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INDIANAPOLIS DIVISION

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

UNITED STATES OF AMERICA,

and

C.A. No. 09-4:09-cv-0125 DFH-WGH

THE STATE OF INDIANA,

Plaintiffs,

v.

THE CITY OF JEFFERSONVILLE,
INDIANA,

Defendant.

CONSENT DECREE

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I. BACKGROUND

A. The United States of America (the "United States"), 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 ("U.S. EPA"), and the State of Indiana, acting at the request of the Indiana Department of Environmental Management ("IDEM"), have filed a Complaint seeking injunctive relief and civil penalties pursuant to Section 309 of the Clean Water Act ("CWA"), 33 U.S.C. § 1319, and Ind. Code. 13-30-4-1 and 13-14-2-6, naming as the defendant the City of Jeffersonville, Indiana ("Jeffersonville").

B. The United States' and State of Indiana's Complaint alleges that Jeffersonville violated the CWA, 33 U.S.C. § 1251 *et seq.*, Title 327 of Indiana Administrative Code, Article 5, and its National Pollutant Discharge Elimination System Permit (the "NPDES Permit"), issued pursuant to the CWA and Indiana law, by, *inter alia*: (1) discharging untreated waste water from point sources in Jeffersonville's combined sewer system ("CSS") in a manner which violates the terms and conditions of the NPDES Permit; (2) discharging untreated waste water from point sources in Jeffersonville's separate sanitary sewer system ("SSS") in violation of the CWA's and Indiana's prohibition on sanitary sewer overflows ("SSOs"), 33 U.S.C. § 1311(a), and the terms and conditions of its NPDES permit; and (3) discharging pollutants from the final effluent of the Jeffersonville Wastewater Treatment Plant ("WWTP") at levels exceeding pollutant limits set in the NPDES Permit.

C. Jeffersonville neither admits nor denies the alleged violations described above; however, Jeffersonville agrees to the obligations imposed on it in this Consent Decree.

D. The United States, the State, and Jeffersonville recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid prolonged and complicated litigation among the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issues of fact or law except as provided in Section III, below, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

II. PURPOSES

1. The express purposes of the Parties in entering into this Consent Decree are for Jeffersonville to take those steps necessary to bring its Sewer System and WWTP into compliance with the CWA and regulations promulgated thereunder, with Title 327 of the IAC, Article 5, with Jeffersonville's NPDES Permit as effective on the Date of Lodging, and with any subsequent renewals of such permit occurring before the termination of this Consent Decree, by, among other things, complying with the "Nine Minimum Controls" for CSOs, completing the development of and by implementing a comprehensive Long Term Control Plan ("LTCP") for its WWTP and CSS, and developing and implementing a Sewer System Capacity, Maintenance, Operation and Management Program for its entire Sewer System.

III. JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action and over the Parties to this action pursuant to 28 U.S.C. §§ 1331, 1345, 1355 and 1367, and CWA Section 309(b), 33 U.S.C. § 1319(b). The United States' and State of Indiana's Complaint states claims upon which relief may be granted against Jeffersonville under Section 309 of the CWA and

under Title 327 of the IAC, Article 5, for injunctive relief and civil penalties. Authority to bring this action on behalf of the United States is vested in the U.S. Department of Justice ("DOJ") pursuant to Section 506 of the CWA, 33 U.S.C. § 1366, and 28 U.S.C. §§ 516 and 519.

Authority to bring this action on behalf of the State of Indiana is vested in the Office of the Attorney General of Indiana pursuant to 327 IAC 5-2-20 and Ind. Code Sections 4-6-3-2, 13-30-4-1 and 13-14-2-6.

3. Venue is proper in this District pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and 1395(a).

4. For the purposes of this Consent Decree, Jeffersonville waives all objections and defenses that Jeffersonville may have to jurisdiction of the Court or to venue in this District. Jeffersonville shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree. For purposes of this Consent Decree, Jeffersonville does not dispute that the United States' and the State of Indiana's Complaint states claims for relief under Section 301(a) and 309(a) of the CWA and under Title 327 of the IAC, Article 5.

IV. PARTIES BOUND

5. This Consent Decree applies to and is binding upon the United States, the State and Jeffersonville and any successors, assigns, or other entities or persons otherwise bound by law. In any action to enforce the terms of this Consent Decree, Jeffersonville shall not raise as a defense the failure of its officers, directors, agents, servants, contractors, and/or employees, or any other persons or entities provided for by Fed. R. Civ. P. 65(d), to take any actions necessary to comply with the terms of this Consent Decree.

6. Transfers of Ownership. Jeffersonville shall condition any transfer of ownership of the WWTP and/or the Sewer System, in whole or in part, upon the transferee's agreement: 1) to enter into a modification to this Consent Decree that shall make the terms and conditions of the Consent Decree which apply to the transferred assets, also apply to the transferee, and 2) to petition IDEM for an appropriate NPDES permit modification or transfer. At least sixty (60) Days prior to the projected date for the transfer of ownership, Jeffersonville shall notify U.S. EPA and IDEM in accordance with Section XIII (Notices and Submissions) of this Consent Decree, of the prospective transfer, and shall provide them with: 1) a copy of the draft motion to modify the Consent Decree, 2) the request for an NPDES permit modification or transfer, and 3) information sufficient to demonstrate that the prospective transferee has the technical and financial qualifications to fulfill the relevant Jeffersonville obligations and liabilities under this Consent Decree. If the United States and/or the State of Indiana oppose the motion and the Court finds that the transferee does not have the financial and/or technical ability to assume the relevant Jeffersonville obligations and liabilities under the Decree, Jeffersonville shall not be released from the relevant obligations and liabilities of this Consent Decree.

7. Any future sharing of operational responsibility for the WWTP or Sewer System shall not be effective to relieve Jeffersonville of its obligations under this Decree. Any action taken by a contractor or worker retained to fulfill any of the responsibilities of Jeffersonville under this Consent Decree shall be considered an action of Jeffersonville for the purpose of determining compliance with this Consent Decree.

8. Following the Date of Lodging of this Consent Decree, upon approval by Jeffersonville of any contract relating to work to be performed pursuant to this Consent Decree,

Jeffersonville shall provide a copy of this Consent Decree to each firm retained to perform that work. For firms already retained by Jeffersonville to perform work under this Decree prior to the Date of Lodging, Jeffersonville shall provide a copy of this Consent Decree no later than thirty (30) Days after the Date of Lodging. Jeffersonville shall condition any such contract upon performance of the work in conformity with the terms of the Consent Decree. Any action taken by a contractor or consultant retained to fulfill any of the responsibilities under this Consent Decree shall be considered an action of Jeffersonville for purposes of determining compliance with this Consent Decree.

V. DEFINITIONS

9. Unless otherwise defined herein, terms used in this Consent Decree (and any attachments thereto) that are defined in the CWA, 33 U.S.C. §§ 1251, *et seq.*, or in the federal regulations promulgated thereunder shall have the meaning prescribed therein. Any terms not defined in the CWA, its regulations, or in this Consent Decree, that are defined in Title 327 of the IAC, Article 5 shall have the meaning prescribed therein. Whenever the following terms are used in this Consent Decree, the following definitions shall apply:

- a. "Achievement of Full Operation" and "Achieve Full Operation" shall mean, for the CSO Control Measures, completion of the following:
 - i. construction and installation of equipment or infrastructure;
 - ii. development and implementation of new or modified operational procedures;
 - iii. startup and shakedown of equipment, infrastructure and/or operational procedures; and

iv. preparation of operations and maintenance manuals;

such that the Control Measures are expected to function and perform as designed and have been accepted by the City from its construction contractors. This term specifically includes all control systems and instrumentation necessary for normal operations and all residuals handling systems. Where CSO Control Measures consist of separate components, "Achievement of Full Operation" shall not be achieved until the last component is completed and operational.

b. "Building/Property Backup" means a wastewater release and backup into a building or onto property that is caused by blockages, flow conditions, or other conditions in the Sewer System. A wastewater backup or release that is caused solely by conditions in a Private Service Connection Lateral is not a Building/Property Backup for purposes of this Consent Decree.

c. "Combined Sewer Overflow Control Policy" or "CSO Control Policy" shall mean the U.S. EPA policy found at 59 Fed. Reg. 18688 (April 19, 1994).

d. "Combined Sewer Overflow Discharge" or "CSO Discharge" shall mean any Discharge from Jeffersonville's Combined Sewer System at any point prior to the headworks of the WWTP, including but not limited to any of the designated Outfalls identified in Attachment A to the Jeffersonville NPDES Permit in effect at the time of the Discharge.

e. "Combined Sewer System" or "CSS" shall mean the collection and conveyance system (including all pipes, Force Mains, Gravity Sewer Segments, overflow structures, regulators, Pump Stations, manholes, and components thereto) designed and constructed to collect and convey municipal sewage (domestic, commercial and industrial) and storm water through a single-pipe system to Jeffersonville's Wastewater Treatment Plant ("WWTP") or to

combined sewer overflow structures located in its CSS. This term also includes any facilities constructed pursuant to any CSOOP or LTCP applicable to the CSS.

f. "Complaint" shall mean the joint complaint filed by the United States and the State of Indiana in this action.

g. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto (listed in Section XXV).

h. "CSO Control Measures" shall mean the physical and/or operational measures, as set forth in the approved Long Term Control Plan Report, to eliminate, treat or otherwise control CSO Discharges that are to be constructed, operated, or otherwise implemented.

i. "CSO Operation Plan" or "CSOOP" shall mean the plan to be revised by Jeffersonville and submitted to U.S. EPA and IDEM pursuant to Paragraph 12 of this Consent Decree, and which shall explain what steps Jeffersonville is taking or has taken to comply with the Nine Minimum Controls.

j. "CSO Outfall" shall mean an Outfall identified in Attachment A to the NPDES Permit that Discharges from the CSS.

k. "Date of Lodging" is the date that the United States lodges a fully executed copy of this Consent Decree with the Court, prior to noticing this Decree in the Federal Register.

l. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

m. "Defendant" shall mean the City of Jeffersonville.

- n. “Discharge” shall mean any “discharge of a pollutant” as defined in 40 C.F.R. § 122.2.
- o. “Dry Weather CSO Discharge” shall mean any Discharge or release from any portion of the CSS that consists of non-precipitation related flows, which may include, without limitation, the combination of domestic sewage, groundwater infiltration, and commercial and industrial wastewaters.
- p. “Effective Date” shall mean the date of entry of this Decree by the Court after satisfaction of the public notice and comment procedures of 28 C.F.R. § 50.7.
- q. “Force Main” shall mean any pipe that receives and conveys wastewater under pressure from the discharge side of a pump.
- r. “Gravity Sewer Segment” or “Sewer Segment” shall mean any pipe that receives, contains and conveys wastewater not normally under pressure, but which is intended to flow unassisted under the influence of gravity.
- s. “IDEM” shall mean the Indiana Department of Environmental Management and any successor departments or agencies of the State.
- t. “Jeffersonville” or “City” shall mean the City of Jeffersonville, Indiana.
- u. “Long Term Control Plan” or “LTCP” shall mean the plan under development by Jeffersonville in accordance with Section II, Subpart C of the CSO Control Policy and this Consent Decree.
- v. “Maximum Peak Treatable Flow” shall mean the flow rate identified in Jeffersonville’s current approved CSOOP that is the maximum flow rate at which all treatment units present at the WWTP can treat wastewater for a three hour period, without causing

violations of final effluent limits of the NPDES Permit or otherwise impairing the WWTP's ability to continue receiving and treating wastewater flows to achieve NPDES permit limits and conditions. As of the Date of Lodging, the Maximum Peak Treatable Flow for the WWTP on a 3-hour basis, converted to units of MGD, is 25 MGD.

w. "Maximum Sustained Treatable Flow" shall mean the flow rate identified in Jeffersonville's current approved CSOOP that is the maximum flow rate at which all treatment units present at the WWTP can treat wastewater on a 24-hour basis, without causing violations of final effluent limits of the NPDES Permit or otherwise impairing the WWTP's ability to continue receiving and treating wastewater flows to achieve NPDES permit limits and conditions. As of the Date of Lodging, the Maximum Sustained Treatable Flow for the WWTP on a 24-hour basis is 21.1 MGD.

x. "MGD" shall mean million gallons per day.

y. "Nine Minimum Controls" shall mean the nine minimum controls on CSOs enumerated in Section II, Subsection B of the CSO Control Policy.

z. "NPDES Permit" shall mean Jeffersonville's National Pollutant Discharge Elimination System permit numbered IN0023302 (expiration date November 30, 2011), or any reissued or modified NPDES permits that succeed this permit and are in effect at any time after the Effective Date of this Consent Decree, and prior to its termination pursuant to Section XXII of this Decree (Termination).

aa. "Outfall" shall mean a "point source" (as that term is defined in Section 501(14) of the CWA, 33 U.S.C. § 1361(14)) that serves as a discharge point from Jeffersonville's Sewer

System. Outfall followed by an Arabic numeral shall mean the Outfall assigned that number in Jeffersonville's NPDES permit.

