a), that is, a rate equal to the coupon issue yield equivalent (as determined by the Secretary of Treasury) of the average accepted auction price for the last auction of 52-week U.S. Treasury bills settled prior to the date this Consent Decree is entered. Interest shall run from the Date of Entry until the date of payment, and shall be computed daily and compounded annually.

C. The Defendant shall make payments to the United States required by Paragraphs A and B above by tendering certified checks or cashier's checks payable to the "Treasurer, United States of America," and sending them to the United States Attorney for the Northern District of Georgia. The current address for the United States Attorney is Richard Russell Federal

Building, 75 Spring Street, S.W., Suite 1800, Atlanta, Georgia 30335. The Defendant shall make payments to the State of Georgia required in Paragraphs A and B by tendering certified checks or cashier's checks payable to the "State of Georgia," and sending them to the Georgia Environmental Protection Division, Permitting, Compliance and Enforcement Program, 4244 International Parkway, Suite 110, Atlanta, Georgia 30354. Simultaneously, the City shall send copies of the certified or cashier's checks and the transmittal letters to the Chief, Environmental Enforcement Section, United States Department of Justice, Post Office Box 7611, Washington, D.C. 20044, and to the Director, Water Management Division, the United States Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, Georgia 30303.

## XI.

### STIPULATED PENALTIES

A. The Defendant shall pay stipulated civil penalties for each day it fails to meet any of the milestones or requirements set forth in Paragraphs B, C, F, G, H, I and J of this Section within thirty days of receiving a written demand from EPA or EPD. The Defendant shall pay stipulated penalties without a written demand as provided in Paragraphs D and E of this Section within thirty days after the penalties accrue. Fifty percent of each payment due under this Section shall be made to the United States and fifty percent shall be paid to the State of Georgia, unless

otherwise noted. In addition to the penalties set forth below, the United States and the State may apply directly to the Court to obtain statutory penalties for any violation of the Defendant's NPDES permits. In such a proceeding, the Court may consider any penalties the Defendant has previously paid under this Section.

B. Failure to Meet the Schedule for Submittals

1. The Defendant shall be subject to the following stipulated penalties if it fails to timely submit the Remedial Measures Report or any revisions to the Remedial Measures Report required under Section VII of this Consent Decree:

<u>Period of Violation</u>	<u>Penalty Per Day</u>
1-14 days	\$2,000/day
15-30 days	\$5,000/day
over 30 days	\$8,500/day.

A submittal shall be timely if the Defendant submits it by the due date and the submittal substantially complies with the requirements of the Consent Decree.

2. The Defendant shall be subject to the following stipulated penalties if it fails to timely submit any other submittal required under Section VII of this Consent Decree, including but not limited to reports, revised reports, and responses to comments:

<u>Period of Violation</u>	<u>Penalty Per Day</u>
1-7 days	\$0/day
8-14 days	\$500/day
15-30 days	\$2,000/day
31-60 days	\$5,000/day
Over 60 days	\$8,500/day.

A submittal shall be timely if the Defendant submits it by the due date and the submittal substantially complies with the requirements of the Consent Decree.

C. Failure to Meet Other Schedules

1. For each affected CSO Control Facility, the Defendant shall be subject to the following stipulated penalties if it fails to advertise for construction bids or to complete construction by the dates set forth in the schedule approved by EPA and EPD:

<u>Period of Violation</u>	<u>Penalty Per Day For Each Affected CSO Control Facility</u>
1-14 days	\$2,000/day
15-30 days	\$5,000/day
Over 30 days	\$8,500/day.

These penalties apply to the schedules for the Short Term Remedial Measures Report (Section VII.A.3) and the Remedial Measures Report (Section VII.A.2).

2. For each affected CSO Control Facility, the Defendant shall be subject to the following stipulated penalties if it fails to meet any other approved Section VII schedule date,



including but not limited to notice to proceed with design, completion of design, and initiation of construction:

<u>Period of Violation</u>	<u>Penalty Per Day For Each Affected CSO Control Facility</u>
1-7 days	\$0/day
8-14 days	\$500/day
15-30 days	\$2,000/day
31-60 days	\$5,000/day
over 60 days	\$8,500/day.

D. Failure to Maintain Adequate Operational Standards

The Parties acknowledge that the Defendant must institute a variety of work practices and capital improvements at the CSO Control Facilities to ensure regular compliance with the Clean Water Act, the Georgia Water Quality Control Act, and the NPDES permits. One measure of these collective efforts is the Defendant's ability to control fecal coliform levels at the Sampling Points. Accordingly, the Defendant shall be liable for stipulated penalties as follows:

1. The Defendant shall pay the following stipulated penalties for each calendar day during the months of May through October in which the Defendant collects a grab sample at a Sampling Point that registers a fecal coliform level of 2,000 colonies per 100 milliliters (ml) and above:

<u>Fecal Coliform Count</u>	<u>Penalty Per Day</u>
2,000/100 ml to 8,000/100 ml	\$2,000
8,001/100 ml to 32,000/100 ml	\$5,000
above 32,001/100 ml	\$8,500.

The Defendant shall pay the daily penalties above for each Sampling Point where a grab sample registered fecal coliform levels of 2,000 colonies per 100 ml and above.

2. The Defendant shall pay the following stipulated penalties for each calendar day during the months of November through April in which the Defendant collects a grab sample at a Sampling Point that registers a fecal coliform level of 4,000 colonies per 100 ml and above:

<u>Fecal Coliform Count</u>	<u>Penalty Per Day</u>
4,000/100 ml to 8,000/100 ml	\$2,000
8,001/100 ml to 32,000/100 ml	\$5,000
above 32,001/100 ml	\$8,500.

The Defendant shall pay the daily penalties above for each Sampling Point where a grab sample registered fecal coliform levels of 4,000 colonies per 100 ml and above.

