

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
and	)	
	)	
THE STATE OF OHIO,	)	
	)	Civil Action No. 3:91:CV7646
Plaintiffs,	)	Judge James G. Carr
	)	
v.	)	
	)	
THE CITY OF TOLEDO, OHIO,	)	
A Municipal Corporation,	)	
	)	
Defendant.	)	
_____	)	

CONSENT DECREE

WHEREAS:

Plaintiff, United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("U.S. EPA"), filed a complaint in this civil action on October 29, 1991, and amended its complaint on Dec. 17, 1992, against Defendant, the City of Toledo, Ohio ("Toledo" or "Defendant").

The State of Ohio ("Ohio") was originally named as a defendant pursuant to Section 309(e) of the Clean Water Act (also referred to herein as the "Act"), 33 U.S.C. § 1319(e); Ohio moved, and this Court granted Ohio's motion, to be realigned as a party plaintiff in this Action. Ohio then filed a complaint and, subsequently, an amended complaint against Toledo.

Toledo is a municipal corporation organized and existing under the laws of the State of Ohio. Toledo owns and operates the Bayview Wastewater Treatment Plant ("WWTP") located in Lucas County, at 3900 N. Summit Street, Toledo, Ohio; the treatment plant discharges

pollutants into the Maumee River, which flows into Lake Erie.

The United States brings its claims pursuant to Section 309 of the Act, 33 U.S.C. § 1319. In its amended complaint, the United States seeks the imposition of civil penalties and injunctive relief for violations of Section 301(a) of the Act, 33 U.S.C. § 1311(a), and terms and conditions of National Pollutant Discharge Elimination System (“NPDES”) permits issued by Ohio as Permit Nos. 2PF00000\*FD, as modified and renewed, including Permit Nos. 2PF00000\*GD and 2PF00000\*HD, and Toledo’s Current Permit, as defined below. Toledo’s current permit as of the date of the lodging of this Consent Decree is 2PF00000\*JD. The application number for these permits, and thus the U.S. EPA number for these permits, is OH0027740. Ohio brings its claims pursuant to Section 505(a) of the Act, 33 U.S.C. § 1365(a) and pursuant to Chapter 6111 of the Ohio Revised Code. In its amended complaint, Ohio seeks the imposition of civil penalties and injunctive relief pursuant to Section 301(a) of the Act, 33 U.S.C. § 1311(a), Chapter 6111 of the Ohio Revised Code, and terms and conditions of Toledo’s NPDES permits, as described above in this Paragraph. Toledo’s payment of these civil penalties and acceptance of the terms of this Decree resolve the allegations in the amended complaints of the United States and Ohio and other matters addressed herein.

Defendant, without making any admission of fact or law or evidence of same, or of any violation of any law or regulation, and Plaintiffs agree by entering this Decree that settlement of these matters, without further protracted litigation is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

#### I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action and over the parties

consenting thereto pursuant to 28 U.S.C. §§ 1345, 1355 and 1367, and Sections 309(b) and 505(a) of the Act, 33 U.S.C. §§ 1319(b) and 1365(a). The amended complaints of the United States and the State of Ohio state claims upon which relief can be granted under Section 309 of the Act, 33 U.S.C. § 1319. Venue is proper pursuant to Section 309(b) of the Act, 33 U.S.C. §§ 1319(b) and 1365(c), 28 U.S.C. §§ 1391(b) and (c) and 1395(b).

## II. APPLICABILITY

2. The provisions of this Consent Decree shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, and assigns and any person having notice of this Consent Decree who is, or will be, acting in concert or participation with Toledo. Toledo shall provide a copy of this Consent Decree to any successor in interest at least thirty (30) days prior to transfer of that interest, and simultaneously shall verify in writing to U.S. EPA that such notice has been given. Any sale or transfer of Toledo's interests in or operating role with respect to the Bayview WWTP shall not in any manner relieve Toledo of its responsibilities for meeting the terms and conditions of this Consent Decree. In any action to enforce this Consent Decree, Toledo shall not raise as a defense the failure by any of its officers, directors, agents, employees, successors, assigns, or contractors to take actions necessary to comply with the Decree.