- bb. "Paragraph" shall mean a portion of this Decree identified by an Arabic numeral.
- cc. "Parties" shall mean the United States, the State, and Jeffersonville.
- dd. "Plaintiffs" shall mean the United States and the State.
- ee. "Precipitation" shall mean rainfall, sleet, snow fall, and ice/snow melt.
- ff. "Priority Area" shall include the Indiana portion of the Ohio River between river milemarker 600 and river milemarker 605.5, and is also known as the Indiana portion of the Ohio River from Duffy's Landing downstream to, but not including, the confluence of Cane Run with the Ohio River.
- gg. "Private Service Connection Lateral" shall mean a portion of the Sewer System, not owned by Jeffersonville, used to convey wastewater from a building or buildings to that portion of the Sewer System owned by Jeffersonville.
- hh. "Pump Station" shall mean a facility comprised of pumps which lift wastewater to a higher hydraulic elevation, including all related electrical, mechanical, and structural systems necessary to the operation of that pump station.
- ii. "Receiving Waters" shall mean Cane Run, Mill Creek, and the Ohio River.
- jj. "Revised Maximum Peak Treatable Flow" and "Revised Maximum Sustained Treatable Flow" shall mean, respectively, the Maximum Peak Treatable Flow and the Maximum Sustained Treatable Flow specified by Jeffersonville in its annual CSOOP update pursuant to Paragraph 17 and approved by U.S. EPA and IDEM.

kk. “Sanitary Sewer Discharge” and “SSD” shall mean any Discharge to waters of the State as defined by applicable state law, or waters of the United States as defined by Section 502(7) of the Clean Water Act, 33 U.S.C. § 1362(7), from Defendant’s Sanitary Sewer System through a point source not specified in any NPDES Permit.

ll. “Sanitary Sewer Overflow” or “SSO” shall mean any Discharge to the waters of the State, as defined by applicable state law, or to waters of the United States, as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), from any portion of Jeffersonville’s Sanitary Sewer System through any point source not specified or authorized by the NPDES permit, as well as any release of wastewater from Jeffersonville’s Sanitary Sewer System to public or private property that does not reach waters of the State or the United States, such as a release to a land surface or into a structure; provided, however, that such releases which are caused solely by conditions in a Private Service Connection Lateral are not SSOs for the purposes of this Consent Decree. As such, the term SSO includes Building/Property Backups caused in whole or in part by conditions in Jeffersonville’s Sanitary Sewer System.

mm. “SSO Outfall” shall mean an Outfall identified in Attachment B to the NPDES Permit that Discharges from the SSS.

nn. “Sanitary Sewer System” or “SSS” shall mean all portions of the collection and conveyance system (including all pipes, Force Mains, Gravity Sewer Segments, Pump Stations, manholes, and components thereto), owned by Jeffersonville as of the Date of Lodging of this Consent Decree, which are not part of the CSS and which were designed to convey sanitary waste waters (domestic, commercial and industrial) to a waste water treatment plant (“WWTP”).

oo. “Section” shall mean a portion of this Decree identified by a Roman numeral.

pp. "Sensitive Area" shall have the same meaning as that contained in Section II.C.3 of the CSO Control Policy.

qq. "Sewer System" shall mean Jeffersonville's entire sewer collection and conveyance system, including both its CSS and its SSS.

rr. "State" shall mean the State of Indiana, acting on behalf of IDEM.

ss. "United States" shall mean the United States of America, acting on behalf of U.S. EPA, or any successor to U.S. EPA.

tt. "U.S. EPA" shall mean the United States Environmental Protection Agency, or any successor to the United States Environmental Protection Agency.

uu. "Wastewater Treatment Plant" or "WWTP" shall mean the existing wastewater treatment plant owned by Jeffersonville and located at 1420 Pennsylvania Avenue, Jeffersonville, Indiana.

vv. "Wet Weather CSO Discharge" shall mean a CSO Discharge that occurs as the result of a Wet Weather Event and that is not a "Dry Weather CSO Discharge" as defined above.

ww. "Wet Weather Event" shall mean any event of Precipitation of 0.10 inches or greater during any period of twenty-four (24) consecutive hours; however, Precipitation that occurs each consecutive hour after the 24 hour period described above shall be considered part of the same Wet Weather Event.

VI. COMPLIANCE PROGRAM

A. NPDES Permit Compliance

10. Permit Compliance. Jeffersonville shall comply with all terms and conditions of its NPDES Permit, the CWA, and Indiana laws and regulations implementing the CWA.

Jeffersonville intends to achieve compliance with its NPDES permit and the CWA, for purposes of this Consent Decree, through the development and, upon approval, implementation of an LTCP and development and implementation of Sewer System Capacity, Management, Operation and Maintenance Program.

11. By the Effective Date of this Consent Decree, Jeffersonville shall have eliminated CSO Outfall 006 (Riverpoint Overflow) and CSO Outfall 012 (Penn Street) such that the Outfalls no longer exist in Jeffersonville's CSS. By December 31, 2009, Jeffersonville shall eliminate CSO Outfall 007 (Clark Street) such that the Outfall no longer exists in Jeffersonville's CSS.

B. Revisions to CSO Operational Plan ("CSOOP") and Implementation of the Revised, Approved CSOOP

12. CSOOP Revisions

a. Attachment A, Section III.B to Jeffersonville's NPDES Permit requires Jeffersonville to annually evaluate its CSOOP, starting twelve (12) months from the effective date of the NPDES Permit. Within sixty (60) Days after the Effective Date and by September 1st of each calendar year thereafter, Jeffersonville shall submit revisions it determines to be necessary to update the CSOOP to U.S. EPA and IDEM pursuant to Section XIII of this Consent Decree (Notices and Submissions). The annual CSOOP revisions shall conform to the requirements of Attachment A, Section III.B. of the NPDES Permit and the CSO Control Policy.

b. Within sixty (60) Days of the Effective Date, Jeffersonville shall revise its CSOOP to include a proposed schedule to annually inspect by closed circuit television the structural integrity of all CSO Outfall pipes, not otherwise eliminated pursuant to its Long Term Control Plan Report approved pursuant to Paragraph 24 of this Consent Decree, at the point

beginning at East Market Street or West Market Street and flowing downstream to the Ohio River, including but not limited to CSO Outfall 008 (Spring Street), CSO Outfall 009 (Wall Street), CSO Outfall 010 (Walnut Street), CSO Outfall 011 (Meigs Street), CSO Outfall 013 (Graham Street), CSO Outfall 018 (Tenth Street Lift Station) and CSO Outfall 021 (Mechanic Street). Within one hundred twenty (120) Days after completion of inspections pursuant to the schedule as approved in accordance with Paragraph 13, below, Jeffersonville shall undertake any repairs or replacements the City determines, based on the results of the inspections, are necessary to maintain the structural integrity of those CSO Outfall pipes. Jeffersonville shall annually submit a revision to its CSOOP pursuant to Subparagraph 12.a. to include the results of the annual inspections and a description of any repairs made to the CSO Outfall pipes during the previous year.

13. Plaintiffs shall review and approve Jeffersonville's current CSOOP and each annual CSOOP revision in accordance with Section XIV of this Consent Decree (Review and Approval Procedures).

14. Jeffersonville shall implement the most recently approved CSOOP revision in accordance with Section XIV of this Consent Decree (Review and Approval Procedures).

15. No later than forty-five (45) Days after the Effective Date, Jeffersonville shall install a new manhole, to be located in the discharge line leading to CSO Outfall 010 (Walnut Street), at the intersection of Walnut Street and East Riverside Drive, for the purpose of inspecting and conducting any repairs and replacements necessary to maintain the structural integrity of the discharge line for CSO Outfall 010 beginning at East Market Street and flowing downstream to the Ohio River.

C. Maximizing Flow and Storage Capacity within the Sewer System, Pending Completion of LTCP Work

16. Maximum Peak Treatable Flow and Maximum Sustained Treatable Flow.

a. Jeffersonville shall not Discharge from CSO Outfall 018 during or immediately following a Wet Weather Event until it has maintained the Maximum Peak Treatable Flow at the WWTP for a period of three consecutive hours. After maintaining the Maximum Peak Treatable Flow at the WWTP for a period of three consecutive hours, Jeffersonville shall not Discharge from CSO Outfall 018 at influent flows to the WWTP less than the Maximum Sustained Treatable Flow. Jeffersonville shall comply with all requirements of the NPDES Permit as they relate to any Discharge from CSO Outfall 018 where Jeffersonville has achieved the Maximum Peak Treatable Flow and Maximum Sustained Treatable Flow in accordance with this Paragraph.

b. Within thirty (30) months from the Effective Date, Jeffersonville shall increase the hydraulic capacity of the Tenth Street Pump Station to a minimum capacity of 35 MGD, which will assure that the WWTP is able to receive the Maximum Peak Treatable Flow to the WWTP, the Maximum Sustained Treatable Flow to the WWTP, any Revised Maximum Peak Treatable Flow to the WWTP, and any Revised Maximum Sustained Treatable Flow to the WWTP, prior to a Wet Weather CSO Discharge from CSO Outfall 018, under any pattern of rainfall distribution upon the area served by Jeffersonville's Sewer System. During the 30-month period specified above, Jeffersonville shall not be subject to stipulated penalties for Jeffersonville's failure to comply with Subparagraph 16.a where such noncompliance is the result of receipt of flows at the Tenth Street Pump Station that exceed its existing pumpage capacity of

15.4 MGD before the WWTP receives the Maximum Peak Treatable Flow or the Maximum Sustained Treatable Flow to the WWTP, in accordance with Subparagraph 16.a.

17. Revised Maximum Peak Treatable Flow and a Revised Maximum Sustained Treatable Flow. An amendment to Jeffersonville's NPDES Permit, which became effective April 1, 2009, authorizes Jeffersonville to upgrade its WWTP. Following completion of the upgrade to Jeffersonville's WWTP, Jeffersonville shall revise its CSOOP to reflect a proposed Revised Maximum Peak Treatable Flow and a Revised Maximum Sustained Treatable Flow for the WWTP and shall provide in the CSOOP a detailed explanation for the basis of the proposed Revised Maximum Peak Treatable Flow and Revised Maximum Sustained Treatable Flow. U.S. EPA and/or IDEM shall review the proposed Revised Maximum Peak Treatable Flow and the proposed Revised Maximum Sustained Treatable Flow in accordance with Section XIV of this Consent Decree (Review and Approval Procedures). In accordance with that review, Jeffersonville shall operate the WWTP at the Revised Maximum Peak Treatable Flow and the Revised Maximum Sustained Treatable Flow during all Wet Weather Events.

18. Jeffersonville shall make maximum use of the transport and storage capacity of the Sewer System to minimize the frequency and volume of Wet Weather CSO Discharges. Maximizing storage in the Sewer System includes, among other things, raising regulator settings to the maximum height feasible, modifying catch basins inlets to restrict inflow rates, removing obstructions and sediment accumulations in the Sewer System (including, but not limited to, the Market Street interceptor), and reducing or eliminating other hydraulic restrictions that can be addressed by limited scope point repairs. Maximizing storage at the WWTP would include use

of any inoperative or unused treatment facilities at the WWTP site to store flows pending treatment.

D. Flow Metering, Monitoring and Recording Requirements

19. Jeffersonville shall comply with flow metering, monitoring and recording requirements set forth in Appendix C, commencing on the Date of Entry of this Consent Decree.

E. Long Term Improvements to the WWTP and the Sewer System to Eliminate or Minimize the Occurrence, Duration and Volume of CSO Overflows

20. Completion of Development of the LTCP and Incorporation of LTCP Report by Reference, Once Approved. In accordance with the requirements of this Subsection VI.E, Jeffersonville shall complete the development of the LTCP and shall submit the LTCP and LTCP Report required under Paragraph 24 for approval pursuant to Section XIII of this Consent Decree (Notices and Submissions). U.S. EPA and IDEM shall review the proposed LTCP and LTCP Report pursuant to Section XIV of this Consent Decree (Review and Approval Procedures). Once approved, the LTCP Report shall be incorporated by reference and shall become enforceable under this Consent Decree.

21. The LTCP shall provide for the construction and implementation of all improvements to the WWTP and the Sewer System and other measures necessary to either eliminate the occurrence of Wet Weather CSO Discharges, or to minimize the number, duration and/or volume of Wet Weather CSO Discharges, in accordance with the CSO Policy. Any such Wet Weather CSO Discharges that continue to occur following full implementation of the LTCP shall comply with the technology-based and water quality-based requirements of the CWA, state law and regulation, and Jeffersonville's NPDES Permit.

22. Schedule for Preliminary Programs and Studies. Appendix A ("LTCP Schedule") sets forth the schedule by which Jeffersonville shall complete those actions necessary to obtain approval of the LTCP. Appendix B provides a description of the LTCP report that Jeffersonville shall submit pursuant to the schedule in Appendix A.

23. Preliminary Programs and Studies Reports. Jeffersonville shall submit to the Plaintiffs the following Preliminary Programs and Studies Reports, in accordance with the schedule established in Appendix A and with the requirements in Appendix B: Stream Reach Characterization and Evaluation Report and SRCER Update, and Update to Sewer System Hydraulic Modeling Program (including model calibration and verification). Each report shall summarize all information and data obtained, and the results of all assessments, evaluations, and characterizations carried out in completing the relevant program or study in accordance with the governing Section of Appendix B ("Long Term Control Plan Requirements") and shall describe any deviations from Appendix B in completing the relevant program or study, as well as the justifications for any deviations. Jeffersonville shall use the results of the Preliminary Programs and Studies, as described in the Preliminary Programs and Studies Reports approved by the Plaintiffs, in developing and implementing the LTCP.

24. LTCP Report. After completing the development activities and analyses specified by Section E of Appendix B, Jeffersonville shall submit to the Plaintiffs an LTCP Report in accordance with the plans and schedules established in Appendix A and B that contains the following deliverables: (i) a description of the CSO Control Measures selected by Jeffersonville in its LTCP; (ii) a description of the performance criteria that those CSO Control Measures shall achieve; (iii) a schedule with milestones for design, construction, and implementation of CSO

Control Measures required under the LTCP, including improvements to the WWTP and the Sewer System; (iv) costs projected to be incurred at each of the scheduled design, construction, and implementation milestones; and (v) a description of the Post-Construction Compliance Monitoring Program that shall be implemented upon completion of the construction. The schedule included in the LTCP Report shall require the design, construction, and implementation of all CSO Control Measures selected by Jeffersonville by no later than the dates determined pursuant to Paragraph 25, below.

25. If the Financial Capability Analysis required under Subsection E of Appendix B to this Consent Decree, as approved by U.S. EPA and IDEM pursuant to Section XIV (Review and Approval Procedures), shows that Jeffersonville is a "medium burden" community, then Jeffersonville shall Achieve Full Operation by no later than June 1, 2020. If the Financial Capability Analysis required under Subsection E of Appendix B to this Consent Decree, as approved by U.S. EPA and IDEM pursuant to Section XIV (Review and Approval Procedures), shows that Jeffersonville is a "high burden" community, then Jeffersonville shall Achieve Full Operation by no later than June 1, 2025.

26. LTCP Implementation and Compliance Achievement. Upon approval by the Plaintiffs, Jeffersonville shall implement the CSO Control Measures in its LTCP and the LTCP Report in accordance with the schedule specified in the approved LTCP Report. After Achievement of Full Operation, Jeffersonville shall demonstrate compliance with the performance criteria contained in the LTCP Report, the technology-based and water quality-based requirements of the CWA, state law and regulation, and the applicable provisions of its

NPDES Permit by implementing the Post-Construction Compliance Monitoring Program portion of its approved LTCP Report in accordance with the schedule specified therein.

F. Elimination of Sanitary Sewer Overflows and Development and Implementation of a Sewer System Capacity, Management, Operation and Maintenance Program.

27. SSOs are prohibited under the CWA, Title 327 of IAC, Article 5, and Jeffersonville's NPDES Permits. Any SSD shall be deemed a violation of this Paragraph and subject to stipulated penalties under Section IX of this Consent Decree (Stipulated Penalties). Jeffersonville shall eliminate and/or permanently seal the following designed and constructed SSO Outfalls within its SSS within the timeframes listed below:

SSO Outfall	Date by Which Jeffersonville Shall Eliminate and Permanently Seal the SSO Outfall
Artic Springs	6 months from the Effective Date
Mill Creek	12 months from the Effective Date
Spring Street	18 months from the Effective Date

28. Jeffersonville shall prevent the occurrence of SSOs by developing and implementing a Sewer System Capacity, Management, Operation and Maintenance Program for the SSS and submitting such plan to U.S. EPA and IDEM pursuant to Section XIII (Notices and Submissions).