3. The Defendant shall collect grab samples from a minimum of four overflow sampling events per calendar month from a CSO Control Facility at the Sampling Point and test those samples for the presence of fecal coliform using a testing method acceptable to EPA/EPD. An "overflow sampling event" begins at the start of a CSO discharge lasting more than 50 minutes and continues until the overflow stops. The next overflow sampling

event shall not begin until at least 48 hours have elapsed since the end of the last CSO discharge. One grab sample shall be taken during the first hour of the overflow sampling event, and once during each successive 24 hour period of continuous overflow. Each sample from a continuous overflow shall be taken no less than 24 hours from the previous sample. After EPA/EPD have established operational standards for total residual chlorine (Section VII.A.3.d), the Defendant shall also collect and test samples for total residual chlorine as provided in the operational standard. The Defendant shall maintain records pertaining to the collection and testing of each sample for a minimum of five years. The Defendant shall pay a stipulated penalty of \$8,500 for each sample required by this Paragraph that the Defendant fails to collect or test.

4. The Defendant shall pay stipulated penalties for each sample exceeding the operational standards for total residual chlorine after the earlier of (a) the date the Defendant completes construction provided for in the approved Short Term Remedial Measures Plan for the CSO Control Facility where the sample was taken; or (b) the date approved by EPA/EPD for the completion of that construction. If the Short Term Remedial Measures Plan does not provide for construction at the CSO Control Facility where the sample was taken, stipulated penalties begin to accrue when EPA/EPD issue the operational standard. The Defendant shall pay \$2,000 for each sample exceeding an

operational standard for total residual chlorine by less than 100%. For each sample exceeding the operational standard by 100% or more, the Defendant shall pay \$8,500.

5. Stipulated penalties under this Paragraph shall not accrue for overflows at a CSO Control Facility until the date approved by EPA/EPD for completing construction of optimization measures at that Facility, as set forth in the Short Term Remedial Measures Report. If the Short Term Remedial Measures Report does not provide for construction at the Facility where an overflow occurred, stipulated penalties begin to accrue on November 1, 1998.

E. Violation of Metals Limits

1. The Defendant shall pay the following stipulated penalties for each metal (Cd, Cu, Ni, Pb, or Zn) in a composite sample collected at a Sampling Point that exceeds an effluent limit ("EF") in the applicable NPDES permit then in effect, or the current Georgia Water Quality Standards if such an effluent standard does not exist:

<u>Percentage Above GWOS or EF</u>	<u>Penalty Per Metal</u>
5% to 25%	\$1,000
greater than 25% to 50%	\$2,000
greater than 50% to 100%	\$5,000
greater than 100%	\$8,500.

2. The Defendant shall collect composite samples of

twelve overflow events per year at each Sampling Point, at the rate of at least two overflow events per quarter. The Defendant shall test each of these composite samples for the presence of Cadmium (Cd), Copper (Cu), Nickel (Ni), Lead (Pb), and Zinc (Zn) using a test method capable of detecting these metals at or below an effluent limit ("EF") in the applicable NPDES permit then in effect, or the current Georgia Water Quality Standards if such an effluent standard does not exist. The Defendant shall pay a stipulated penalty of \$20,000 for each composite sample required by this Paragraph that the Defendant fails to collect or test.

3. The obligations and stipulated penalties in this Paragraph shall not begin to apply until the earlier of (a) the date given in the approved Remedial Measures Report for completing construction at the CSO Control Facility where the sample was collected; (b) the date when the Defendant completes construction of the remedy selected in the Remedial Measures Report for the CSO Control Facility where the sample was collected; or (c) the date when the Defendant abandoned remedial measures that are necessary for achieving compliance with the Georgia Water Quality Standards or site-specific effluent limits for metals at the CSO Control Facility where the sample was collected.

F. Noncompliance with Management, Operations, and Maintenance Requirements

1. Failure to implement any of the requirements listed below shall subject the Defendant to a penalty of \$6,000 per

month for each Combined Sewershed where a violation occurs or to which a violation relates. If the Defendant violates any of the requirements listed below for six consecutive months for a single Combined Sewershed, the Defendant shall be subject to a penalty of \$10,000 per month for each successive month thereafter in which a violation occurs at that Sewershed. Stipulated penalties shall accrue for violations of the following requirements:

1. failure to implement the requirements of Section VII.B.1.a.iv (regular cleaning and maintenance of sewers);
2. failure to implement the requirements of Section VII.B.1.a.v (industrial pretreatment programs);
3. failure to implement the requirements of Section VII.B.1.a.vi (stormwater programs);
4. failure to implement the requirements of Section VII.B.1.a.vii (general BMP requirements to reduce or eliminate flow and pollutant loading);
5. failure to implement the requirements of Section VII.B.1.a.x (street cleaning program);
6. failure to implement or complete the requirements of Section VII.B.2.a.xi and Section VII.B.3.a.xv (training programs);
7. failure to correct structural or non-structural deficiencies according to the approved schedules, as required by Section VII.B.1.a.xi and Section VII.B.3.a.vi;
8. failure to implement the operational monitoring system required by Section VII.B.2.a.iii;

9. failure to implement the maintenance management system, as required by Section VII.B.3.a.xii;

10. failure to follow the approved monitoring and sampling program (but not including the failure to sample), as required by Section VII.B.2.a.v; and

11. failure to follow chain of custody procedures, as required by Section VII.B.2.a.viii.

G. Dry Weather Overflows

Any Dry Weather Overflow from a CSO Control Facility shall subject the Defendant to the following penalties payable to the State of Georgia:

1. \$20,000 for a Dry Weather Overflow at a CSO Control Facility if the overflow has occurred more than twelve (12) months since the last Dry Weather Overflow at that facility; or

2. \$45,000 for a Dry Weather Overflow at a CSO Control Facility which has had one Dry Weather Overflow within the last twelve (12) months; or

3. \$75,000 for a Dry Weather Overflow at a CSO Control Facility which has had two or more Dry Weather Overflows within the last twelve (12) months.

H. Violation of the Narrative Standards

The Defendant shall be subject to the following penalties for each violation of a narrative Georgia Water Quality Standard at a CSO Control Facility:

1. \$2,000 if the CSO Control Facility has had no other narrative violations within the last twelve (12) months; or

2. \$5,000 if the CSO Control Facility has had only one other narrative violation within the last twelve (12) months; or

3. \$8,500 if the CSO Control Facility has had two or more other narrative violations within the last twelve (12) months. The penalties in this Paragraph shall not apply to violations caused by chlorine in a CSO.