## III. OBJECTIVES

3. It is the express purpose of the parties in entering this Consent Decree to further the objectives of the Act, as enunciated at Section 101 of the Act, 33 U.S.C. § 1251, and the objectives of Chapter 6111 of the Ohio Revised Code. All plans, reports, construction, remedial maintenance, and other obligations in this Consent Decree or resulting from the activities

required by this Consent Decree shall have the objective of causing Toledo to come into and remain in full compliance with the terms and conditions of Toledo's Current Permit, to meet the objectives of U.S. EPA's April 19, 1994 "Combined Sewer Overflow (CSO) Policy," and to eliminate sanitary sewer discharges, as these terms are defined in Paragraph 4 of this Consent Decree. The remedies, timetables and studies required under this Consent Decree are the feasible alternatives to address those matters alleged as violations in the amended complaints.

#### IV. DEFINITIONS

4. Unless otherwise defined herein, terms used in this Decree shall have the meaning given to those terms in the Act, 33 U.S.C. § 1251 et seq., the regulations promulgated thereunder at 40 C.F.R. § 122, Chapter 6111 of the Ohio Revised Code, the regulations promulgated under that Chapter, and in Toledo's NPDES Permit, No. 2PF00000\*JD.

(a) "Bayview WWTP" means the Bayview Wastewater Treatment Plant.

(b) "Combined Sewer Overflow" or "CSO" shall mean any discharge from any outfall identified in Toledo's Current Permit, as defined below except for outfalls 001 and 002.

(c) "Combined Sewer Overflow Outfall" or "CSO Outfall" shall mean the outfall from which CSOs are discharged.

(d) "Combined Sewer System" or "CSS" shall mean the portion of Toledo's Sewer System designed to convey municipal sewage (domestic, commercial and industrial wastewaters) and stormwater runoff through a single-pipe system to the Bayview WWTP or to a combined sewer overflow structure.

(e) "Defendant" shall mean the City of Toledo, Ohio.

(f) "Design" shall include detailed plans and specifications.

(g) “Infiltration” means the water entering a sewer system and service connections from the ground, through means including, but not limited to, defective pipes and sewer walls, pipe and sewer joints, connections, and manhole walls.

(h) “Inflow” means the water discharged into a sewer system, including service connections, from sources including, but not limited to, roof leaders, cellars, yard and area drains, foundation drains, cooling water discharges, drains from springs and swampy areas, manhole covers, cross connections from storm sewers and combined sewers, catch basins, storm waters, surface run-off, street wash waters, and drainage.

(i) “Infiltration/Inflow” and “I/I” mean infiltration and/or inflow.

(j) “MGD” or “mgd” means million gallons per day.

(k) “Monthly Operating Report” or “MOR” is defined as the discharge monitoring report which Toledo submits to the Ohio Environmental Protection Agency on a monthly basis pursuant to Section III.4 of Toledo’s NPDES Permit No. 2PF00000\*JD, and any similar provision in Toledo’s Current Permit.

(l) “Ohio EPA” means the State of Ohio Environmental Protection Agency.

(m) “Outfall 001” and “outfall 002” refer to the outfalls identified as outfalls 001 and 002 in Toledo’s National Pollutant Discharge Elimination System Permit No. 2PF00000\*JD, effective November 1, 1994.

(n) “Plaintiffs” mean the United States of America, on behalf of U.S. EPA, and the State of Ohio.

(o) “Sanitary Sewer Discharge,” and “SSD” shall mean any discharge to waters of the State or United States from Toledo’s Sanitary Sewer System through a point source not

specified in any NPDES permit. SSDs include discharges from portable overflows.