29. Jeffersonville shall develop its Sewer System Capacity, Management, Operation and Maintenance Program to reflect accepted industry practices to: (a) properly manage, operate, and maintain sewer systems; (b) identify and inventory areas in the sewer systems with capacity

constraints; (c) implement measures to ensure adequate capacity throughout the sewer system; and (d) respond to SSO events. EPA's January 2005 "Guide for Evaluating Capacity, Management, Operation and Maintenance (CMOM) Programs at Sanitary Sewer Collection Systems" (EPA 305-B-05-002) ("EPA's January 2005 CMOM Guide") shall be considered in determining what constitutes "accepted industry practices" for purposes of this Paragraph. To the extent that Jeffersonville drafts its Sewer System Capacity, Management, Operation and Maintenance Program in a manner that is materially inconsistent with EPA's January 2005 CMOM Guide, Jeffersonville shall identify the material inconsistency in its submission to EPA and IDEM, and explain the basis for its belief that the Sewer System Capacity, Management, Operation and Maintenance Program is nevertheless consistent with accepted industry practices, notwithstanding the material inconsistency.

30. Plaintiffs shall review and approve Jeffersonville's Sewer System Capacity, Management, Operation and Maintenance Program in accordance with Section XIV of this Consent Decree (Review and Approval Procedures).

31. Jeffersonville shall implement its approved Sewer System Capacity, Management, Operation and Maintenance Program in accordance with Section XIV of this Consent Decree (Review and Approval Procedures).

VII. CIVIL PENALTIES

32. No later than thirty (30) Days after the Effective Date, Jeffersonville shall pay a civil penalties in the amounts of \$49,500 to the United States and \$82,500 to the State of Indiana for violations as alleged by the United States and the State of Indiana in the Complaint through the Date of Lodging of the Consent Decree. In lieu of the \$82,500 payment to the State of

Indiana, Defendant may pay a civil penalty of \$8,250 to the State of Indiana and perform a State Supplemental Environmental Project in accordance with Paragraphs 45 through 47 of this Consent Decree.

33. Civil Penalty Payment to the United States. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with instructions to be provided to Jeffersonville upon entry of the Consent Decree by the Financial Management Unit of the U.S. Attorney's Office for the Southern District of Indiana. Any EFTs received at the DOJ lockbox bank after 3:00 PM Eastern Time will be credited on the next business day. At the time of payment, Jeffersonville shall simultaneously send written notice of payment and a copy of any transmittal documentation (which should reference the above-captioned case name and civil action number and DOJ case number 90-5-1-1-08723) to the Plaintiffs in accordance with Section XIII (Notices and Submissions) of this Decree.

34. Civil Penalty Payment to the State. Payment to the State shall be made by a check made payable to "Indiana Department of Environmental Management Special Fund," delivered to:

Indiana Department of Environmental Management
Cashier's Office – Mail Code 50-10C
100 N. Senate Avenue
Indianapolis, IN 46207-7060

At the time of payment, Jeffersonville shall simultaneously send written notice of payment and a copy of any transmittal documentation (which should reference the above-captioned case name and civil action number and DOJ case number 90-5-1-1-08723) to the Plaintiffs in accordance with Section XIII (Notices and Submissions) of this Consent Decree.

35: Late Payments. In accordance with the Debt Collection Act of 1982, 31 U.S.C. § 3717, and 40 C.F.R. § 13.11, Jeffersonville shall be subject to the payment of interest and late charges in the event of late payment of the civil penalties required to be paid under Paragraph 32 or stipulated penalties required to be paid under Section IX of this Consent Decree (Stipulated Penalties).

a. Jeffersonville shall pay interest on any unpaid penalties that are due and payable to the United States under Paragraph 32 or Section IX of this Consent Decree (Stipulated Penalties) at the rate of the current value of funds to the U.S. Treasury (i.e., the Treasury tax and loan account rate), accruing on the date payment was due and payable beginning on the thirty-first (31st) Day after payment was due, unless paid prior to that date. Jeffersonville shall pay interest on any unpaid penalties that are due and payable to the State under Paragraph 32 or Section IX of this Consent Decree (Stipulated Penalties) at the rate established by Ind. Code Section 24-4.6-1-101, accruing on the date payment was due and payable beginning on the thirty-first (31st) Day after payment was due, unless paid prior to that date.

b. In addition to the previous charge, Jeffersonville shall pay late fees on any unpaid penalty amount still due and payable more than ninety (90) Days past the date due. Late fees shall accrue at the rate of six (6) percent per annum and shall be assessed monthly. Interest and handling charges as provided for in this Paragraph shall be tendered along with any late penalty payments in the manner specified above. The Plaintiffs shall be entitled to collect the costs (including attorneys fees) incurred in any action necessary to collect any portion of the civil penalty, stipulated penalty, interest, or late payment costs or fees.

VIII. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

A. Federal Supplemental Environmental Project

36. Defendant shall implement the Federal Supplemental Environmental Project ("Federal SEP") described in Appendix E in accordance with all provisions of this Section VIII of this Consent Decree (Supplemental Environmental Projects) and Appendix E. Defendant shall complete the Federal SEP by October 31, 2010, in accordance with the schedule set forth in Appendix E. The Federal SEP shall include a constructed wetland storm water treatment system that will consist of two separate constructed wetland areas and a vegetative buffer strip at the River Ridge Commerce Center in the City of Jeffersonville for the purpose of reducing the velocity of and removing pollutants from stormwater flow to Lentzier Creek.

37. Defendant is responsible for the satisfactory completion of the Federal SEP in accordance with the requirements of this Decree and Appendix E. Defendant may use contractors or consultants in planning and implementing the Federal SEP.

38. With regard to the Federal SEP, Defendant certifies the truth and accuracy of each of the following:

a. that all cost information provided to EPA in connection with EPA's approval of the Federal SEP is complete and accurate and that Defendant in good faith estimates that the cost to implement the Federal SEP, exclusive of inventory on hand, overhead, additional employee time and salary, administrative expenses, legal fees, and contractor oversight costs, is \$130,000;

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

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

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

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

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

39. Federal SEP Completion Report.

a. Within thirty (30) Days after the date set for completion of the Federal SEP, Defendant shall submit a Federal SEP Completion Report to the United States and the State, in accordance with Section XIII of this Consent Decree (Notices and Submissions). The Federal SEP Completion Report shall contain the following information:

i. a detailed description of the Federal SEP as implemented;

ii. a description of any problems encountered in completing the Federal SEP and the solutions thereto;

iii. an itemized list of all eligible Federal SEP costs expended;

iv. certification that the Federal SEP has been fully implemented pursuant to the provisions of this Decree; and

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

40. U.S. EPA may, in its sole discretion, require information in addition to that described in the preceding Paragraph, in order to evaluate Defendant's completion report.

41. After receiving the Federal SEP Completion Report, the United States shall notify Defendant whether or not Defendant has satisfactorily completed the Federal SEP. If Defendant has not completed the Federal SEP in accordance with this Consent Decree, stipulated penalties may be assessed under Section IX of this Consent Decree (Stipulated Penalties).

42. Disputes concerning the satisfactory performance of the Federal SEP and the amount of eligible Federal SEP costs may be resolved under Section XI of this Decree (Dispute Resolution). No other disputes arising under this Section shall be subject to Dispute Resolution.

43. Each submission required under this Section shall be signed by an official with knowledge of the Federal SEP and shall bear the certification language set forth in Paragraph 92.

44. Any public statement, oral or written, in print, film, or other media, made by Defendant making reference to the Federal SEP under this Decree shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action, United States v. City of Jeffersonville, taken on behalf of the U.S. Environmental Protection Agency under the federal Clean Water Act."

B. State Supplemental Environmental Project

45. In lieu of payment of the \$82,500 civil penalty to the State in accordance with Paragraph 34, Jeffersonville may instead (a) pay the sum of \$8,250 to the State as a civil penalty within thirty (30) Days after the Effective Date of this Consent Decree and (b) perform a State Supplemental Environmental Project ("State SEP") in accordance with Appendix E to this Consent Decree. The State SEP shall consist of the construction of pervious pavers and a rain

garden at Preservation Park located in the City of Jeffersonville, for the purpose of eliminating stormwater runoff from Preservation Park. Jeffersonville shall use a 1.6:1 ratio in determining what portion of the civil penalty payable to the State shall be offset by the State SEP, which means that Jeffersonville shall expend \$1.60 on the State SEP in order to offset \$1.00 of civil penalty payable to the State. Therefore, Jeffersonville shall expend \$118,050 in order to offset 90% of the \$82,500 civil penalty payable to the State. Jeffersonville estimates in good faith that the cost to implement the State SEP is not less than \$118,050.

46. Jeffersonville shall complete the State SEP within 90 Days of the Effective Date. Every year, on the anniversary of the Effective Date of this Consent Decree, and until completion of the State SEP in accordance with this Consent Decree and Appendix E, Jeffersonville shall submit a milestone report to IDEM, detailing Jeffersonville's progress on implementing the State SEP in accordance with this Consent Decree. In performing the State SEP, Jeffersonville shall comply with all applicable federal, state, and local laws and regulations, and shall obtain and comply with any necessary licenses or permits. Within thirty (30) Days of completion of the State SEP, Jeffersonville shall submit to IDEM an itemized list, along with supporting documentation, of costs incurred in performing the State SEP. In the event that the total cost of the State SEP is less than \$118,050, Jeffersonville shall pay the balance of the civil penalty that is not offset by the State SEP, to be calculated by using the 1.6:1 ratio described in Paragraph 45, plus interest at the rate established by Indiana Code 24-4.6-1-101. Interest on the balance of the civil penalty shall be paid from the Effective Date of the Consent Decree. Payment shall be made within fifteen (15) Days of receipt of notice from IDEM that payment is due.

47. In the event that Jeffersonville fails to complete the State SEP in accordance with this Consent Decree and Appendix E, Jeffersonville shall pay the entire balance of the civil penalty, totaling \$74,250 plus interest at the rate established by Indiana Code 24-4.6-1-101. Interest on the balance of the civil penalty shall be paid from the Effective Date of this Consent Decree. Payment shall be made within fifteen (15) Days of receipt of notice from IDEM that payment is due.

IX. STIPULATED PENALTIES

48. Jeffersonville shall pay for stipulated penalties to the Plaintiffs in the amounts set forth in this Section for failure to comply with the requirements of this Consent Decree as specified below, unless the court finds under Section XI (Dispute Resolution) that Jeffersonville did not fail to comply with the requirements of this Consent Decree, or unless excused under Section X (Force Majeure). Stipulated penalties shall be allocated between the Plaintiffs as provided in Paragraph 66. As used in this Section, "compliance" or "to comply" includes meeting all requirements of this Consent Decree and any applicable permit, as well as completing the activities under this Consent Decree, or any work plan or other plan approved under this Consent Decree, and within the specified time schedules established by and approved under this Consent Decree.

49. Failure to Comply with Effluent Limits. Stipulated penalties for any noncompliance with a numerical effluent limit imposed by Jeffersonville's NPDES Permit shall accrue as follows:

<u>Parameter</u>	<u>Stipulated Penalty</u>
Daily concentration or mass limits	\$1,750 per Day per parameter
Weekly average concentration or mass limits	\$3,500 per week per parameter
Monthly average concentration or mass limits	\$4,500 per month per parameter

50. Delay in Eliminating CSO Outfall 006, CSO Outfall 007, or CSO Outfall 012:

The following stipulated penalties shall accrue for failure to meet the schedule set forth for eliminating CSO Outfall 006, CSO Outfall 007, or CSO Outfall 012, for each such failure:

<u>Period of noncompliance</u>	<u>Stipulated Penalty</u>
1st to 30th Day of violation	\$1,000 per Day per violation
31st to 60th Day of violation	\$2,000 per Day per violation
After 60 Days of violation	\$3,000 per Day per violation.

51. Failure to Maximize Flow and Storage in the Sewer System to Minimize Wet

Weather CSO Discharges: The following stipulated penalty shall accrue if a Wet Weather CSO Discharge occurs from any CSO Outfall in the Sewer System as a result, in whole or in part, of Jeffersonville's failure to maximize storage in the Sewer System as required by Consent Decree Subsection VI.C:

Stipulated Penalty per Day, per Wet Weather CSO: \$1,750

52. Failure to Maximize Treatment at the WWTP Prior to Wet Weather CSO

Discharges: The following stipulated penalties shall accrue if a Wet Weather CSO Discharge or Discharges occur from CSO Outfall 018 (Tenth Street Pump Station) when the treatment flow requirements set forth in Paragraphs 16.a or 17 are not met.

Stipulated Penalty per Day: \$4,000

53. Failure to Increase Capacity of Tenth Street Pump Station: The following stipulated penalties shall accrue in the event that Jeffersonville fails to increase the physical capacity of the Tenth Street Pump Station in accordance with Subparagraph 16.b:

<u>Period of Noncompliance</u>	<u>Stipulated Penalty</u>
1st to 30th Day of violation	\$1,750 per Day per violation
31 st through 60 th Day of violation	\$3,000 per Day per violation
After 60 Days of violation	\$5,000 per Day per violation.

54. Sanitary Sewer Discharges: The following stipulated penalties shall accrue per Day for any SSD:

<u>Period of Noncompliance</u>	<u>Stipulated Penalty</u>
1st to 3rd Day of violation	\$3,000 per Day per violation
4th to 10th Day of violation	\$4,500 per Day per violation
After 10 Days of violation	\$12,000 per Day per violation.

55. Dry Weather CSO Discharges: The following stipulated penalties shall accrue per Day for any Dry Weather CSO Discharge that occurs more than 24 hours after a Wet Weather Event:

<u>Period of Noncompliance</u>	<u>Stipulated Penalty</u>
1st to 3rd Day of continuous CSO Discharge	\$2,500 per Day per CSO Discharge
4th to 10th Day of continuous CSO Discharge	\$4,000 per Day per CSO Discharge
After 10 Days of continuous CSO Discharge	\$7,500 per Day per CSO Discharge.

56. Failure to Comply with the Requirements to Develop and/or Submit an LTCP: The following stipulated penalties shall accrue for any failure to timely submit any of the deliverables

that precede the LTCP, or to submit the LTCP itself, or any required revisions thereto, in accordance with the schedule set forth in Appendix A and in accordance with the requirements of Subsection VI.E and Appendix B to this Consent Decree:

<u>Period of noncompliance</u>	<u>Stipulated Penalty</u>
1st to 30th Day of violation	\$1,500 per Day per violation
31st to 60th Day of violation	\$3,000 per Day per violation
After 60 Days of violation	\$4,500 per Day per violation.