I. Failure to Comply with Provisions of the Supplemental Environmental Project

1. The determinations of whether the SEP has been satisfactorily completed and whether the Defendant has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA/EPD, after an opportunity for comment by the Citizen Plaintiffs.

SEP Milestones will include the following:

- a. Initial deposit to Greenway Account
- b. Annual deposits to Greenway Account
- c. Entry into contract with consultant
- d. Establishment of the Supplemental Environmental Project Advisory Committee (SAC)
- e. Submittal of Draft Greenway Acquisition Plan
- f. Submittal of Final Greenway Acquisition Plan
- g. Submittal of semi-annual progress reports
- h. Submittal of annual financial reports
- i. Submittal of final SEP Project reports
- j. Submittal of reports to Public Document Repository



k. Submittal of Stream Cleanup Plan

1. Responses to EPA/EPD comments.

2. The Defendant shall be subject to the following stipulated penalties for failure to comply with the milestones and obligations identified above and for violating any other requirements of Section VIII:

<u>Period of Violation</u>	<u>Penalty Per Day</u>
1-14 days	\$1,000/day
15-30 days	\$2,000/day
31-60 days	\$5,000/day
Over 60 days	\$8,500/day.

3. The Defendant shall pay a stipulated penalty of \$8,500 if it fails to comply with Section VIII.G.5 (public statements regarding the SEPs).

4. In the event the Defendant exceeds the 10% limitation set forth in Section VIII.D.2.c without prior approval from EPA/EPD, it shall deposit into the Greenway sub-account an amount equal to the amount of the cost that exceeded the 10% limitation within sixty (60) days of receiving written notice from the EPA/EPD.

5. If the SEP is satisfactorily completed, but the Defendant spent less than 90 percent of the amount of money required to be spent for the project, the Defendant shall pay a stipulated penalty to the United States and State that represents the difference in the total amount spent and \$25 million for the Greenway Project and the difference in the total amount spent and

\$2.5 million for the Stream Cleanup Project.

J. Additional Stipulated Penalties

In addition to other stipulated penalties in this Section, the Defendant shall be subject to the following stipulated penalties for Substantial Noncompliance during a Compliance Evaluation. The terms "Substantial Noncompliance" and "Compliance Evaluation" are defined in Paragraph K of this Section.

1. If the Defendant completes construction by February 1, 2006 of all remedial measures intended for meeting an effluent limit ("EF") in the applicable NPDES permit then in effect, or the current Georgia Water Quality Standards if such an effluent standard does not exist, for metals at a Sampling Point, the Defendant shall be subject to a stipulated penalty of \$1 million for the first occurrence of Substantial Noncompliance at that Sampling Point during the Compliance Evaluation.

2. If the Defendant completes construction between February 1, 2006 and February 1, 2007 of all remedial measures intended for meeting an effluent limit ("EF") in the applicable NPDES permit then in effect, or the current Georgia Water Quality Standards if such an effluent standard does not exist, for metals at a Sampling Point, the Defendant shall be subject to a stipulated penalty of \$1.5 million for the first occurrence of Substantial Noncompliance at that Sampling Point during the

## Compliance Evaluation.

3. If the Defendant completes construction after February 1, 2007 of all remedial measures intended for meeting an effluent limit ("EF") in the applicable NPDES permit then in effect, or the current Georgia Water Quality Standards if such an effluent standard does not exist, for metals at a Sampling Point, the Defendant shall be subject to a stipulated penalty of \$2 million for the first occurrence of Substantial Noncompliance at that Sampling Point during the Compliance Evaluation.

### K. Contingent Authority

1. If the Defendant is in Substantial Noncompliance, EPA and EPD may jointly prohibit the Defendant during the period of Substantial Noncompliance from issuing building permits that allow sewer connections, or otherwise authorizing or allowing sewer connections, in each affected Combined Sewershed. An "affected Combined Sewershed" means a Sewershed that sends wastewater to the Sampling Point where Substantial Noncompliance was detected. To invoke this authority, EPA and EPD shall send a written notice to the City that identifies the affected sewershed and the period in which the prohibition will be in effect. In their sole discretion, EPA and EPD may limit the prohibition to a period shorter than the period of Substantial Noncompliance, and may jointly allow sewer connections necessary to protect public health and safety.

2. A determination that the Defendant is in

Substantial Noncompliance shall be subject to dispute resolution under this Consent Decree.

3. If the Defendant allows any sewer connections prohibited under this Paragraph, EPA or EPD may prohibit the Defendant from issuing building permits that allow sewer connections, or otherwise approving sewer connections, for a period of up to six months in the affected Combined Sewershed, regardless of whether the Defendant is in Substantial Noncompliance. In their sole discretion, EPA and EPD may jointly allow sewer connections necessary to protect public health and safety. In addition, the Defendant shall be subject to a stipulated penalty of \$35,000 for each prohibited sewer connection.

L. Substantial Noncompliance

1. For the purposes of determining Substantial Noncompliance, the following terms shall be used:

a. An exceedance count for fecal coliform or other bacterial indicators shall mean either an exceedance of a geometric mean limitation for these indicators; a failure to properly collect and analyze a sample for fecal coliform or other bacterial indicator; or an exceedance of a total residual chlorine limitation or operational standard, whichever is lower, in more than 25% of the samples collected in a given month.

b. A substantial exceedance count for fecal coliform or other bacterial indicators shall mean either:

(i) a 50% exceedance of a geometric mean

limitation; or

(ii) a 100% exceedance of a maximum limitation in more than 25% of the samples collected in a given month during a period in which the geometric mean has not been exceeded.

c. An exceedance count for a metal (Cd, Cu, Ni, Pb, or Zn) shall mean either an exceedance of a limitation for that metal, or a failure to properly collect and analyze a sample for that metal.

d. A substantial exceedance count for a metal (Cd, Cu, Ni, Pb, or Zn) shall mean a 40% exceedance of a limitation for that metal.

e. A Compliance Evaluation shall mean an evaluation that begins on the earlier of the following periods:

(i) six months after the date approved by EPA and EPD for completing construction of all remedial measures necessary to meet a limitation for metals (Cd, Cu, Ni, Pb, or Zn) in wastewater from a Combined Sewershed; or

(ii) six months after the date when the Defendant completes construction of all remedial measures necessary to meet a limitation for metals (Cd, Cu, Ni, Pb, or Zn) in wastewater from a Combined Sewershed.