(p) “Sanitary Sewer System” or “SSS” shall mean all portions of Toledo’s Sewer System that are not a part of the Toledo’s Combined Sewer System.

(q) “Sewer System” shall mean the wastewater collection and transmission system owned or operated by Toledo designed to collect and convey municipal sewage (domestic, commercial and industrial) to Toledo’s Wastewater Treatment Plants or to a combined sewer overflow structure. “Sewer System” includes both the “Combined Sewer System” and the “Sanitary Sewer System.”

(r) “Ten-year storm event” shall mean a rain event in which the total amount of rainfall during a one-hour period during the event exceeds the amount specified in the “Rainfall Frequency Atlas of the Midwest” (Midwest Climate Center, National Weather Service, 1992) for the ten-year return frequency, one-hour duration storm event for Toledo.

(s) “Toledo’s Current Permit” means Toledo’s National Pollutant Discharge Elimination System Permit No. 2PF00000\*JD, effective November 1, 1994, and any such permit which succeeds Permit No. 2PF00000\*JD issued to Toledo, and which is in effect at a particular time in question.

## V. COMPLIANCE PROGRAM AND SCHEDULES

5. Toledo is ordered and enjoined to achieve and maintain compliance with Toledo’s Current Permit and the provisions of the Act, 33 U.S.C. § 1281 et seq. and Ohio Revised Code Chapter 6111 in accordance with the compliance program and schedules set forth below.

### A. Compliance with NPDES Permit

6. Toledo shall at all times comply with all effluent limitations applicable to Outfall 001

in Toledo's Current Permit and with the requirement set forth in Toledo's Current Permit that any discharges from Combined Sewer Overflows may occur only during wet weather periods when the flow in the sewer system exceeds the capacity of the sewer system.

2. Phase I Design and Construction of Improvements at the Bayview WWTP and to Portions of the Combined Sewer System

7. Toledo shall submit for approval by U.S. EPA and Ohio EPA the design of various Bayview WWTP improvements according to the following schedule:

(a) Within twelve months after the entry of this Consent Decree, Toledo shall submit the design for improvements to its large pump stations, including structural and mechanical renovations to the East Side Pump Station and Bay View Pump Stations; and structural, mechanical and electrical renovations to the Windermere Pump Station, including new bar screens and variable frequency drives for two raw sewage pumps;

(b) Within fifteen months after the entry of this Consent Decree, Toledo shall submit the design for backup power for the secondary system, including the addition of multiple diesel or gas fired electric generators with sufficient capacity to run the electric blowers and the activated sludge process;

(c) Within twenty-seven months after the entry of this Consent Decree, Toledo shall submit the design for replacement of the diesel drive blowers in the Mechanical Equipment Building with electric motor driven blowers. This will include structural, electrical and mechanical renovations to the Mechanical Equipment Building, blower controls and computer control through the plant's control system;

(d) Within twenty-four months after the entry of this Consent Decree, Toledo

shall submit the design for an equalization basin, to be used to capture and store peak wastewater flows and to return the stored wastewater to the Bayview WWTP for treatment, with a capacity of no less than sixty million gallons;

(e) Within fifteen months after the entry of this Consent Decree, Toledo shall submit the design for an additional secondary clarifier with the same capacity as Toledo's existing tank number 12; and

(f) Within twenty-one months after entry of this Consent Decree (consisting of twelve months of pilot testing and nine months of design), Toledo shall submit the design for ballasted flocculation facilities with a firm design capacity of 185 million gallons per day (128,500 gallons per minute), a hydraulic loading rate of no more than 60 gallons per minute per square foot (at the firm design flow of 128,500 gallons per minute); and appropriate chemical feed and chemical storage systems, solids handling facilities (under no circumstances may the solids stream from the facilities be directed back into the liquid stream at the Bayview WWTP), and automatic, computerized equipment for system control.