57. Failure to Implement the Requirements of the Approved LTCP Report: The following stipulated penalty shall accrue for the failure to timely implement any requirement in the approved LTCP Report:

<u>Period of noncompliance</u>	<u>Stipulated Penalty</u>
1st to 30th Day of violation	\$1,750 per Day per violation
31st to 60th Day of violation	\$3,000 per Day per violation
After 60 Days of violation	\$5,000 per Day per violation.

58. Failure to Comply with Requirements to Develop and/or Submit a Sewer System Capacity, Management, Operation and Maintenance Program: The following stipulated penalties shall accrue for failure timely to develop and/or submit a Sewer System Capacity, Management, Operation and Maintenance Program in accordance with Subsection VI.F:

<u>Period of noncompliance</u>	<u>Stipulated Penalty</u>
1st to 30th Day of violation	\$1,000 per Day per violation
31st to 60th Day of violation	\$2,000 per Day per violation
After 60 Days of violation	\$3,000 per Day per violation.

59. Failure to Implement the Requirements of the Approved Sewer System Capacity, Management, Operation and Maintenance Program: The following stipulated penalty shall accrue for the failure to implement any requirement in the approved Sewer System Capacity, Management, Operation and Maintenance Program:

<u>Period of noncompliance</u>	<u>Stipulated Penalty</u>
1st to 30th Day of violation	\$1,000 per Day per violation
31st to 60th Day of violation	\$2,000 per Day per violation
After 60 Days of violation	\$3,000 per Day per violation.

60. Failure to Revise CSOOP: The following stipulated penalty shall accrue for the failure timely to revise the CSOOP as required by Section VI.B of the Consent Decree:

Stipulated Penalty per Day: \$750

61. Failure to Implement Provisions of the CSOOP: The following stipulated penalty shall accrue for the failure to implement each provision of the CSOOP, in any month, as required by Consent Decree Subsection VI.B:

Stipulated Penalty per provision per month: \$2,000

62. Failure to Install a Manhole at CSO Outfall 010 (Walnut Street and East Riverside Drive) in Accordance with Paragraph 15 of this Consent Decree: The following stipulated penalty shall accrue for the failure to timely install a manhole at the discharge line for CSO Outfall 010 in accordance with the requirements of Paragraph 15 of this Consent Decree:

<u>Period of noncompliance</u>	<u>Stipulated Penalty</u>
1st to 30th Day of violation	\$1,000 per Day per violation
31st to 60th Day of violation	\$1,500 per Day per violation
After 60 Days of violation	\$2,000 per Day per violation.

63. Noncompliance with Reporting Requirements: Except as otherwise provided by this Section IX (Stipulated Penalties), the following stipulated penalties shall accrue for each noncompliance with any requirement that Jeffersonville submit to the Plaintiffs any work plan, report, or any other submission under this Consent Decree:

<u>Period of noncompliance</u>	<u>Stipulated Penalty</u>
1st to 30th Day of violation	\$1,000 per Day per violation
31st to 60th Day of violation	\$2,000 per Day per violation
After 60 Days of violation	\$3,000 per Day per violation.

64. SEP Compliance: If Defendant fails to satisfactorily complete the SEP by the deadline set forth in Section VIII of this Consent Decree (Supplemental Environmental Projects), Defendant shall pay stipulated penalties for each Day for which it fails to satisfactorily complete the SEP, as follows:

<u>Period of noncompliance</u>	<u>Stipulated Penalty</u>
1st to 30th Day of violation	\$1,000 per Day per violation
31st to 60th Day of violation	\$2,000 per Day per violation
After 60 Days of violation	\$3,000 per Day per violation.

In addition, if the total amount expended on completing the Federal SEP is less than \$130,000, Jeffersonville shall be subject to a stipulated penalty equal to difference between \$130,000 and

the amount actually expended. Penalties under this Paragraph shall be paid upon demand, in accordance with the provisions of Paragraph 66.

65. Any Other Violation of this Consent Decree: The following stipulated penalty shall accrue for any other violation of this Consent Decree:

Stipulated Penalty: \$1,000 per Day per violation

66. Either the United States, or the State, or both may elect to demand stipulated penalties under this Section; however, the United States and the State shall consult with each other before making any demand. Where both sovereigns demand stipulated penalties, any such penalties determined to be owing shall be paid fifty (50) percent to the United States and fifty (50) percent to the State. Where only one Plaintiff demands stipulated penalties, the entire amount of stipulated penalties determined to be owing shall be payable to that sovereign. In no case shall the determination by one sovereign not to seek stipulated penalties preclude the other sovereign from seeking stipulated penalties, as otherwise provided for by, and consistent with, the terms of this Consent Decree. A decision by the United States or the State to waive, in whole or in part, stipulated penalties otherwise due under this Section shall not be subject to judicial review. Unless Jeffersonville invokes dispute resolution as provided in Section XI below, Jeffersonville shall pay stipulated penalties assessed by the United States or the State of Indiana within sixty (60) Days of such Plaintiff's written notice that stipulated penalties are due and owing.

67. All stipulated penalties shall begin to accrue on the Day after the performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Nothing herein shall

prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree, except that when two or more violations are based upon the same noncompliance, the higher stipulated penalty shall apply.

68. Penalty Accrual During Dispute Resolution. Stipulated penalties shall continue to accrue during any dispute resolution, with interest on accrued penalties payable and calculated at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961 (for penalties payable to the United States) and at the rate established pursuant to Ind. Code Section 24-4.6-1-101 (for penalties payable to the State), but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of U.S. EPA that is not appealed to the Court, accrued penalties determined to be owing, together with accrued interest, shall be paid to the Plaintiffs within thirty (30) Days of the effective date of the agreement or the receipt of U.S. EPA's decision or order.

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

c. If the District Court's decision is appealed by any Party and the Plaintiffs prevail in whole or in part, Jeffersonville shall, within thirty (30) Days of receipt of the Court of Appeals' decision, pay all accrued penalties determined to be owing to the Plaintiffs, together with accrued interest.

69. Payment of Stipulated Penalties to the United States.

a. Payment. Stipulated penalties payable to the United States shall be paid by certified or cashier's check in the amount due, payable to the "Treasurer, United States of America," referencing the above-captioned case name and civil action number and DOJ No. 90-5-1-1-08723 and shall be delivered to the Financial Litigation Unit of the Office of the United States Attorney for the Southern District of Indiana, at the following address:

Financial Litigation Unit
Office of the United States Attorney
Southern District of Indiana
10 West Market Street, Suite 2100
Indianapolis, IN 46204-3048

b. Late Payment. Should Jeffersonville fail to pay stipulated penalties and accrued interest payable to the United States in accordance with the terms of this Consent Decree, the United States shall be entitled to collect interest and late payment costs and fees as set forth in Paragraph 35 (Late Payments), together with the costs (including attorneys fees) incurred in any action necessary to collect any such stipulated penalties, interest, or late payment costs or fees.

70. Payment of Stipulated Penalties to the State.

a. Payment. Stipulated penalties payable to the State shall be paid by certified or cashier's check in the amount due, payable to the "Indiana Department of Environmental Management Special Fund," delivered to:

Indiana Department of Environmental Management
Cashier's Office – Mail Code 50-10C
100 N. Senate Avenue
Indianapolis, IN 46207-7060

b. Late Payment. Should Jeffersonville fail to pay stipulated penalties and accrued interest payable to the State in accordance with the terms of this Consent Decree, the State shall

be entitled to collect interest and late payment costs and fees as set forth in Paragraph 35 (Late Payments) together with the costs (including attorneys fees) incurred in any action necessary to collect any such stipulated penalties, interest, or late payment costs or fees.

71. Jeffersonville's payment of stipulated penalties under this Section shall be in addition to any other rights or remedies available to the United States and the State by reason of Jeffersonville's failure to comply with any requirement of this Consent Decree, applicable laws or regulations, and applicable permits.

X. FORCE MAJEURE

72. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Jeffersonville, its agents, consultants and contractors, or any entity controlled by Jeffersonville that delays or prevents the performance of any obligation under this Consent Decree despite Jeffersonville's best efforts to fulfill the obligation. "Best efforts" include using best efforts to anticipate any potential force majeure event and to address the effects of any such event (a) as it is occurring and (b) after it has occurred, such that the delay is minimized to the greatest extent practicable. Unanticipated or increased costs or expenses associated with implementation of this Consent Decree and changed financial circumstances shall not, in any event, be considered "Force Majeure" events. In addition, failure to apply for a required permit or approval or to provide in a timely manner all information required to obtain a permit or approval that is necessary to meet the requirements of this Consent Decree, or failure of Jeffersonville to approve contracts, shall not, in any event, be considered "Force Majeure" events.

73. When Jeffersonville knows or if Jeffersonville should have known, by the exercise

of reasonable diligence, of an event that might delay completion of any requirement of this Consent Decree, whether or not the event is a Force Majeure event, Jeffersonville shall notify U.S. EPA and IDEM, in writing, within thirty (30) Days after Jeffersonville first knew, or in the exercise of reasonable diligence under the circumstances, should have known of such event. The notice shall indicate whether Jeffersonville's claim that the delay should be excused due to a Force Majeure event. The notice shall describe the basis for Jeffersonville's contention that it experienced a Force Majeure delay, the anticipated length of the delay, the 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 shall be implemented. Jeffersonville shall adopt all reasonable measures to avoid or minimize such delay. Failure to give such notice shall preclude Jeffersonville from asserting any claim of Force Majeure as to the event in question, and shall be a waiver of Jeffersonville's right to obtain an extension of time for its obligations based on such event.

74. Jeffersonville shall have the burden of proving, by a preponderance of the evidence, that each event described in the preceding Paragraph was a Force Majeure event; that they gave the notice required by the preceding Paragraph; that they took all reasonable steps to prevent or minimize any delay caused by the event; that any period of delay that they claim was attributable to the Force Majeure event was caused by that event; and that the amount of additional time they are requesting is necessary to compensate for the delay caused by that event.

75. If the Plaintiffs find that a delay in performance is, or was, caused by a Force Majeure event, the Parties shall extend the time for performance, in writing, in accordance with paragraph 78, below, for a period to compensate for the delay resulting from such event, and stipulated penalties shall not be due for such period.

76. If the Plaintiffs do not find that a Force Majeure event has occurred, or do not agree with Jeffersonville concerning the extent of time sought, the position of the Plaintiffs shall be binding, unless Jeffersonville invokes Dispute Resolution under Section XI of this Consent Decree. In any such dispute, Jeffersonville bears the burden of proof described in Paragraph 74, above.

77. 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 any other compliance date. Jeffersonville shall make an individual showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought.

78. If the Parties agree that Jeffersonville could not have prevented or mitigated any delay, or anticipated delay, attributable to a Force Majeure event by the exercise of due diligence, the Parties shall stipulate to an extension of time for Jeffersonville's performance of the affected compliance requirement by a period not exceeding the delay actually caused by such event. In such circumstances, the appropriate modification shall be made pursuant to Section XXI of the Consent Decree (Modification). In the event the Parties cannot agree, the matter shall be resolved in accordance with Section XI of this Consent Decree (Dispute Resolution). An extension of time for performance of the obligations affected by a Force Majeure event shall not, of itself, extend the time for performance of any other obligation.

XI. DISPUTE RESOLUTION

79. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising

under or with respect to this Consent Decree. However, such procedures shall not apply to actions by the Plaintiffs to enforce obligations of Jeffersonville that have not been disputed in accordance with this Section.

80. Informal Dispute Resolution. Any dispute which arises under or with respect to this Consent Decree shall first be the subject of informal negotiations. The period of informal negotiations shall not exceed thirty (30) Days from the time Jeffersonville sends the Plaintiffs a written Notice of Dispute in accordance with Section XIII of this Consent Decree (Notices and Submissions), unless that period is modified by written agreement. Such Notice of Dispute shall state clearly the matter in dispute. Jeffersonville's failure to submit a Notice of Dispute within fourteen (14) Days from the date upon which the issue in dispute first arises waives its right to invoke dispute resolution under this Section with respect to such dispute.

81. Formal Dispute Resolution.

a. If the Parties cannot resolve a dispute by informal negotiations pursuant to the preceding Paragraph, then the position advanced by the Plaintiffs shall be considered binding unless, within fifteen (15) Days after the conclusion of the informal negotiation period, Jeffersonville invokes formal dispute resolution procedures by serving on the Plaintiffs, in accordance with Section XIII of this Consent Decree (Notices and Submissions), a written Statement of Position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, together with a statement indicating whether formal dispute resolution should proceed upon the administrative record.

b. Within thirty (30) Days after receipt of Jeffersonville's Statement of Position, the Plaintiffs shall serve on Jeffersonville their Statement of Position, including any supporting

factual data, analysis, opinion or documentation, together with a statement indicating whether formal dispute resolution should proceed upon the administrative record. Within fifteen (15) Days after receipt of the Plaintiffs' Statement of Position, Jeffersonville may submit a Reply.

c. If there is disagreement as to whether dispute resolution should proceed upon the administrative record, the Parties shall follow the procedures determined by the Plaintiffs to be applicable. However, if Jeffersonville ultimately appeals to the Court to resolve the dispute, the Court shall determine the applicable standard and scope of review, in accordance with Subparagraph 82.c below.

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

82. Resolution of Disputes.

a. The Director of the Water Division in U.S. EPA Region 5 shall issue a final decision resolving the matter in dispute. Where the dispute pertains to the performance of the Compliance Program under Section VI of this Consent Decree, or is otherwise accorded review on the administrative record under applicable principles of administrative law, the decision shall be upon the administrative record maintained by U.S. EPA pursuant to Subparagraph 81.d. The decision of the Water Division Director shall be binding upon Jeffersonville, subject only to the right to seek judicial review, in accordance with Subparagraph 82.b.

b. The decision issued by U.S. EPA under Subparagraph 82.a. shall be reviewable by this Court upon a motion filed by Jeffersonville and served upon the Plaintiffs within twenty (20) Days of receipt of U.S. EPA's decision. In addition to containing the supporting factual data, analysis, opinion, and documentation upon which Jeffersonville relies, the motion shall describe the history of the matter in dispute, the relief requested, and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree, as well as Jeffersonville's position on whether the dispute should be resolved on the administrative record.

c. In any judicial proceeding pursuant to Subparagraph 82.b that concerns the performance of the Compliance Program under Section VI of this Consent Decree (Compliance Program), or that is otherwise accorded review on the administrative record under applicable principles of administrative law, Jeffersonville shall have the burden of demonstrating that the decision of the Water Division Director is arbitrary and capricious or otherwise not in accordance with law. The United States and the State of Indiana shall have forty-five (45) Days to file a response to Jeffersonville's petition. Judicial review of the Water Division Director's decision shall be on the administrative record compiled in accordance with Subparagraph 81.d. Judicial review for all other disputes shall be governed by applicable principles of law.