A Compliance Evaluation ends two years after it begins, or when the Defendant ceases to be in Substantial Noncompliance, whichever is later.

f. A limitation shall mean the effluent limit set forth in the applicable NPDES permit. If no effluent limit

appears in the permit for a Pollutant Parameter, a limitation shall mean the Georgia Water Quality Standard for that Pollutant Parameter.

2. "Substantial Noncompliance" occurs only during a Compliance Evaluation, and refers to the period beginning when any of the following events occur:

a. four or more exceedance counts for fecal coliform or other bacterial indicators have been detected at a single Sampling Point within the last two quarters;

b. four or more exceedance counts for metals (Cd, Cu, Ni, Pb, or Zn) have been detected at a single Sampling Point within the last two quarters;

c. two or more substantial exceedance counts for fecal coliform or other bacterial indicators have been detected at a single Sampling Point within the last two quarters;

d. two or more substantial exceedance counts for metals (Cd, Cu, Ni, Pb, or Zn) have been detected at a single Sampling Point within the last two quarters;

e. the Defendant has failed to properly collect and analyze a sample for metals (Cd, Cu, Ni, Pb, or Zn) in at least four CSOs within the last two quarters, regardless of where the CSOs occurred; or

f. the Defendant has failed to properly collect and analyze a sample for fecal coliform or other bacterial indicators from at least ninety percent of all CSOs within the last two quarters.

A period of Substantial Noncompliance ends when two calendar quarters have elapsed without any of the events listed in Section XI.K.2 occurring.

3. All samples shall be collected and analyzed in accordance with 40 CFR Part 136 or other standard operating procedures agreed upon by EPA/EPD and the Defendant for compliance with the NPDES permit for the CSO Control Facilities. The analytical methods for metals shall be capable of detecting concentrations down to or below an effluent limit ("EF") in the applicable NPDES permit then in effect, or the current Georgia Water Quality Standards if such an effluent standard does not exist, for each metal being tested.

M. Payment of stipulated civil penalties as set forth above shall be in addition to any other rights or remedies which may be available to the United States or its agencies or the State of Georgia or its agencies by reason of the Defendant's failure to comply with requirements of this Consent Decree, and any applicable Federal, State or local laws, regulations, NPDES permit(s) and all other applicable permits.

N. Stipulated civil penalties shall be paid to the United States by submitting a cashier's or certified check payable to the "Treasurer, the United States of America", and tendered to the United States Attorney for the Northern District of Georgia. The current address for the United States Attorney is Richard Russell Federal Building, 75 Spring Street, S.W., Suite 1800, Atlanta, Georgia 30335. Stipulated penalties shall be paid to

the State of Georgia by submitting a certified or cashier's check payable to the State of Georgia and tendered to Georgia, Environmental Protection Division; Permitting, Compliance and Enforcement Program, 4244 International Parkway, Suite 110, Atlanta, Georgia 30354. Copies of the certified or cashier's check and the transmittal letter shall be sent simultaneously to the following people:

Chief, Environmental Enforcement Section  
United States Department of Justice  
Post Office Box 7611  
Washington, D.C. 20044-7611

and to

Director, Water Management Division  
United States Environmental Protection Agency  
Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303.

O. In the event that a stipulated civil penalty is not paid when due, EPA or EPD may demand in writing that the stipulated civil penalty be payable with interest from the original due date to the date of payment, at the statutory judgment rate set forth at 28 U.S.C. § 1961(a).

P. The Defendant may dispute EPA's or EPD's demand for payment of stipulated penalties pursuant to the dispute resolution provisions of Section XIII hereof. Invoking dispute resolution, however, shall not stop the accrual of stipulated penalties unless EPA and EPD, in their sole discretion, agree.



## XII.

### FORCE MAJEURE

A. "Force Majeure" for the purposes of this Consent Decree is defined as an event arising from causes beyond the control of the Defendant or of any entity employed by the Defendant, including, but not limited to, its consultants and contractors, which delays or prevents the performance of any obligation under this Consent Decree, despite the Defendant's best efforts to fulfill the obligation. The requirement that the Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential Force Majeure event and 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 delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to perform an obligation required by this Consent Decree or a failure to achieve compliance with the NPDES permits, the Georgia Water Quality Control Act, or the Clean Water Act.

B. The Defendant shall be deemed to know of any circumstance of which the Defendant, any entity controlled by the Defendant, or the Defendant's contractors knew or should have known.

C. When circumstances are occurring or have occurred which may delay the completion of any requirement of this Consent Decree, whether or not due to a Force Majeure event, the

Defendant shall so notify EPA, EPD and the Citizen Plaintiffs, in writing, within fifteen (15) days after the Defendant learns, or in the exercise of reasonable diligence under the circumstances should have learned, of the delay or anticipated delay. The notice shall describe in detail the basis for the Defendant's contention that it experienced a Force Majeure delay, the anticipated length of the delay, the precise cause or causes of the delay, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which those measures will be implemented. Failure to so notify EPA, EPD and the Citizen Plaintiffs shall constitute a waiver of any claim of Force Majeure as to the event in question.

D. If EPA/EPD, after consultation with the Citizen Plaintiffs, finds that a delay in performance is, or was, caused by a Force Majeure event, it shall extend the time for performance, in writing, for a period to compensate for the delay resulting from such event and stipulated penalties shall not be due for such period. In proceedings on any dispute regarding a delay in performance, the dispute resolution provisions of Section XIII shall apply, and the Defendant shall have the burden of proving that the delay is, or was, caused by a Force Majeure event, and that the amount of additional time requested is necessary to compensate for that event.

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

particular event shall not automatically extend another compliance date or dates. The Defendant shall make an individual showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought. The Defendant may petition for the extension of more than one compliance date in a single request.