8. Toledo shall construct, complete and place into operation the following improvements to the Bayview WWTP in accordance with the following schedule:

(a) Within twenty-seven months after approval of the design by U.S. EPA and Ohio EPA, improvements to the three large pump stations in accordance with the design approved by U.S. EPA and Ohio EPA pursuant to Paragraph 7(a);

(b) Within twenty-four months after approval of the design by U.S. EPA and Ohio EPA, a backup power source for the secondary system in accordance with the design approved by U.S. EPA and Ohio EPA pursuant to Paragraph 7(b);



(c) Within twenty-four months after approval of the design by U.S. EPA and Ohio EPA, replacement of the blowers in accordance with the design approved by U.S. EPA and Ohio EPA pursuant to Paragraph 7(c);

(d) Within thirty months after approval of the design by U.S. EPA and Ohio EPA, an equalization basin in accordance with the design approved by U.S. EPA and Ohio EPA pursuant to Paragraph 7(d);

(e) Within twenty-four months after approval of the design by U.S. EPA and Ohio EPA, an additional secondary clarifier in accordance with the design approved by U.S. EPA and Ohio EPA pursuant to Paragraph 7(e);

(f) Within eighteen months after approval of the design by U.S. EPA and Ohio EPA, ballasted flocculation facilities in accordance with the design approved by U.S. EPA and Ohio EPA pursuant to Paragraph 7(f);

(g) By October 10, 2001, modifications to the plant's skimming tanks in accordance with Ohio EPA Permit to Install No. 03-12308;

(h) Within thirty-six months of the entry of this Consent Decree, secondary renovations, including the renovation of the existing eleven final tanks, replacement of electrical and control equipment for final tanks seven through eleven, construction of a new secondary control house, replacement of valve actuators on all aeration tanks, concrete repairs to all aeration tanks and final tanks, new channel air diffusers, piping and flow meters, and modification to secondary lighting; and

(i) improvements to the Woodsdale, LaGrange, Parkside, Maumee and Columbus CSO systems consisting of sewer separation and/or inflow/infiltration removals that will

eliminate or reduce wet weather flow to the Bayview WWTP from these combined sewer areas.

9. Within twelve months of the entry of this Consent Decree, Toledo shall submit to U.S. EPA and Ohio EPA, for approval, a work plan for conducting a two year study (“Ballasted Flocculation Study”) of the effectiveness of the ballasted flocculation facilities constructed pursuant to Paragraph 8(f). The study shall commence immediately after construction of the ballasted flocculation facilities and shall include, but not be limited to, an analysis of: (a) the effectiveness of those facilities at removing suspended solids, carbonaceous biochemical oxygen demand (or biochemical oxygen demand), total Kjeldahl nitrogen (TKN) and ammonia; (b) any difficulties encountered in or limitations involved with using those facilities over a range of flow conditions, chemical feed rates and other operational control parameters; and (c) measures that Toledo has taken to optimize use of those facilities.

10. Upon approval by U.S. EPA and Ohio EPA of the work plan submitted in accordance with Paragraph 9, Toledo shall commence the study in accordance with the approved work plan and schedule set forth in the approved work plan.

11. Within sixty (60) days after completion of the Ballasted Flocculation Study, Toledo shall submit a written report to U.S. EPA and Ohio EPA, for approval, which contains the results of the study.

12. Toledo currently anticipates that it will spend approximately \$157,000,000 to complete the Bayview WWTP improvements required by this Section V.B and that, as a result of these improvements, Toledo intends to provide full biological treatment to approximately 99.5% of all flows received at the Bayview WWTP in a typical year and that the remaining 0.5% of flows at the Bayview WWTP will receive treatment from Toledo’s ballasted flocculation

facilities and disinfection (as required by Toledo's Current Permit) and dechlorination (if applicable) prior to discharge.