83. The invocation of dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Jeffersonville under this Consent Decree, not directly in dispute, unless the Plaintiffs agree or the Court orders otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 68 (Penalty Accrual During Dispute Resolution). In the event that Jeffersonville does not prevail on

the disputed issue, stipulated penalties shall be assessed and paid as provided in Section IX of this Consent Decree (Stipulated Penalties).

XII. REPORTING REQUIREMENTS

84. Semi-Annual Reporting. On July 1, 2010, and every six (6) months thereafter until termination of this Consent Decree, Jeffersonville shall submit to Plaintiffs at the address provided in Section XIII of the Consent Decree (Notices and Submissions) a Semi-Annual Report that contains all information required in Appendix D or otherwise expressly specified by Plaintiffs as necessary to determine Jeffersonville's compliance with the requirements of this Consent Decree.

85. In addition to the information identified in Appendix D, the Semi-Annual Reports shall include a description of any non-compliance with the requirements of this Consent Decree and an explanation of the violation's likely cause and duration, and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of the violation cannot be fully explained at the time the report is due, Jeffersonville shall so state in the report. Jeffersonville shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within thirty (30) Days of the Day Jeffersonville becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Jeffersonville of its obligation to provide the notice required by Section X of this Consent Decree (Force Majeure).

86. The Semi-Annual Reports shall be certified in accordance with the "Certification Language" set forth in Paragraph 92 of Section XIII of the Consent Decree (Notices and Submissions).

87. Jeffersonville shall not object to the accuracy, authenticity, and/or admissibility into evidence of any certified Semi-Annual Report in any proceeding to enforce this Consent Decree.

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

89. Any information provided pursuant to this Consent Decree may be used by the United States and Indiana in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

XIII. NOTICES AND SUBMISSIONS

90. Unless otherwise specified herein, whenever notifications, reports, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

To the U.S. Department of Justice:

Chief, Environmental Enforcement Section
U.S. Department of Justice -- DOJ No. 90-5-1-1-08723
P.O. Box 7611
Washington, D.C. 20044-7611

and

To U.S. EPA:

Chief, Water Enforcement and Compliance Assurance Branch (WCC-15J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

and

Regional Counsel (C-14J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

To the State:

To the Indiana Attorney General:

Chief, Environmental Section
Office of the Attorney General
Indiana Government Center South
5th Floor
402 West Washington Street
Indianapolis, IN 46204

and

To IDEM:

Chief, Compliance Branch
Office of Water Quality
Indiana Department of Environmental Management
100 North Senate Street
P.O. Box 6015
Indianapolis, IN 46206

and

Chief, Enforcement Section
Office of Legal Counsel
Indiana Department of Environmental Management
100 North Senate Street
P.O. Box 6015
Indianapolis, IN 46206

To Jeffersonville:

Mayor
City of Jeffersonville
City Hall
500 Quartermaster Court
Jeffersonville, IN 47130

Sanitary Sewer Board
City of Jeffersonville
City Hall
500 Quartermaster Court
Jeffersonville, IN 47130

91. Notices and submissions provided pursuant to this Section shall be deemed effective upon receipt, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing. In addition to the other reports required by this Consent Decree, if Jeffersonville violates any requirement of this Consent Decree or its NPDES Permit, Jeffersonville shall notify the Plaintiffs of such violation and its likely duration in writing within fourteen (14) Days of the Day Jeffersonville first becomes aware of the violation, with an explanation of the violations likely cause and of the remedial steps taken, and/or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Jeffersonville shall include a statement to that effect in the report. Jeffersonville shall immediately investigate to determine the cause of the violation, and then shall submit an amendment to the report, including a full explanation of the cause of the violation,

within thirty (30) Days of the Day Jeffersonville becomes aware of the cause of the violation.

92. Each notice or submission made by Jeffersonville under this Consent Decree shall be signed by an official of the submitting Party and shall include the following "Certification Language":

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gather and present the information contained therein. I further certify, based on my inquiry of those individuals immediately responsible for obtaining the information, that I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

93. Jeffersonville shall retain all underlying documents from which it has compiled any report or other submission required by this Consent Decree until five years after termination of the Decree.

94. Any information provided pursuant to this Consent Decree may be used by the Plaintiffs in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

XIV. REVIEW AND APPROVAL PROCEDURES

95. Following receipt of any report, plan, or other submission by Jeffersonville under this Consent Decree, the Plaintiffs may do one of the following, in writing: (i) approve all of or any portion of the submission; (ii) approve all or part of the submission upon specified conditions; (iii) disapprove all of or any portion of the submission, notifying Jeffersonville of deficiencies in the submission and granting Jeffersonville additional time within which to correct

the deficiencies; (iv) modify the submission to correct deficiencies; or (v) reject all of or any portion of the submission.

96. In the event that U.S. EPA and IDEM approve a complete submission, Jeffersonville shall proceed to take the actions identified in the report, plan, or other submission beginning within fourteen (14) Days following U.S. EPA's and IDEM's approval.

97. In the event U.S. EPA and IDEM either approve specifically identified portions of the submission, or approve all or a specifically identified portion of the submission with conditions, Jeffersonville shall proceed to take the actions identified in the approved portion of the report, plan, or other submission, or portion thereof, in accordance with the applicable conditions, beginning within fourteen (14) Days following receipt of the conditional approval.

98. In the event that U.S. EPA and/or IDEM disapprove all or a portion of any submission, Jeffersonville shall revise the submission to address all of U.S. EPA and/or IDEM's written comments. Jeffersonville shall resubmit the revised report, plan, or other submission to the Plaintiffs within thirty (30) Days of receipt of the Plaintiffs' comments, unless otherwise provided in this Consent Decree.

99. If Jeffersonville submits a report, plan or other submission that fails to contain all of the required elements set forth in this Consent Decree (including all appendices to the Decree and documents incorporated by reference into the Decree), Jeffersonville shall be deemed to have failed to make the submission. Where this Consent Decree requires a resubmission, if upon resubmission, a report, plan or other submission that has been resubmitted pursuant to a requirement of the Consent Decree is disapproved by U.S. EPA and/or IDEM, either in whole or in part, Jeffersonville shall be deemed to have failed to resubmit such report, plan or other

submission timely and adequately, unless Jeffersonville invokes the Dispute Resolution Procedures set forth in Section XI of the Consent Decree, and U.S. EPA's and/or IDEM's action is overturned pursuant to that Section. In the case of a submission that fails to contain all the required elements, stipulated penalties begin to accrue on the date the submission is due. In the case of a disapproved resubmission, stipulated penalties begin to accrue on the date Jeffersonville receives written notice of disapproval.

XV. ACCESS TO INFORMATION AND DOCUMENT RETENTION

100. Commencing on the Date of Lodging of this Consent Decree, Jeffersonville agrees to provide the United States and its representatives (including U.S. EPA and its contractors and consultants), and the State and its representatives (including IDEM and its contractors and consultants), access at all reasonable times to all areas and facilities under Jeffersonville's control, and to allow such representatives to move about, without restriction, for the purposes of conducting any any activity related to this Consent Decree, including to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States or the State in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Jeffersonville or its representatives, contractors, or consultants; and
- d. assess Jeffersonville's compliance with this Consent Decree.

101. This Consent Decree in no way limits or affects any right of entry and inspection held by the United States or the State pursuant to applicable federal or state laws, regulations, or permits.

102. Jeffersonville shall provide to the Plaintiffs, upon request, copies of all documents and information within its possession or control (or that of its contractors or agents) relating to compliance with this Consent Decree. Jeffersonville shall also make available to Plaintiffs its employees, agents, or representatives with knowledge of relevant facts concerning its compliance with this Consent Decree.

a. Jeffersonville may assert business confidentiality claims covering part or all of the documents or information submitted to the Plaintiffs under this Consent Decree, to the extent permitted by and in accordance with 40 C.F.R. Part 2. Documents or information submitted to U.S. EPA and determined to be confidential by U.S. EPA shall be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to U.S. EPA, the public may be given access to such documents or information without further notice in accordance with 40 C.F.R. Part 2, Subpart B.

b. Jeffersonville may assert that certain documents and information are privileged under the attorney-client privilege or any other privilege recognized by applicable law. If Jeffersonville asserts such a privilege in lieu of providing documents, Jeffersonville shall provide the Plaintiffs with the following: (i) the title of the document; (ii) the date of the document; (iii) the name and title of the author of the document; (iv) the name and title of each addressee and recipient; (v) a description of the contents of the document; and (vi) the privilege asserted by Jeffersonville. No documents or information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

103. Jeffersonville agrees to preserve, during the pendency of this Consent Decree and for at least one year after its termination, at least one legible copy (either in electronic or hard

copy form) of all final documents in its possession, custody or control that relate to the performance of its obligations under this Consent Decree.

XVI. FAILURE OF COMPLIANCE

104. The Plaintiffs do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Jeffersonville's compliance with any aspect of this Consent Decree will result in compliance with the provisions of the CWA, 33 U.S.C. § 1251 *et seq.*, applicable state law and regulations, or its NPDES Permit. Notwithstanding the Plaintiffs' review and approval of any documents submitted by Jeffersonville pursuant to this Consent Decree, Jeffersonville shall remain responsible for compliance with the terms of the CWA, applicable state law and regulations, the NPDES Permit, and this Consent Decree. The pendency or outcome of any proceeding concerning issuance, reissuance, or modification of any NPDES permit shall neither affect nor postpone Jeffersonville's duties and obligations as set forth in this Consent Decree.

XVII. EFFECT OF SETTLEMENT AND RESERVATION OF RIGHTS

105. Effective upon the Date of Entry of the Consent Decree, and in consideration of the civil penalty payments that shall be made and the injunctive relief that shall be performed under this Consent Decree, except as expressly set forth in Paragraph 107 (Reservation of Rights), the United States covenants not to bring any administrative or civil judicial action for the violations of Sections 301 or 402 of the CWA alleged in the Complaint filed in this matter, and the State of Indiana covenants not to bring any administrative or civil judicial action for the violations of Sections 301 or 402 of the CWA and Indiana law, as alleged in the Complaint. Entry of the Consent Decree by the Court shall resolve the United States and the State of

Indiana's civil claims, except as expressly set forth in Paragraph 107 below, for violations of the above-referenced statutory provisions alleged in the Complaint up to and including the Date of Lodging of the Decree.

106. This Consent Decree shall not be construed to prevent or limit the rights of the United States or the State to obtain penalties or injunctive relief under the CWA or applicable State laws or regulations promulgated thereunder, or permit conditions, except as expressly specified herein.

107. Reservation of Rights. Notwithstanding any other provision of this Consent Decree, the United States and the State of Indiana reserve, and this Consent Decree is without prejudice to, all rights against Jeffersonville with respect to all matters other than those expressly included in its Complaint, respectively, including but not limited to the following:

- a. Claims based on a failure by Jeffersonville to meet a requirement of this Consent Decree;
- b. Claims for stipulated penalties, if any, under the terms of this Consent Decree;
- c. Any criminal liability; and
- d. Claims that a Discharge from the Sewer System may pose an imminent and substantial endangerment to health or the environment in accordance with Section 504 of the CWA, 33 U.S.C. § 1364, or equivalent State law provisions.

108. Jeffersonville is responsible for achieving and maintaining complete compliance with all applicable federal, State and local laws, regulations, and permits. Jeffersonville's compliance with this Consent Decree shall be no defense to any action commenced pursuant to said laws, regulations, or permits.

109. This Consent Decree does not limit or affect the rights of Jeffersonville, or of the United States or the State against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Jeffersonville.

110. Performance of the terms of this Consent Decree by Jeffersonville is not conditioned on the receipt of any federal, State or local funds. 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 Jeffersonville shall not be cause for extension of any required compliance date in this Consent Decree.

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

112. The Plaintiffs reserve any and all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated herein.

113. The United States and the State of Indiana reserve all remedies available to them for violations of the CWA or applicable State laws by Jeffersonville which are not alleged in the Complaint, and for any violations of the CWA or applicable State laws by Jeffersonville which occur after the Date of Lodging of this Consent Decree.

XVIII. COSTS

114. The Parties shall each bear their own costs of litigation of this action, including attorneys fees, except as provided in Paragraphs 35.b, 69.b, and 70.b (Late Payments).

XIX. EFFECTIVE DATE

115. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

XX. RETENTION OF JURISDICTION

116. The Court shall retain jurisdiction of this case until termination of this Consent Decree, for the purpose of enabling any of the Parties to apply to the Court for such further order, direction, or relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XI of this Consent Decree (Dispute Resolution).

XXI. MODIFICATIONS

117. This Consent Decree may not be materially amended or modified except by written agreement of the Parties, and approval of this Court, after notice and motion to all Parties. Any material modification of this Consent Decree shall be effective upon approval of the Court. Non-material modifications of the Consent Decree which do not significantly alter the requirements of this Consent Decree may be made in writing by the Parties and shall be effective upon service to all Parties. All modifications, whether material or non-material, shall be deemed an enforceable part of this Consent Decree.

118. Before seeking any modification of this Consent Decree, the Appendices attached to this Consent Decree, or the submittals approved under this Consent Decree, Jeffersonville shall consult with U.S. EPA and IDEM concerning the proposed modification and the scope of public participation to be obtained by Jeffersonville before submission of a request for modification.

119. If the Parties do not agree that modification of this Consent Decree is warranted, Jeffersonville may file a motion seeking modification pursuant to Rule 60(b) of the Federal Rules of Civil Procedure; provided, however, that the United States and the State reserve their rights to

oppose such a motion and to argue that modification is unwarranted. Such a motion for modification by Jeffersonville shall not relieve it of any of its obligations under this Consent Decree, unless the Court orders otherwise, and Jeffersonville shall continue with timely implementation of all measures required by the Decree until the Decree is modified in accordance with Paragraph 117 and any other applicable provisions of the Consent Decree.

XXII. TERMINATION

120. After Jeffersonville complies with all of its obligations under this Consent Decree, including but not limited to all requirements set forth in Section VI of the Consent Decree (Compliance Program), payment of the civil penalty and all accrued stipulated penalties which Jeffersonville did not successfully challenge under Section XI of the Consent Decree (Dispute Resolution), and after Jeffersonville has achieved continuous compliance with the terms and conditions of its NPDES Permit, the CWA, or applicable State laws, for a period of at least one year, and after Jeffersonville has completed all SEPs in accordance with this Consent Decree, including Appendix E, Jeffersonville may file and serve upon the Plaintiffs a "Motion for Termination of Consent Decree" with supporting documentation demonstrating that the conditions for termination set forth in this Section have been met.

121. The United States and/or the State shall have the right to oppose Jeffersonville's motion for termination. If the United States and/or the State oppose termination of this Consent Decree, Jeffersonville shall have the burden to prove by clear and convincing evidence that the conditions for termination of the Decree have been satisfied. If the United States and/or the State oppose termination, this Consent Decree shall remain in effect pending resolution of the

dispute by the Parties or the Court in accordance with Section XI of the Consent Decree (Dispute Resolution).