### **XIII.**

#### **DISPUTE RESOLUTION**

A. This Court shall retain jurisdiction of this matter for the purposes of implementing and enforcing the terms and conditions of this Consent Decree and for the purpose of adjudicating all disputes among the parties that may arise under the provisions of this Consent Decree, including the adequacy of submissions, to the extent that this Consent Decree provides for resolution of disputes by the Court.

B. In order to ensure that the Defendant's obligations under this Consent Decree do not conflict with obligations imposed by any other judicial or administrative authority, the Court shall have the exclusive power to adjudicate disputes concerning the following obligations imposed by this Consent Decree and the NPDES permits for the CSO Control Facilities:

1. the Defendant's obligation to undertake a System Evaluation, as described in Section VII.A.1, including the obligations to design, implement, and document the Evaluation Program, and the obligation to submit reports concerning the System Evaluation;

2. the Defendant's obligation to prepare, submit, and implement the Remedial Measures Report, as described in Section VII.A.2;

3. the Defendant's obligation to prepare, submit, and implement the Short Term Remedial Measures Plan, as described in Section VII.A.3;

4. the Defendant's obligation to develop, submit, and implement the CSO Management Plan, as described in Section VII.B.1;

5. the Defendant's obligation to develop, submit, and implement the CSO Operations Plan, as described in Section VII.B.2;

6. the Defendant's obligation to develop, submit, update, and implement the CSO Maintenance Plan, as described in Section VII.B.3;

7. the Defendant's obligation to erect signs posting all streams receiving CSO discharges, as described in Section VII.C;

8. the Defendant's obligation concerning City ordinances, as described in Section VII.D;

9. the Defendant's obligation to comply with sanctions imposed under Section XI.J, if any;

10. the Defendant's obligation to make reports, as described in Section VII.E;

11. the Defendant's obligation to implement the SEP, as described in Section VIII; and

12. the Defendant's obligation to pay stipulated penalties and to perform other obligations described in Section XI.

In addition, the Court shall have the exclusive power to adjudicate all disputes concerning the development of site-specific effluent limits for the CSO Control Facilities, including study protocols, data collection and analysis, calculation of site-specific limits, and rejection of site-specific limits. This exclusive power does not extend, however, to disputes concerning the modification, revocation, or reissuance of NPDES permits, which shall be governed by prevailing law.

C. The dispute resolution procedures of this Section shall be the exclusive mechanism available for resolving disputes between the parties concerning the obligations specifically listed in Section XIII.B of this Consent Decree. The dispute resolution procedures under this Section shall be a mechanism available to the parties to this Consent Decree for resolving all other disputes that arise under or with respect to this Consent Decree.

D. A party to this Consent Decree shall invoke the dispute resolution procedures of this Section by notifying all other parties in writing of the matter(s) in dispute and of the party's intention to resolve the dispute under this Section. The parties shall then attempt to resolve the dispute informally for a period of thirty (30) calendar days from the date of the notice. For

purposes of this Paragraph only, the Defendant shall address the notice to the United States at: U.S. Environmental Protection Agency, Region IV, Office of Regional Counsel, Attention: Regional Counsel, Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303; and Chief, Environmental Enforcement Section, Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Washington, D.C. 20044-7611, Referencing United States, et al. v. City of Atlanta, Georgia, (DOJ No. 90-5-1-1-4430). For the purposes of this Paragraph only, the Defendant shall address the notice to the State of Georgia at Office of State Attorney General, Environmental Section, 40 Capitol Square, S.W., Atlanta 30334-1300. Notice to the Citizen Plaintiffs shall be given to David Pope, Carr, Tabb & Pope LLP, 1355 Peachtree Street, N.E., Suite 2000, Atlanta, Georgia 30309, or to such other addresses provided by Citizen Plaintiffs. The period for informal negotiations may be extended beyond thirty (30) days by written agreement of the parties to the dispute.

E. When a dispute concerns the Remedial Measures Report or adequacy of a submittal requiring EPA/EPD approval under this Consent Decree (e.g., if EPA/EPD decides to reject or modify such a submittal), the Defendant shall establish a documentary record containing all the evidence supporting the parts of the submittal in dispute and provide that record to EPA and EPD before the period for informal negotiations ends.

F. If the parties cannot resolve a dispute by the end of

the period for informal negotiations, EPA and EPD shall provide their position(s) on the issues in dispute and the reasons therefor in writing to the Defendant and the Citizen Plaintiffs. The Defendant and the Citizen Plaintiffs may petition the Court to review EPA and EPD's position(s) by filing a petition with the Court within fifteen (15) days of receiving EPA and EPD's written position(s) on the issues in dispute. The petition shall set forth the nature of the dispute with a proposal for its resolution. Within thirty (30) days of receiving a petition filed with the Court pursuant to this Paragraph, any opposing party may file a response, which may include an alternate proposal for resolution of the dispute.

G. Unless and until overturned or modified by the Court, the Defendant shall comply with EPA and EPD's written position(s) on the issues in dispute. If EPA and EPD provide the Defendant with inconsistent positions on the issues in dispute, the Defendant's obligation to perform an action affected by the inconsistent position shall be stayed until the dispute is resolved.

H. In any dispute concerning the Remedial Measures Report or the adequacy of a submittal requiring EPA/EPD approval under this Consent Decree (e.g., if EPA or EPD decides to reject or modify such a submittal), the Defendant shall not present evidence to the Court (without EPA and EPD consent) unless the evidence is contained in the record presented to EPA and EPD during the period for informal negotiations. This provision does

not preclude the Defendant from presenting witnesses for the purpose of explaining technical matters in the record, or for rebutting evidence outside the record presented by an opposing party. The limitations of this Paragraph do not apply to the Plaintiffs.

I. A dispute concerning EPA's or EPD's failure to act on the Remedial Measures Report, or a submittal the Defendant is required to submit for EPA/EPD approval under Section VII (i.e., to accept, modify, or reject the submittal within 60 days after receipt), shall be governed by the procedures of this Section. If a party petitions the Court for resolution of such a dispute, the sole relief available shall be an order from the Court directing EPA or EPD to act on the submittal (i.e., to accept, modify, or reject the submittal) within an appropriate period of time.

J. The Defendant may propose to perform construction activities required by Section VII after July 1, 2007. If EPA or EPD decide to reject or modify such a proposal, that decision shall not be overturned unless it constitutes an abuse of discretion. The legal standard applying to other disputes arising under or with respect to this Consent Decree shall be the standard provided by applicable law. Except as provided in this Consent Decree, agreed to in writing by the parties, or allowed by the Court, submission of any matter to the Court for resolution shall not extend any of the deadlines set forth in this Consent Decree.



XIV.

RIGHT OF ENTRY

A. Without limiting the authority otherwise available to them, the United States and State and their authorized representatives and contractors shall have authority at all times, upon the presentation of credentials, to enter the premises of the Defendant to:

1. Monitor the program of activities required by this Consent Decree;
2. Verify any data or information submitted to the United States and State;
3. Obtain samples from the POTW;
4. Inspect and evaluate any portions of the Defendant's POTW; and
5. Inspect and review any records required to be kept under the terms and conditions of this Consent Decree or any NPDES Permit, the Clean Water Act and the Georgia Water Quality Control Act. This provision of this Consent Decree is in addition to, and in no way limits or otherwise affects, the statutory authorities of the United States and State to conduct inspections, to require monitoring and to obtain information from the Defendant as authorized by law.

The United States and State agree to make available to the Defendant split samples of wastewater samples taken by the United States and/or State from the Defendant's POTW Collection System. The United States and State further agree to provide the

Defendant with the quality assured/quality controlled laboratory analytical results of samples obtained from the Defendant's POTW, and any non-privileged (including non-attorney work product) reports prepared concerning such results. The United States and State will use reasonable efforts to coordinate field inspections of the Defendant's POTW with the Defendant by notifying the Defendant, if practicable, of such inspections prior to arrival at the field inspection location.

B. The Citizen Plaintiffs shall also have authority to inspect and review the records specified in this Section upon reasonable notice to the Defendant.

XV.

**NOT A PERMIT/COMPLIANCE WITH OTHER STATUTES/REGULATIONS**

A. This Consent Decree is not and shall not be construed as a permit, nor a modification of any existing permit, issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342, nor shall it in any way relieve the Defendant of its obligations to obtain permits for its Wastewater Treatment Facilities and to comply with the requirements of any NPDES permit or with 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.

B. Nothing herein shall be construed as relieving the Defendant of the duty to comply with the Clean Water Act, the regulations promulgated thereunder, and all applicable permits

issued thereunder, or as relieving the Defendant of its duty to comply with applicable federal and State laws and regulations.

XVI.

FAILURE OF COMPLIANCE

It is the position of the United States and State that, by their consent to the entry of this Consent Decree, they do not warrant or aver in any manner that the Defendant's complete compliance with this Consent Decree will result in compliance with the provisions of the Clean Water Act, 33 U.S.C. §§ 1251 et seq., or with Defendant's NPDES permits. Notwithstanding review or approval by the United States or State of any plans, reports, policies or procedures formulated pursuant to this Consent Decree, the Defendant shall remain solely responsible for any non-compliance with the terms of this Consent Decree, all applicable permits, Georgia Water Quality Control Act, the Clean Water Act and regulations promulgated thereunder.

XVII.

NON-WAIVER PROVISIONS

A. The Consent Decree in no way affects or relieves the Defendant of any responsibility to comply with any federal, state, or local law or regulation.

B. Nothing contained in this Consent Decree shall be construed to prevent or limit the rights of the United States or the State to seek penalties or further or additional injunctive relief under the Clean Water Act or other federal statutes or

regulations, including, but not limited to, criminal punishment under Section 309(c) of the Act, 33 U.S.C. § 1319(c), or State laws and regulations, except as expressly specified herein.

C. The parties agree that the Defendant is responsible for achieving and maintaining compliance with all applicable federal and state laws, regulations, and permits, and that compliance with this Consent Decree shall be no defense to any actions commenced pursuant to said laws, regulations, or permits, except as set forth herein or otherwise authorized by law.

D. This Consent Decree does not limit or affect the rights of the Defendant or the State or the United States and Citizen Plaintiffs as against any third parties which are not parties to this Consent Decree. The parties recognize that this Consent Decree resolves certain matters between the United States, the State, Citizen Plaintiffs and the Defendant, and that its execution does not preclude the City from asserting any legal or factual position in any action brought against the Defendant by any person or entity not a party to this Consent Decree.

E. The parties reserve any and all legal and equitable remedies available to enforce the provisions of this Consent Decree.

F. This Consent Decree shall not limit any authority of EPA/EPD under any applicable statute, including the authority to seek information from the Defendant or to seek access to the property of the Defendant nor shall anything in this Consent Decree be construed to limit the authority of the United States

or State to undertake any action against any person, including the Defendant, in response to conditions that may present an imminent and substantial endangerment to the environment or to the public health or welfare.

G. Application for construction grants, State Revolving Loan Funds, or any other grants or loans, or delays caused by inadequate facility planning or plans and specifications, on the part of the Defendant shall not be cause for extension of any required compliance date in this Consent Decree.

H. Obligations of the Defendant under the provisions of this Consent Decree to perform duties scheduled to occur after the Date of Lodging, but prior to the Date of Entry, shall be legally enforceable from the Date of Lodging of this Consent Decree. Liability for stipulated penalties, if applicable, shall accrue for violation of such obligations and payment of such stipulated penalties may be demanded by the United States or State as provided in this Consent Decree.

I. The United States and State of Georgia reserve the right to elect to file a civil action for statutory penalties or injunctive relief against the Defendant for any violations of the Clean Water Act and the Georgia Water Quality Control Act by the Defendant discovered after the Date of Lodging of this Consent Decree.

K. This Consent Decree was negotiated, mutually drafted, and executed by the parties in good faith to avoid further litigation and is a settlement of claims which were vigorously

contested, denied and disputed. Neither the execution of this Consent Decree nor any action taken hereunder is an admission of any fact, liability or wrongdoing of any kind regarding any of the matters addressed in the Consent Decree. Accordingly, with the exception of this proceeding, this Consent Decree shall not be admissible in any judicial or administrative proceeding for use against any party over the objection of that party.