XXIII. PUBLIC COMMENT

122. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Jeffersonville consents to entry of this Consent Decree without further notice.

XXIV. SIGNATORIES/SERVICE

123. Each undersigned representative of Jeffersonville, the State, and the Acting Assistant Attorney General for the Environment and Natural Resources Division of the U.S. Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

124. This Consent Decree may be signed in counterparts, and such counterpart signature pages shall be given full force and effect.

125. Jeffersonville hereby agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States notifies Jeffersonville in writing that it no longer supports entry of the Decree.

126. Jeffersonville hereby agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree 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.

XXV. INTEGRATION/APPENDICES

127. This Consent Decree, its Appendices and the LTCP, the revised CSOOP and the CMOM Program that shall be developed hereunder, constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree, and supersede all prior agreements and understandings, whether oral or written. Other than documents mentioned in the preceding sentence, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Decree or the settlement it represents, nor shall it be used in construing the terms of this Consent Decree.

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

- | | |
|--------------|--|
| “Appendix A” | Long Term Control Plan Completion Schedule |
| “Appendix B” | Long Term Control Plan Requirements |
| “Appendix C” | Flow Metering, Monitoring and Recording Requirements |
| “Appendix D” | Semi-Annual Report Format |
| “Appendix E” | Supplemental Environmental Projects |

XXVI. FINAL JUDGMENT

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

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

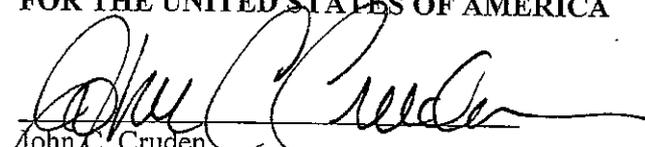
SO ORDERED THIS _____ DAY OF _____, _____.

United States District Judge

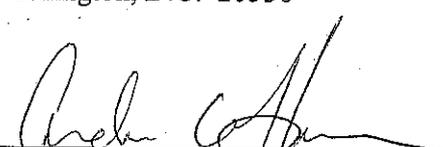
THE UNDERSIGNED PARTY enters into this Consent Decree in this action captioned United States and the State of Indiana v. City of Jeffersonville, Indiana (S.D. Ind.):

FOR THE UNITED STATES OF AMERICA

DATE: _____

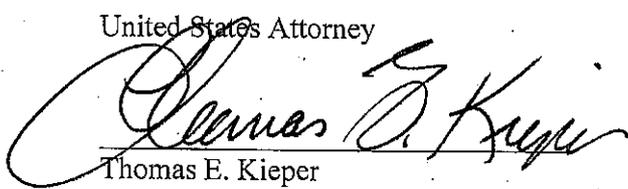

John C. Cruden
Acting Assistant Attorney General
Environment & Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

DATE: 8-17-09


Lisa A. Cherup, Trial Attorney
Andrew C. Hanson, Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-2802

TIMOTHY M. MORRISON

United States Attorney


Thomas E. Kieper
Assistant United States Attorney
Southern District of Indiana
10 West Market Street, Suite 2100
Indianapolis, IN 46204-3048

THE UNDERSIGNED PARTY enters into this Consent Decree in this action captioned United States and the State of Indiana v. City of Jeffersonville, Indiana (S.D. Ind.):

DATE: 9-8-09

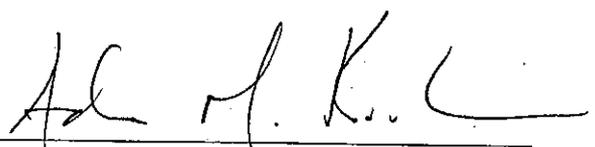
Bharat C. Mathur for
Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

DATE: August 31, 2009

Robert A. Kaplan
Acting for Robert A. Kaplan
Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

THE UNDERSIGNED PARTY enters into this Consent Decree in this action captioned United States and the State of Indiana v. City of Jeffersonville, Indiana (S.D. Ind.):

DATE: 9/15/09



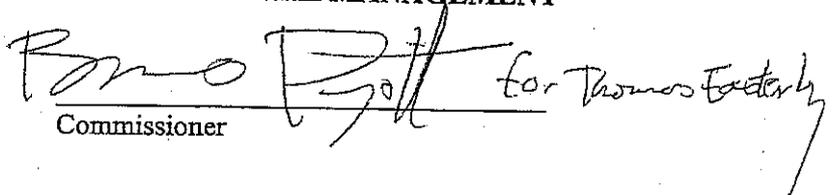
Adam M. Kushner
Director
Office of Civil Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20004

THE UNDERSIGNED PARTY enters into this Consent Decree in this action captioned United States and the State of Indiana v. City of Jeffersonville, Indiana (S.D. Ind.):

FOR THE STATE OF INDIANA

INDIANA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

DATE: 8/21/09

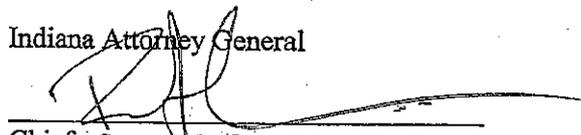

Commissioner

Approved as to form and legality:

DATE: 8/17/2009


Beth Admire
Attorney
Indiana Department of Environmental Management
100 North Senate Street
P.O. Box 6015
Indianapolis, IN 46206

DATE: 8/25/2009

Indiana Attorney General

Chief Counsel for Litigation
Office of the Attorney General
Indiana Government Center South
5th Floor
402 West Washington Street
Indianapolis, IN 46204

THE UNDERSIGNED PARTY enters into this Consent Decree in this action captioned United States and the State of Indiana v. City of Jeffersonville, Indiana (S.D. Ind.):

FOR THE CITY OF JEFFERSONVILLE

DATE: 8/6/2009

Thomas R. Yager Mayor

CONSENT DECREE APPENDIX A: Schedule for Long Term Control Plan Development and Completion.

For any of the deliverables identified below, any further revisions following receipt of U.S. EPA and/or IDEM comments shall be due within sixty (60) Days after Jeffersonville's receipt of the first set of comments, and within sixty (60) Days after the receipt of any subsequent set of comments, unless otherwise agreed to by parties on a case-by-case basis.

DELIVERABLE	DUE DATE
Submit Enhanced Flow Monitoring Data	July 1, 2009
Submit Sewer System Hydraulic Model calibration and validation report	October 1, 2009
Submit SRCER Update for Mill Creek, if required *	January 1, 2010
Submit Final Alternatives Analysis	December 1, 2009
Submit Final Financial Analysis	December 1, 2009
Submit CSO Control Measure Implementation Schedule, with date for Achievement of Full Operation	January 1, 2010
Submit Post Construction Monitoring Plan	January 1, 2010
Present Final Draft LTCP to the Public	February 1, 2010
Submission of final revised LTCP and LTCP Report	April 1, 2010

* The requirement for submittal of a SRCER Update for Mill Creek is contingent upon certain conditions specified in Paragraph B.1 of Appendix B to this Consent Decree.

CONSENT DECREE APPENDIX B: Long Term Control Plan ("LTCP") Requirements to be submitted in accordance with Schedule in Appendix A.

The Long Term Control Plan required under this Consent Decree and this Appendix B shall be developed and implemented in accordance with the CSO Control Policy and other relevant guidance as stated below.

A. Public and Regulatory Agency Participation Program.

Jeffersonville shall continue to implement its Public and Regulatory Agency Participation Program designed to ensure that there is ample public participation, and ample participation by the Plaintiffs, throughout the stages of the completion of the development of Jeffersonville's LTCP. The Program shall include, at a minimum, the features described below.

1. Jeffersonville shall continue to make information pertaining to the development and completion of the LTCP available to the public for review.
2. Jeffersonville shall continue to solicit comments from the public on significant aspects of the development and completion of the LTCP.
3. Jeffersonville shall include minutes from the public meetings in its Final Draft LTCP submission to IDEM and U.S.EPA on the Final Alternatives Analysis and the Final Draft LTCP, in accordance with the schedule in Appendix A to this Consent Decree.
4. Jeffersonville will consider comments provided by the public when completing development of its LTCP.
5. Jeffersonville shall continue to ensure that the Plaintiffs are kept informed of Jeffersonville's progress in completing the development of its LTCP, including participating in meetings with the Plaintiffs at meaningful times during the LTCP development process and submittal of reports to Plaintiffs summarizing the public comments received throughout implementation of the Public and Regulatory Agency Participation Program.

B. Sensitive Areas and Priority Area Stream Reach Characterization and Evaluation Report ("SRCER") and SRCER Update.

Jeffersonville conducted a SRCER to characterize water quality in, and the water quality impacts of CSO Discharges, other point sources, and non-point sources upon the Ohio River, Mill Creek, and Cane Run, and to facilitate the development, calibration, and validation of the modeling required pursuant to Section D of this Appendix, below. The SRCER identified *E.coli* as having significant potential water quality impacts from the CSO Discharges. The SRCER shall be revised to reflect the Priority Area and any Sensitive Areas and to reflect the public's use of the Ohio River for jet-skiing and kayaking as recreational uses.

1. In the event that the City of Jeffersonville chooses, as an alternative CSO control measure, the discharge of wet weather flow to Mill Creek from a wet weather treatment facility providing only primary equivalent treatment and disinfection, Jeffersonville will update the SRCER to include an identification of any Sensitive Areas associated with Mill Creek downstream of the point of the proposed Discharge.

2. The SRCER Update shall update the identification of Sensitive Areas in Mill Creek by conducting: (i) inquiries to appropriate state and federal agencies (to identify endangered /threatened species habitat, designated outstanding waters, and aquatic sanctuaries), and (ii) survey activities to identify potentially impacted drinking water sources and recreational uses, including primary contact recreational uses.

C. Sewer System Characterization and Monitoring Program.

As of the Date of Lodging of this Consent Decree, Jeffersonville has completed its Sewer System Characterization and Monitoring Program as part of its effort to develop its Long Term Control Plan. Jeffersonville shall submit the results of its Sewer System Characterization and Monitoring Program, and any supporting documentation and analyses, with its Draft Long Term Control Plan on the schedule identified in Appendix A and pursuant to Section XIII of the Consent Decree (Notices and Submissions).

D. Sewer System Hydraulic Modeling Program.

1. Jeffersonville shall update and implement its Sewer System Hydraulic Modeling Program (the "Updated Modeling Program") that provides for the development and utilization of a Hydraulic Model to aid in the evaluation of a range of potential water pollution treatment/control alternatives and to evaluate the impacts of such alternatives on the water quality of the receiving stream and the operation of the Sewer System. The Updated Modeling Program shall include, at a minimum, the features described below.

2. The Updated Modeling Program shall specify either the Hydraulic Model or other appropriate engineering analyses to be used in the completion of the LTCP. In addition, the Hydraulic Model, or other appropriate engineering analyses, shall be used in the development and implementation of operation and maintenance procedures and to establish priorities for, and evaluate the impacts of, proposed system modifications and upgrades. Jeffersonville shall also use the Hydraulic Model, or other appropriate engineering analyses, to assess the hydraulic capacities of the Pump Stations serving the separate sewer areas, and major sewers within the separate sewer areas and to identify whether those identified capacities are currently insufficient, or are expected to become insufficient, under future conditions (which shall include system modifications proposed by the LTCP). The evaluation of Sanitary Sewer System capacities is to assure that future Sanitary Sewer System characteristics shall be consistent with the CSO Control Measures that Jeffersonville shall propose in its LTCP.

a. At a minimum, the Hydraulic Model or other appropriate engineering analyses shall be capable of: (i) predicting base flows and wet weather flows generated by various wet weather events in the Combined Sewer System; (ii) predicting the hydraulic grade lines, volume and flow rates of wastewater in Force Mains and Gravity Sewer Segments; (iii) predicting the hydraulic pressure and flow capacity of wastewater at any point in force mains throughout the Combined Sewer System; (iv) predicting the flow capacity of each Pump Station; (v) predicting the flow capacity of all Gravity Sewer Segments in the Combined Sewer System; (vi) predicting the peak flows during wet weather and dry weather conditions for each Pump Station and all specified Gravity Sewer Segments; (vii) predicting the likelihood, location, duration and volume of Discharge from each CSO Discharge Outfall for a range of precipitation events (of varying durations and return frequencies); (viii) predicting wet weather flows at points where Jeffersonville's separate Sanitary Sewer System flows into the Combined Sewer System; (ix) predicting the peak instantaneous and sustained flows of combined sewage to the Facilities for a variety of storm events (of varying durations and return frequencies); (x) estimating wastewater flow, groundwater infiltration, runoff, and precipitation-induced infiltration and inflow ("I/I"); and (xi) supporting development of the LTCP.

b. As part of the Updated Modeling Program, Jeffersonville shall prepare and submit to Plaintiffs a Sewer System Hydraulic Model calibration and validation report in accordance with the schedule in Appendix A, which shall include: (i) a description of the Hydraulic Model; (ii) specific attributes, characteristics, and limitations of the Hydraulic Model; (iii) identification of all input parameters, constants, assumed values, and expected outputs; (iv) digitized map(s) and schematic(s) that identify and characterize the portions of the Combined Sewer System that shall be included in the Hydraulic Model; (v) identification of input data to be used; (vi) configuration of the Hydraulic Model; (vii) procedures and protocols for performance of sensitivity analyses (*i.e.*, how the Hydraulic Model responds to changes in input parameters and variables) and identification of the ranges within which calibration parameters shall be maintained; (viii) procedures for calibrating the Hydraulic Model to account for values representative of the Combined Sewer System and the Facilities using actual Combined Sewer System and Facilities data (e.g., flow data and hydraulic grade line data); (ix) procedures to verify the Hydraulic Model's performance using actual Combined Sewer System and Facilities data (e.g., flow data and hydraulic grade line data); (x) procedures for modeling wet weather flows from Sanitary Sewer System service areas tributary to the Combined Sewer System; and (xi) an expeditious schedule for the development and utilization of the Hydraulic Model.

3. Jeffersonville shall use the results from the SRCER, Hydraulic Model, and any other available and relevant water quality modeling efforts (including but not limited to water quality modeling completed by Ohio River Sanitary Commission) to predict water quality in the Receiving Waters, under existing and future predicted Jeffersonville conditions.

E. Long Term Control Plan

In accordance with the CSO Control Policy and other relevant guidance, as stated below, Jeffersonville shall complete the development and implementation of an LTCP that shall provide for the construction and implementation of all WWTP and Sewer System improvements and other CSO Control Measures necessary to: (i) ensure that Wet Weather CSO Discharges comply with the technology-based and water-quality based requirements of the CWA, state law, and regulation, and Jeffersonville's NPDES Permit; and (ii) eliminate SSD's. The LTCP shall build upon, and integrate the results of the SRCER, the SRCER Update, the Characterization Program, and the Updated Modeling Program. The LTCP shall include, at a minimum, the features described below.