#### XVIII.

##### COSTS OF SUIT

The Government Plaintiffs and the Defendant shall bear their own costs and attorney's fees with respect to matters related to this Consent Decree, except as provided below.

Defendant shall pay the costs of litigation (including reasonable attorney and expert witness fees) of Citizen Plaintiffs with respect to Civil Action 1:95-CV-2550-TWT and with respect to this Consent Decree. Citizen Plaintiffs and Defendant will attempt to negotiate a resolution of the Citizen Plaintiffs' claim for costs of litigation by an agreement to be submitted and approved by the Court. If an agreement cannot be reached, Citizen Plaintiffs will petition the Court for an award of costs of litigation within twenty (20) days from entry of the Consent Decree.

Should the Court subsequently determine that the Defendant has violated the terms and conditions of this Consent Decree, the Defendants shall be liable to the Government Plaintiffs and Citizen Plaintiffs for any costs of litigation incurred by the

Government Plaintiffs and Citizen Plaintiffs in an action against the Defendants with respect to such violations of the Consent Decree.

**XIX.**

**CERTIFICATION OF SUBMISSIONS/REVIEW OF SUBMISSIONS**

A. The Defendant shall maintain copies of any underlying research and data in its possession, custody or control for any and all documents, reports, or permits submitted to EPA/EPD pursuant to this Consent Decree for a period of five (5) years, except that the Defendant shall not be required to maintain copies of drafts of documents, reports or permits. The Defendant shall require any independent contractor(s) implementing this Consent Decree to also retain such materials for a period of five (5) years. The Defendant shall submit such supporting documents to EPA/EPD upon request. In all notices, documents or reports submitted to the United States and State pursuant to this Consent Decree, the Defendant shall, by a senior management official of the City, sign and certify such notices, documents and reports as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

B. EPA/EPD agree to use their best efforts to expeditiously review and comment on all documents, plans and other deliverables that the Defendant is required to submit to EPA/EPD for approval pursuant to the terms and conditions of this Consent Decree. The State of Georgia agrees to use its best efforts to coordinate with the Defendant to expedite evaluation of permit applications submitted by the Defendant. For purposes of this Consent Decree, "best efforts to expeditiously review and comment" with respect to any of the Defendant's submissions required under Section VII of this Consent Decree, other than submissions pertaining to the site-specific study (Section VII.A.6), shall mean that the comments and decisions of EPA/EPD shall be issued to the Defendant in writing in no more than sixty (60) days after receipt of such submission. If EPA/EPD fails to so notify the Defendant within sixty (60) days, any subsequent milestone dependent upon such comment or decisions shall be extended by the number of days beyond sixty (60) days which EPA/EPD takes for such comment or decision.

C. When a task or responsibility is given to "EPA/EPD" in this Consent Decree, the term means "EPA and EPD" unless the Government Plaintiffs jointly elect (in their unreviewable discretion) to assign a particular task or responsibility to one of them. To make that election, the Government Plaintiffs shall notify the Defendant in writing of the task or responsibility that EPA or EPD is assigned. Nothing in this Paragraph shall prevent EPA or EPD from disputing a decision by the other.



XX.

FORM OF NOTICE

Unless otherwise specified, or as may be changed from time to time, all reports, notices, or any other written communications required to be submitted under this Consent Decree shall be sent to the respective parties at the following addresses:

As to the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Post Office Box 7611  
Washington, D.C. 20044-7611  
Reference DOJ Case No. 90-5-1-1-4195

United States Attorney  
Northern District of Georgia  
Richard Russell Building  
75 Spring Street, S.W., Suite 1800  
Atlanta, Georgia 30335

As to EPA:

Chief  
Water Programs Enforcement Branch  
Water Management Division  
U.S. Environmental Protection Agency,  
Region 4  
Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, Georgia 30303  
ATTN: Georgia Management Unit

As to the State of Georgia:

Department of Law  
State of Georgia  
40 Capitol Square, S.W.  
Atlanta, Georgia 30334

As to EPD:

Georgia Environmental Protection Division  
Permitting, Compliance and Enforcement Program  
4244 International Parkway, Suite 110  
Atlanta, Georgia 30354

As to Citizen Plaintiffs:

David H. Pope, Esq.  
1355 Peachtree Street, N.E.  
Suite 2000  
Atlanta, Georgia 30309

As to City of Atlanta:

Commissioner of Public Works  
City Hall, 4<sup>th</sup> Floor  
55 Trinity Avenue, SW  
Atlanta, Georgia 30335

Chief Operating Officer  
City Hall, Suite 2400  
55 Trinity Avenue, SW  
Atlanta, Georgia 30335

Vance Hughes/Richard Horder  
Kilpatrick & Stockton  
1100 Peachtree Street  
Atlanta, Georgia 30309-6500

Notifications to or communications with EPA, the United States Attorney or the Department of Justice ("DOJ"), the State of Georgia (Department of Law) and the EPD shall be deemed submitted on the date they are postmarked and sent by certified mail, return receipt requested or deposited with an overnight mail/delivery service. Notifications to or communications with the Defendant shall be deemed received ten (10) days after the date they are postmarked.

**XXI.**

**MODIFICATION**

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. Prior drafts of this Consent Decree shall not be used in any action involving the interpretation or enforcement of this Consent Decree. This Consent Decree may not be amended or modified except by written order of this Court. Any modification of this Consent Decree by the parties shall be in writing and approved by the Court before it will be deemed effective. However, minor changes which do not significantly alter the remedial action to be conducted by the Defendant may be made by the parties, provided such changes are agreed upon in writing by all parties to this Consent Decree.

**XXII.**

**PUBLIC COMMENT**

The parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the requirements of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and consideration of any comments. The Defendant consents to the entry of this Consent Decree without further notice.

XXIII.

CONTINUING JURISDICTION OF THE COURT

The Court shall retain jurisdiction to enforce the terms and conditions and achieve the objectives of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction, modification, implementation or execution of this Consent Decree.

XXIV.