1. The LTCP shall include an evaluation and screening of a wide range of alternatives for eliminating, reducing, or treating Wet Weather CSO Discharges. This screening shall result in the identification of an appropriate list of alternatives for further evaluation. This further evaluation shall consider the costs, effectiveness (in terms of overflow volume, and/or frequency reduction, pollutant loading reductions, etc.) and the water quality improvements of the appropriate list of alternatives. In performing the evaluation, Jeffersonville shall use the results of the SRCER, the Characterization Program, and the Hydraulic Model.

2. In identifying, assessing and selecting alternatives for its LTCP, Jeffersonville shall give the highest priority to controlling overflows to Sensitive Areas and to the Priority Area, consistent with Section II.C.3 of the CSO Control Policy. Jeffersonville's LTCP Report shall prohibit new or increased overflows to the Priority Area and any Sensitive Areas. Jeffersonville's LTCP shall, where physically possible and economically achievable and where doing so does not provide less environmental benefits than additional treatment, eliminate or relocate overflows that Discharge to the Priority Area and any Sensitive Areas. Where relocation or elimination of an overflow to the Priority Area and any Sensitive Area is not physically possible or economically achievable, or would provide less environmental benefit than additional treatment, Jeffersonville's LTCP shall provide for additional treatment as is necessary to meet water quality standards for full protection of all designated and existing uses.

3. The alternatives evaluated as part of the LTCP shall include, at a minimum, consideration of the following: (i) taking no-action; (ii) complete sewer separation; (iii) partial separation of various portions of the Combined Sewer System; (iv) installation of various sizes of storage or equalization basins at Jeffersonville's Facilities and/or in the Sewer System; (v) construction of new secondary or advanced wastewater treatment plants; (vi) construction of increased treatment capacities at the existing Facilities; (vii) construction of additional facilities

(such as high rate treatment or ballasted flocculation facilities) for providing primary treatment or better than primary treatment of Discharges from CSO Outfalls; (viii) construction of new intercepting sewers from the Sewer System to the Facilities; (vix) construction of facilities for providing disinfection (and dechlorination, if necessary) of CSO Discharges; (x) construction of facilities for removing floatables from CSO Discharges; (xi) construction of relief sewers; (xii) relocation of CSO Outfalls; (xiii) implementation of pretreatment measures to reduce flows and/or pollutants discharged into the Sewer System from Industrial Users; and (xiv) construction and/or implementation of combinations of these alternatives, utilizing the "alternatives analyses" portion of U.S. EPA's "Combined Sewer Overflows Guidance for Long-Term Control Plan" (1995).

4. For each alternative or combination of alternatives evaluated as part of the final LTCP, Jeffersonville's assessment shall include, at a minimum, an evaluation of the technical feasibility and applicability of each alternative or combination of alternatives at each CSO Outfall or grouping of CSO Outfalls.

5. For each alternative or combination of alternatives evaluated as part of the final LTCP and through the aforementioned screening process found to be technically feasible and applicable, Jeffersonville's assessment shall include an evaluation of a range of sizes of each alternative, with the exception of the alternatives identified in Paragraph E.3(i), (ii), (xi), and (xii), or combination of alternatives, that shall:

a. Provide capture and/or treatment, on an annual average basis, of a range of combined storm and sanitary wastewater flows, including 75%, 85%, 90%, 95% and 100% or an equivalent range of capture rates; or

b. Reduce the average number of untreated Wet Weather CSO Discharge events per year to a specified range, including 0, 1-3, 4-7 and 8-12, events per year.

6. For each alternative or combination of alternatives evaluated through the aforementioned screening process that is found to be technically feasible and applicable as part of the LTCP, Jeffersonville's assessment shall include a determination of the estimated project costs, as that term is described on pages 3-49 through 3-51 of the U.S. EPA's "Combined Sewer Overflows Guidance for Long-Term Control Plan," (1995) for each alternative or combination of alternatives. The determination of the estimated project costs shall include:

a. "Capital costs," "annual operation and maintenance costs," and "life cycle costs," as those terms are described on pages 3-49 through 3-51 of U.S. EPA's "Combined Sewer Overflows Guidance for Long-Term Control Plan" (1995); and

b. An itemization of the "capital costs" and "annual operation and maintenance costs" used to determine the total "project costs" for each separate component of each alternative or combination of alternatives.

7. For each alternative or combination of alternatives evaluated through the aforementioned screening process that is found to be technically feasible and applicable as part of the LTCP, Jeffersonville's assessment shall include an evaluation, using the results of the SRCER and SRCER Update, of the expected water quality improvements in the Receiving Waters that shall result from implementation of each alternative or combination of alternatives.

8. For each alternative or combination of alternatives evaluated through the aforementioned screening process that is found to be technically feasible and applicable as part of the LTCP, Jeffersonville's assessment shall include a cost-performance analysis, such as a "knee of the curve" analysis, for each alternative or combination of alternatives, that shall allow for the comparison of the costs to: (i) the associated expected water quality improvements; (ii) the reduction of Wet Weather CSO Discharge volume, duration, and frequency; (iii) the reduction in Wet Weather CSO Discharge events; and/or (iv) the estimated reduction in pollutant loading from Wet Weather CSO Discharge events.

9. The LTCP shall include an evaluation of Jeffersonville's financial capability to fund the selected alternative or combination of alternatives including analysis of: (i) median household income/total project cost per household; (ii) per capita debt as a percent of full market property value; (iii) property tax revenues as a percent of full market property value; (iv) property tax collection rate; (v) unemployment rate; (vi) current and projected residential, commercial and industrial user fees; (vii) bond rating; (viii) bond capacity for the next twenty years; (ix) grant and/or loan eligibility and availability; (x) other viable funding mechanisms and sources of financing; and (xi) other factors which may be applicable to the financial evaluation.

10. The LTCP shall include the selection of CSO Control Measures, including the construction all Sewer System and WWTP improvements, necessary to ensure compliance with the technology-based and water-quality based requirements of the CWA, state law and regulation, and Jeffersonville's NPDES Permit.

11. As provided in Appendix A, the LTCP shall include an expeditious schedule for the design, construction, and implementation of all CSO Control Measures described in Paragraph E.10 of this Appendix and a proposed date for Achievement of Full Operation. The highest priority being given to eliminating Discharges to the Priority Area and any Sensitive Areas and to those projects which most reduce the Discharge of pollutants. The schedule shall specify critical construction milestones for each specific measure, including dates for: (i) submission of applications for all permits required by law; (ii) commencement of construction; (iii) completion of construction; and (iv) Achievement of Full Operation.

12. As provided in Appendix A, the LTCP shall include a post-construction monitoring program which shall assess the effectiveness of the selected and completed CSO Control Measures upon Achievement of Full Operation and thereafter. This program shall be consistent with the guidance "Combined Sewer Overflows: Guidance for Long-Term Control Plan" (1995).

CONSENT DECREE APPENDIX C: Flow Metering, Monitoring, and Recording

Section 1 - Flow Meter and Measurement Location Designations

Jeffersonville shall submit, by November 1st of each year, the location of each flow meter in the entire Sewer System, as well as flow meters within the WWTP (at the headworks, final discharge point and throughout plant) in accordance with the format shown below.

Location	Description	Type of Flow Meter	Measures flow at what point in system	Longitude/ Latitude
A	Tenth Street Pump Station	Ultrasonic	Flow from Combined and Sanitary Sewer Area	38 16 45 N 85 46 00 W
B	Spring Street Lift Station	Ultrasonic	Flow from Northwest Sanitary Sewer Area	
C	Mill Creek Lift Station	Ultrasonic	Flow from North and Northeast sanitary sewer Area	
D	CSO 008 – Spring Street	AV meter		38 16 10 N 85 44 20 W
E	CSO 009 – Wall Street	AV Meter		38 06 12 N 85 44 15 W
F	CSO 010- Walnut Street	AV Meter		38 16 15 N 85 44 05 W
G	CSO 011 – Meigs Avenue	AV Meter		38 16 20 N 85 43 55 W
H	CSO 013 – Graham Street	AV Meter		38 16 35 N 85 43 35 W

I	CSO 018 – Tenth Street Pump Station	AV Meter		38 16 45 N 85 46 00 W
J	CSO 021 – Mechanic Street	AV Meter		38 16 20 N 85 43 55 W
K	CSO 007 – Clark Street	AV Meter		38 16 05 N 85 44 45 W
L	Raw Influent	3-ft Parshall Flume		
M	Final Effluent	3-ft Parshall Flume		38 17 12 N 85 44 38.5 W
N	Return Sludge Flow	Mag Meter		
O	Waste Sludge Flow	Mag Meter		

Section 2 Flow Metering, Monitoring, and Recording Requirements

Jeffersonville shall install, as necessary, and utilize flow metering, measuring, and recording equipment capable of continuously, reliably, and accurately measuring and recording the flow rate, flow duration (including beginning and ending times), and flow volume of Discharges from each CSO Outfall in the Combined Sewer System, and any designed SSO Outfalls in the Sanitary Sewer System. The flow recording equipment shall provide for continuous chart recording of the instantaneous raw influent wet-well level, as well as the duration (including beginning and ending times), the instantaneous flow rate, and the integrated/totalized flow volume of discharges from each CSO Outfall. The electronic recording equipment shall display instantaneous flow rate data continuously and shall record instantaneous flow rate and integrated/totalized flow volume data in at least five minute increments. Jeffersonville shall configure and calibrate the flow metering, measuring, and recording equipment such that an accuracy of better than or equal to +/- 15% is achieved for the flow volume and the flow rate, and such that an accuracy of better than or equal to +/- one minute is achieved at all times.

CONSENT DECREE APPENDIX D: Format for Semi-Annual Report and Statement of Certification

**Semi-Annual Report for _____, 20____
And Semi-Annual Statement or Certification
Regarding Compliance with Certain Consent Decree Provisions**

Section VI.B. Revisions to CSO Operational Plan

State the status of annual review of the CSO Operational Plan, and whether any updates were necessary based on onsite physical operational changes or based on U.S. EPA's and IDEM's review and approval of the CSO Operational Plan in accordance with Section XIV of the Consent Decree (Review and Approval of Submittals).

State the status of implementation of the last approved Annual CSO Operational Plan Update, including implementation of each of the Nine Minimum Controls identified in the approved CSO Operational Plan.

State the status of the permanent removal of CSO Outfall 006 (Riverpointe Overflow), CSO Outfall 007 (Clark Street), and CSO Outfall 012 (Penn Street).

States the results of annual inspection of all CSO Outfalls not eliminated pursuant to the approved LTCP Report, and any repairs made to those CSO Outfalls during the reporting period.

Section VI.C. Maximizing Existing Flow and Storage Capacity of the Sewer Systems

Prepare a table summarizing the date, duration, volume, and beginning time and ending time of all discharges from CSO Outfall 018 that occurred on Days when the WWTP treated flows less than 25 MGD on a 3-hour basis and/or 21.1 MGD on a 24-hour basis (or other approved Maximum Treatable Flow following upgrade of the WWTP), the cause(s) of the Discharges, and all remedial actions undertaken to prevent the recurrence of the Discharges.

Section VI.E. Long Term Improvement of the WWTPs and Sewer System Operations

State the status of compliance with the Schedule for LTCP Development and Completion in Appendix A to this Consent Decree.

State the status of progress toward Achievement of Full Operation for all CSO Control Measures.

Section VI.F. Sewer System Capacity Management, Operation, and Maintenance Program

State the status of the elimination and/or permanent sealing of all designed and constructed SSO Outfalls within its Sanitary Sewer System.

State the status of the completion of a Sewer System Capacity Management, Operation, and Maintenance Program.

State all activities undertaken pursuant to the approved Sewer System Capacity Management, Operation, and Maintenance Program Plan, including but not limited to:

Collection System Management

- **Organizational Structure of the program:** Any changes to listed personnel, listed chain of command, and listed assigned responsibilities as of the close of the reporting period.
- **Training:** The list of legal, programmatic, and functional training developed, and delivered to affected personnel the last reporting period.
- **Internal Communication Procedures:** A description of the defined chain of command and any changes thereto; a description of how frequently maintenance staff communicate with operation and maintenance managers, and how frequently maintenance managers communicate with the Sanitary Sewer Board, and the means of such communication.
- **Customer Service:** A description of the listed method of warning notification of SSOs or sewer problems to affected customers; any changes to the customer complaint system to collect, respond, and complete corrective actions for complaints.
- **Management Information Systems:** A description of electronic and hard copy data management; file storage system; location of customer complaints; and percent of work orders showing corrective actions completed before closeout.
- **SSO Notification Program:** A table describing the location, duration, and volume of each SSO that occurred during the reporting period, specifically identifying Building/Property Backups.
- **Legal Authority:** A description of any changes to the current sewer use ordinance and enforcement authorities identified in the Sewer System CMOM Program.

Collection System Operation

- **Budgeting:** A list of the most recent annually approved capital and expense budgets for the Sanitary Sewer System.
- **Monitoring:** A description of how the Sanitary Sewer System is monitored, the number and location of sensors and/or frequency of visual SSO monitoring.
- **Hydrogen Sulfide Monitoring and Control:** A list segments identified during the reporting period as having hydrogen sulfide problems, and the steps taken during the reporting period to reduce hydrogen sulfide production; and analyses used to document the concentration of hydrogen sulfide in the wastewater after chemical addition.

- **Safety:** A list of the written safety procedures and a schedule of safety training for employees.
- **Emergency Preparedness and Response:** A description of the written emergency preparedness and response plans and a copy of any incident reports issued during the reporting period.
- **Modeling:** A description of the status of use of the calibrated and verified hydraulic model during the reporting period.
- **Mapping:** A description of the percentage of the Sewer System mapped (% of sewer mapped); the number of GIS points entered into the database; and the percent of laterals included in GIS database.
- **New Construction:** A description of the sewer design requirements for new construction contained in the Jeffersonville Design Standards.
- **Pump Stations:** A list of locations and capacities of all Pump Stations; the number of the completed inspections of Pump Stations during the last reporting period, including the scope of the inspection for each; the number of Pump Stations with fixed backup generator power and plans to cover all with backup power; and the frequency of inspection at each Pump Station during the reporting period; steps taken to ensure that each Pump Station has an adequate source of backup power.

Equipment and Collection System Maintenance

- **Maintenance Budgeting:** Describe the most recently approved annual budget for collection system operations and maintenance.
- **Planned and Unplanned Maintenance:** A description of the preventive maintenance program and a description of how Jeffersonville ensures "24-hour coverage," such that maintenance personnel are available to respond to Sewer System emergencies.
- **Sewer Cleaning:** The number of feet of Sewer Segments cleaned, the dates of such cleaning (including for root intrusion, grease, and other causes of blockages), the location of such Sewer Segments as identified on a locational map; a percentage comparison of the feet of Sewer Segments cleaned as a comparison to the number of feet of Sewer Segments in the entire Sewer System, and an estimate of the number of feet of additional Sewer Segments planned for cleaning the following 6 month reporting period.
- **Parts and Equipment Inventory:** A list of spare parts, critical spare parts, long lead time replacement parts, parts interchangeability, and storage locations of the parts.

Sewer System Capacity Evaluation - Testing and Inspection

- **Flow Monitoring:** A description of all continuous WWTP flow monitoring activities and an identification of average dry and wet weather flow rates relative to population daily average and wet weather gallon per capita per day rates during the last reporting period.
- **Sewer System Testing:** A description of the status of any and all inflow/infiltration analyses of Sewer Segments completed during this reporting period; the number of smoke tests completed for illegal downspout or other illegal building clearwater connections; a

list of the number of clearwater connections identified and removed and calculated reductions in volume of inflow resulting therefrom.

- **Sewer System Inspection:**
 - A description of the status of the scheduling and completion of the following: sewer manhole inspections, Sewer Segments in proximity to SSOs that were evaluated with closed circuit television; Sewer Segments evaluated with closed circuit television which are not directly associated with SSOs; the percent of total Sewer Segment and manhole inspections completed for the reporting period, as compared to the entire Sewer System.
 - A description of any Building/Property Backups, their location and volume, and whether the Building/Property Backup was related to the City's Sewer System capacity. For those Building/Property Backups caused by insufficient Sewer System capacity, a description of actions taken or to be taken to improve Sewer System capacity in the affected area(s).
- **Sewer System Rehabilitation:** A description of the infiltration/inflow analyses performed during the last reporting period; the status of the completion of any Sewer System Evaluation Survey; a description of the amount of excessive infiltration/inflow determined; a plan to target the construction or rehabilitation of the Sewer System; a plan to eliminate infiltration/inflow and a description of the status of its implementation, with priority given to areas with SSO problems first, followed by the most cost-effective rehabilitation measures; a report on the Sewer Segments which have undergone rehabilitation or replacement during the last reporting period, the cost for the rehabilitation or replacement, and the amount of infiltration/inflow anticipated to be removed from each of the listed rehabilitations or replacements; and, the amount of infiltration/inflow removed, if any, during the last reporting period.

Any other information documenting adherence to the approved Sewer System Capacity, Management, Operation and Maintenance Program.

Section VIII Supplemental Environmental Projects

State the status of completion of Defendant's progress in satisfying its obligations in connection with the SEPs required under Section VIII of this Decree and Appendix E including, at a minimum, a narrative description of activities undertaken; status of any construction or compliance measures, including the completion of milestones set forth in Appendix E, and a summary of costs incurred since the previous report.

Section IX Payment of Any Stipulated Penalties

Any Other Information Necessary to Determine Compliance Status

Annual Statement or Certification

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gather and present the information contained therein. I further certify, based on my inquiry of those individuals immediately responsible for obtaining the information, that I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

[Signature of authorized official]

CONSENT DECREE APPENDIX E: Supplemental Environmental Projects

A. Federal Supplemental Environmental Project

1. *Project Overview and Purpose*

Jeffersonville shall construct and implement a constructed wetland stormwater treatment system at an industrial park known as the River Ridge Commerce Center (RRCC). The purpose of the Federal SEP is to significantly improve the quality of storm water discharging from the detention basin and into Lentzier Creek, a tributary to the Ohio River.

Construction and planning of the RRCC is a joint project of the City and the River Ridge Development Authority (RRDA). The RRCC is located on what was formerly the Indiana Army Ammunition Plant (INAAP), which consists of a 9,700 acre property immediately northeast of Jeffersonville, also on the Ohio River. The Department of the Army has been transferring parcels of the INAAP property to the Indiana Department of Natural Resources and the RRDA. The property on which the City will perform the SEP is currently owned by the RRDA. The City is in the process of providing water and wastewater utilities to the RRCC and surrounding areas.

Due to its current use as a commercial center and industrial park, the RRCC contains a relatively large amount of impervious area with the potential to generate large quantities of storm water runoff carrying various pollutants including heavy metals, oils and greases, phosphorus, nitrogen and total suspended solids. Since the RRCC is located within the previous site for the Indiana Army Ammunition Plant, stormwater runoff may include traces of lead and other hazardous materials.

Storm water runoff from the RRCC flows into a detention basin located to the south of the facility. Currently, this runoff does not receive treatment before discharging into Lentzier Creek. Constructed wetlands are an effective means for providing removal of pollutants from storm water through natural processes, including the microbial breakdown of pollutants, plant uptake, retention, settling and adsorption.

2. *Project Scope, Schedule, and Cost*

Shown on Figure 1, attached to this Appendix E, Jeffersonville shall construct an approximately 1.2 acre constructed wetland northwest of the detention basin, an approximately 0.5 acre constructed wetland southwest of the detention basin, and a 2,400 square foot vegetated filter located at the effluent end of the detention basin. The vegetated filter shall consist of different species of Carex (sedges), Scirpus (bulrushes), Fowl Manna Grass, Switch Grass & Wild Rye Species. Jeffersonville shall plant the vegetation as plugs to insure initial survivability.

For at least two months prior to commencing construction of the Federal SEP, Jeffersonville shall sample water quality in the detention basin effluent. After the construction of

the facilities identified in Figure 1 is complete, Jeffersonville shall sample the effluent from the vegetated filter to document any improvement in the quality of the effluent discharging from the constructed wetlands and vegetated filter strip.

For all water quality sampling, Jeffersonville shall use automatic samplers designed to collect stormwater samples. At a minimum, Jeffersonville shall analyze the water quality samples for the following pollutants and parameters: cadmium, chromium, copper, cyanide, lead, mercury, nickel, silver, zinc, five day biological oxygen demand, total suspended solids, chemical oxygen demand, nitrates, ammonia, phosphorus, oil & grease.

Jeffersonville shall take samples of the pollutants and parameters described in the above Paragraph at the influent to and the effluent from the existing detention basin for the pollutants listed above. At a minimum, Jeffersonville shall take at least one sample of each of the above pollutants and parameters before completing the constructed wetlands identified in Figure 1, attached to this Appendix E. Jeffersonville shall take two samples of each of the pollutants and parameters in the above paragraph after it has completed the constructed wetlands and vegetated filter. Jeffersonville shall take its first sample within thirty (30) Days after completion of construction of the wetland and vegetated filter. Jeffersonville shall take the second sample by October 31, 2010. If no water quality improvement is shown in the first and second water quality sampling events referred to above, Jeffersonville shall continue to take at least one water quality sample every thirty (30) Days until such improvement is shown by the sample results.

Jeffersonville shall complete the Federal SEP on the following schedule:

Complete Design:	60 Days after the Effective Date
Award Contracts:	120 Days after the Effective Date
Complete Construction:	210 Days after the Effective Date

Jeffersonville in good faith estimates that the cost to implement the Federal SEP, exclusive of inventory on hand, overhead, additional employee time and salary, administrative expenses, legal fees, and contractor oversight costs, is \$130,000.

3. Progress Reports

Jeffersonville shall provide progress reports in accordance with Section XII of the Consent Decree (Reporting Requirements) and Appendix D to this Consent Decree.

Until Jeffersonville has completed the requirements of Section A.4 of this Appendix E, below, Jeffersonville shall submit progress reports every six months describing any water quality improvements achieved by the Federal SEP.

4. Compliance

Jeffersonville shall be in compliance with the requirement to implement the Federal SEP provided it has:

- a. completed construction of the Federal SEP;
- b. expended all funds in furtherance of construction of the Federal SEP;
- c. has demonstrated that for two consecutive years after the completion of construction and prior to the termination of the Consent Decree, Native plant species excluding *Typha spp.* (cattail) in each constructed wetland have an areal cover of at least:
 - i. 60% in saturated tree, shrub, sedge meadow, or wet prairie communities;
 - ii. 50% in inundated tree or shrub, and shallow emergent communities;
 - iii. 30% in deep emergent communities (average water depth >8 inches);
 - iv. No more than 10% of the surface area coverage of each constructed wetland may be open water, bare ground, or a combination of the two. Open water and bare ground are defined as areas with less than 10% areal vegetative cover.
- d. has demonstrated an improvement to storm water quality by October 31, 2010 or until such improvement to storm water quality is demonstrated as shown by water quality samples, whichever is later; and,
- e. complied with the requirement to submit a Federal SEP Completion Report in accordance with Paragraph 39 of the Consent Decree.

5. Modification/Substitution of Projects

Jeffersonville may modify the project or may substitute a similar project for the improvement of storm water quality identified above with advance written approval of U.S. EPA in accordance with Section XIV (Review and Approval Procedures), provided that the alternative SEP represents costs at least equal to those described in Section A.2 of this Appendix E for improvement of storm water quality for the RRCC.

B. State Supplemental Environmental Project

1. Project Overview and Purpose.

Jeffersonville shall construct pervious pavers and a rain garden in Preservation Park, located in the City of Jeffersonville on the north side of Market Street and to the east of Pearl Street. The purpose of this project is to reduce or eliminate the flow of stormwater from Preservation Park to the Combined Sewer System, and to demonstrate to the public the effectiveness of green infrastructure technologies in the City of Jeffersonville.

Preservation Park is relatively flat and has a long history of poor drainage related to ineffective grading. The poor drainage has caused problems with grass growth, access, and concrete durability. In addition, the lack of vegetation has triggered erosion and increased the rate of runoff flowing to surrounding sewers. Those sewers are in close proximity to several of the Jeffersonville's CSO Outfalls.

To improve the overall usability of Preservation Park to the public, improve drainage conditions, and reduce stormwater runoff to Jeffersonville's CSOs. Jeffersonville shall install pervious pavers (as shown on Figure 2, attached to this Appendix E) to provide an avenue for runoff to infiltrate underlying subgrade soils. Jeffersonville shall regrade the park as necessary to direct runoff to the pervious pavers so that most of the runoff from the park will infiltrate subsurface soils through the pervious paver section.

Jeffersonville shall also install a rain garden close to the existing "caboose" building to receive roof runoff and discharge it to the soil subgrade. Jeffersonville shall plant the rain garden with native species that are tolerant of variable soil moisture conditions.

2. Project Scope, Schedule, and Cost

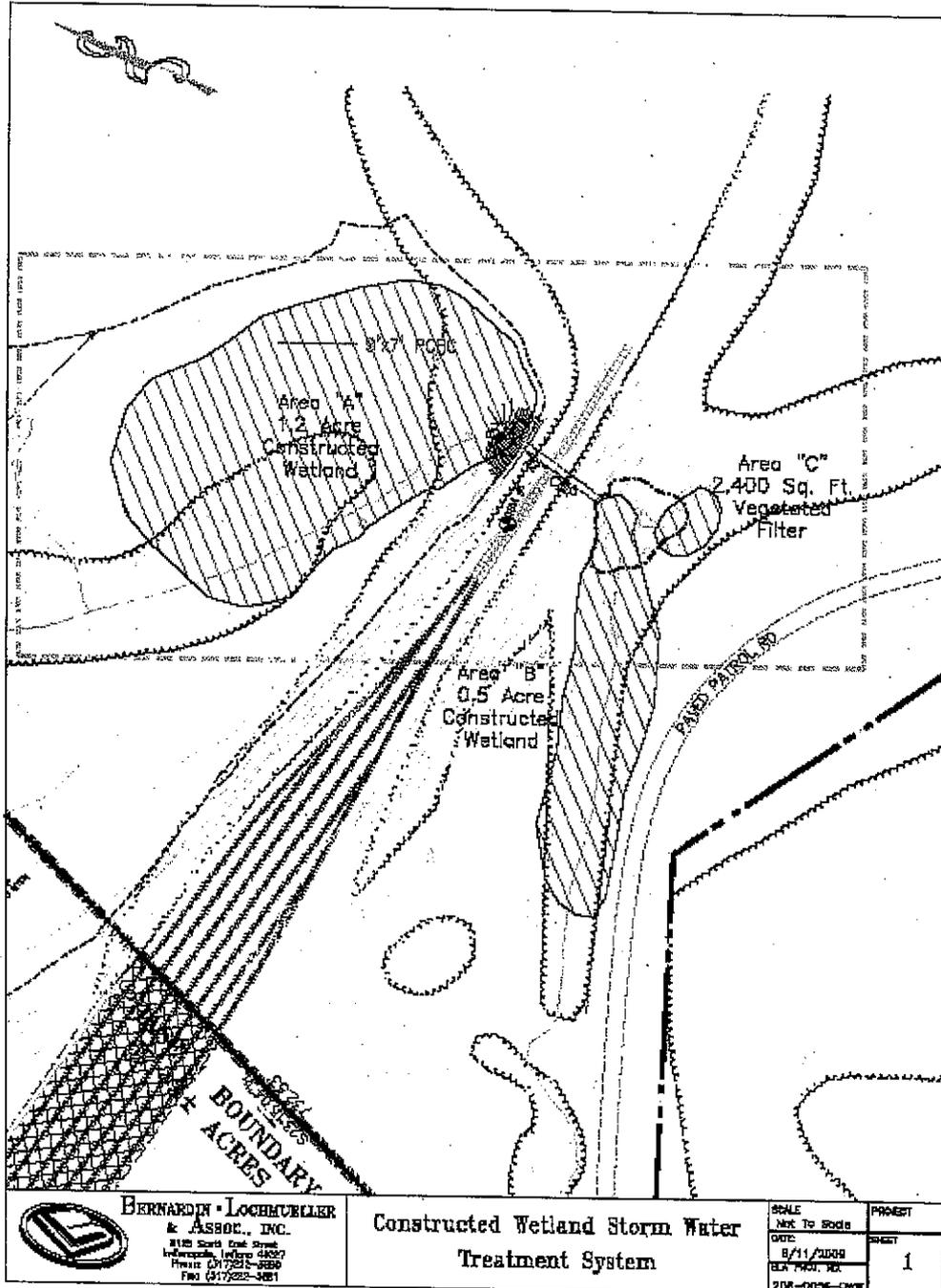
Jeffersonville shall construct the pervious pavers and the rain garden in accordance with this Appendix E and Figure 2, attached to this Appendix E. Jeffersonville estimates that it will cost approximately \$110,550, with engineering and design fees of \$7,500, for a total of \$118,050. These costs do not include the purchase and installation of benches, swings, trash receptacles, walls, nor do they include administrative costs, maintenance costs or annual fees. All construction and design fees are one-time capital expenditures.

Jeffersonville shall construct the State SEP by October 30, 2009.

3. Progress Reports

Jeffersonville shall provide progress reports in accordance with Section XII of the Consent Decree (Reporting Requirements) and Appendix D to this Consent Decree.

CONSENT DECREE APPENDIX E: Supplemental Environmental Projects
Figure 1



CONSENT DECREE APPENDIX E: Supplemental Environmental Projects
Figure 2