TERMINATION

A. Upon motion filed with the Court by the United States, State or Defendant, the Court may terminate the terms of this Consent Decree with regard to each of the CSO Control Facilities covered by this Consent Decree after each of the following has been satisfied for each CSO Control Facility, unless EPA and EPD jointly choose to terminate the terms and conditions of this Consent Decree:

1. The Compliance Evaluation has ended and the Defendant is otherwise in substantial compliance with the provisions of this Consent Decree, the Clean Water Act, the Georgia Water Quality Control Act and its NPDES Permit for the CSO Control Facility;
2. Defendant has paid all penalties due under this Consent Decree;
3. Defendant has certified compliance with subparagraphs 1 and 2 above to the Court and all parties; and

4. EPA and EPD, within forty-five (45) days of receiving such Certification from the Defendant, have not contested, in writing, that such compliance has been achieved. If the EPA or EPD dispute the Defendant's compliance, this Consent Decree shall remain in effect pending resolution of the dispute by the parties or the Court pursuant to Section XIII.

B. Section VIII (Supplemental Environmental Projects) shall survive termination of other portions of this Consent Decree. The United States, State and Citizen Plaintiffs may invoke the jurisdiction of the Court under Section XXIII to enforce the requirements of Section VIII notwithstanding the termination of the Consent Decree as it relates to the CSO Control Facilities.

C. If the Citizen Plaintiffs dispute that the Defendant has achieved compliance, this Consent Decree shall remain in effect pending resolution of the dispute by the Court.

#### XXV.

#### SIGNATORIES

A. The Assistant Attorney General on behalf of the United States and the signatories for the Citizen Plaintiffs, the Defendant, and the State of Georgia certify that they are fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such parties to this document.

B. The Defendant and the Citizen Plaintiffs agree not to oppose entry of this Consent Decree by this Court or to challenge

any provision of this Consent Decree unless the United States or the State has notified them in writing that it no longer supports entry of this Consent Decree.

C. The Defendant shall identify on the attached signature page the name, address, and telephone number of an agent who is authorized to accept service of process by mail the Defendant's behalf with respect to all matters arising under or related to this Consent Decree. The Defendant agrees to accept service of process in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to service of a summons.

Dated and entered this \_\_\_\_\_ day of \_\_\_\_\_ 1998.

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UNITED STATES DISTRICT JUDGE

WE HEREBY CONSENT to the entry of this Consent Decree in the Upper Chattahoochee Riverkeeper Fund, et al. v. City of Atlanta, Georgia, Case No. I:95 CV-2550-TWT, and United States, et al. v. City of Atlanta, Georgia, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR PLAINTIFF THE UNITED STATES OF AMERICA

DATE: May 25, 1998

Lois J. Schiffer  
LOIS J. SCHIFFER  
Assistant Attorney General  
Environment and Natural Resources  
Division  
United States Department of Justice

DATE: 5/1/98

William A. Weinischke  
WILLIAM A. WEINISCHKE  
Senior Counsel  
PAUL WOLFTEICH  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
United States Department of Justice  
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(202) 514-4592  
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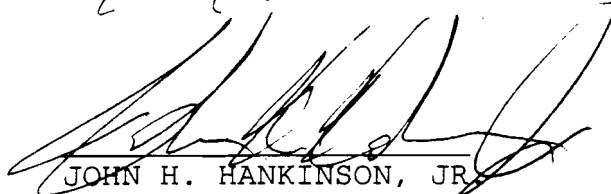
Richard H. Deane, Jr.  
United States Attorney  
Northern District of Georgia

DATE: 6/24/98

Steven A. Herman  
STEVEN A. HERMAN  
Assistant Administrator for Enforcement  
United States Environmental Protection Agency  
Washington, D.C. 20460

DATE:

5/20/98



JOHN H. HANKINSON, JR.  
Regional Administrator  
United States Environmental Protection Agency  
Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303

OF COUNSEL:

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LOURDES BUFILL  
Attorney Advisor  
United States Environmental  
Protection Agency  
Office of Regulatory Enforcement  
401 M Street, S.W.  
Washington, D.C. 20460



WE HEREBY CONSENT to the entry of this Consent Decree in the Upper Chattahoochee Riverkeeper Fund, et al. v. City of Atlanta, Case No. I:95 CV-2550-TWT, and United States, et al. v. City of Atlanta.

FOR DEFENDANT CITY OF ATLANTA, GEORGIA

By: \_\_\_\_\_  
Kilpatrick & Stockton  
1100 Peachtree Street  
Atlanta, GA 30309-6500

DATE: \_\_\_\_\_

By: \_\_\_\_\_  
Chief Operating Officer  
City Hall, Suite 2400  
55 Trinity Avenue, SW  
Atlanta, GA 30335

By: \_\_\_\_\_  
Commissioner of Public Works  
City Hall, 4<sup>th</sup> Floor  
55 Trinity Avenue, SW  
Atlanta, GA 30335

Date: \_\_\_\_\_

Date: \_\_\_\_\_

The Defendant, City of Atlanta, enters into this Consent Decree in Upper Chattahoochee Riverkeeper Fund, Inc., et al. V. City of Atlanta, Civil Action No. 1:95-CV-2550-TWT, and United States, et al. V. City of Atlanta.

DATE: \_\_\_\_\_ BY: Bill Campbell  
Mayor of Atlanta

Agent authorized to accept service of process on behalf of the City of Atlanta:

NAME: Clifford Hardwick, IV, Esq.  
TITLE: City Attorney  
ADDRESS: 68 Mitchell Street, SW, Suite 4100  
Atlanta, GA 30335  
TELEPHONE: (404) 330-6400

Plaintiffs Upper Chattahoochee Riverkeeper Fund, Inc.; The  
Chattahoochee Riverkeeper, Inc.; and W. Robert Hancock, Jr.  
consent to the entry of this consent Decree in the Upper  
Chattahoochee Riverkeeper Fund, et al. v. City of Atlanta,  
Georgia, Case No. I:95 CV-2550-TWT, and United States, et al. v.  
City of Atlanta, Georgia.

DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
David H. Pope  
Attorney for Plaintiffs  
1355 Peachtree Street, NE  
Suite 2000  
Atlanta, GA 30309