C. Long Term Control Plan

Toledo shall develop a Long Term Control Plan for insuring that Toledo's CSOs comply with the requirements of Toledo's Current Permit, the Clean Water Act and the objectives of U.S. EPA's April 19, 1994 "Combined Sewer Overflow (CSO) Policy." To develop the Long Term Control Plan, Toledo shall develop and implement the following in accordance with this Section V.C: a public and regulatory agency participation plan; a flow characterization study; a water quality study; a hydraulic model; and a water quality model.

13. Prior to completion of the work required by this Section V.B, Toledo is prohibited from discharging flows from the Bayview WWTP as follows:

(a) flows from the 001 outfall that have not been treated by the WWTP's secondary aeration basins and secondary clarifiers during any twenty-four hour period when the effluent flow rate from outfall 001 has not exceeded 170 million gallons per day for at least one entire hour during the twenty-four hour period; and

(b) flows from the 002 outfall during any twenty-four hour period when the effluent flow rate from outfall 001 has not exceeded 170 million gallons per day for at least one entire hour during that 24-hour period.

14. Upon completion of the work required by this Section V.B, Toledo is prohibited from discharging flows from the Bayview WWTP as follows:

(a) flows from the 001 outfall that have not been treated by the WWTP's secondary aeration basins and secondary clarifiers during any twenty-four hour period when the

effluent flow rate from outfall 001 has not exceeded 195 million gallons per day for at least one entire hour during the twenty-four hour period; and

(b) flows from the 002 outfall during any twenty-four hour period when the effluent flow rate from outfall 001 has not exceeded 400 million gallons per day for at least one entire hour during that 24-hour period.

15. Following completion of construction of the ballasted flocculation facilities as required by Paragraph 8(f), Toledo's wastewater as measured at sampling locations 001 or 602 (as defined in Paragraphs 58(a) and (b) of this Consent Decree) shall not contain suspended solids or CBOD<sub>5</sub> levels in excess of the effluent limitations specified for those parameters in Table 1 in this Consent Decree, and the critical pH levels, as measured at sampling locations 001 or 602 shall not be greater than the maximum levels and/or are less than the minimum levels set forth in Table 1.

16. Public and Regulatory Agency Participation Plan

Within thirty (30) days after entry of this Consent Decree, Toledo shall submit to U.S. EPA and Ohio EPA, for approval, a plan for insuring that there is ample public participation, and ample participation by U.S. EPA and Ohio EPA, throughout all stages of Toledo's development of its Long Term Control Plan. The plan shall include, at a minimum, a description of the measures that Toledo will take to make the information it develops in the course of the planning process available to the public for review and to solicit public opinion on Toledo's development of the Long Term Control Plan, a schedule for holding transcribed public hearings at meaningful times during the planning process to provide the public with that information and to solicit information from the public regarding the components of the Long Term Control Plan. The plan

shall describe how Toledo will take public opinion and information provided by the public into account as Toledo develops its Long Term Control Plan. The plan shall also set forth measures that Toledo will take to insure that U.S. EPA and Ohio EPA are kept informed of Toledo's progress in developing its Long Term Control Plan. These measures shall include scheduling periodic meetings with U.S. EPA and Ohio EPA at meaningful times during the planning process.

17. Upon approval by U.S. EPA and Ohio EPA of the plan submitted in accordance with Paragraph 16, Toledo shall implement the plan.

18. Flow Characterization Study

Within thirty (30) days after entry of this Consent Decree, Toledo shall submit to U.S. EPA and Ohio EPA, for approval, a work plan for conducting a study (the "Flow Characterization Study") to characterize flows in Toledo's Combined Sewer System and at the Bayview WWTP to facilitate the calibration and validation of the Hydraulic Model (required pursuant to Paragraphs 26-27) and the Water Quality Model (required pursuant to Paragraphs 28-29), and to be used in developing the Long Term Control Plan (required pursuant to Paragraphs 30-34). The Flow Characterization Study shall involve verifying existing and/or collecting additional physical attribute data about Toledo's Combined Sewer System; monitoring CSO and WWTP flows and flows within Toledo's Sewer System; and monitoring groundwater and rainfall at locations throughout the Sewer System and at the WWTP. The study should incorporate existing monitoring data. The work plan shall include a schedule for performing and completing the study within one year after approval of such work plan. At a minimum, the study shall include (and so the work plan shall describe how Toledo's study will

accomplish) the following:

(a) CSO flow and pollutant monitoring consistent with the CSO flow and pollutant monitoring described in the “Requirements Imposed Pursuant to Section 308(a) of the Clean Water Act” issued by U.S. EPA on September 30, 1999. (Attachment 1);

(b) Additional monitoring necessary to assure that, in conjunction with existing monitoring information and the monitoring information generated in accordance with subparagraph 18(a), Toledo has adequate data to facilitate the calibration and validation of the Hydraulic Model (required pursuant to Paragraphs 26-27) and the Water Quality Model (required pursuant to Paragraphs 28-29), and to be used in developing the Long Term Control Plan (required pursuant to Paragraphs 30-34). This additional monitoring data shall include flow monitoring, using permanent or temporary flow monitoring equipment: (i) at additional CSO outfalls; (ii) within the interceptors in Toledo’s Combined Sewer System; (iii) at the WWTP; and (iv) other key portions of the Combined and Separate Sewer Systems that hydraulically influence CSO outfalls.

(c) rainfall monitoring in locations sufficient to provide coverage throughout Toledo’s service area and in a manner that provides sufficient data to accurately determine localized rain patterns.

(d) development of digitized map(s) which: (i) illustrate the configuration and location of all major trunk sewers, force mains, interceptors, pump stations, siphons and other major appurtenances (and, to the extent practical, include the size of the sewers so mapped) and (ii) indicate the locations of all prior and proposed monitoring.

(e) development of schematic(s) which illustrate the hydraulic relationship between all of the major components of the Sewer System mentioned above in subparagraph (d);

(f) a summary of existing CSO, river level, flow, WWTP, rainfall and groundwater level monitoring data and a description of all additional monitoring that must be carried out in order to assure that sufficient data exists to adequately support development of the Hydraulic Model (required pursuant to Paragraphs 26-27), the Water Quality Model (required pursuant to Paragraphs 28-29), and the Long Term Control Plan (required pursuant to Paragraphs 30-34); and a description of the steps Toledo will take to obtain that additional data;

(g) a description of the data management system that will organize, analyze, and report all existing data to be utilized and all of the data that Toledo will be collecting in accordance with the Flow Characterization Study;

(h) a description of the quality assurance and quality control program Toledo will follow to ensure the accuracy and reliability of data collected in accordance with this Flow Characterization Study;

(i) a description of the amount and type of rainfall, flow, groundwater and hydraulic grade line data that Toledo will collect, including dry and wet weather monitoring, and minimum criteria (e.g., rainfall amounts and intensities) for wet weather events;

(j) an evaluation of the adequacy, completeness and accuracy of available Sewer System and WWTP attribute data (e.g., pipe diameters, pipe segment lengths, invert elevations, pipe interior roughness coefficients) to support development of the Hydraulic Model (required pursuant to Paragraphs 26-27), the Water Quality Model (required pursuant to Paragraphs 28-29), and the Long Term Control Plan (required pursuant to Paragraphs 30-34), and a description

of the steps Toledo will take to obtain any necessary additional data and/or to verify the accuracy of existing data; and

(k) a schedule for the expeditious installation of CSO, WWTP, flow, groundwater level, and rainfall monitoring equipment; a schedule for the expeditious completion of all monitoring activities; a schedule for the expeditious completion of all physical attribute data collection activities; and a schedule for the expeditious completion and submission of the Flow Characterization Report, pursuant to the requirements of Paragraph 20.

19. Upon approval by U.S. EPA and Ohio EPA of the work plan submitted in accordance with Paragraph 18, Toledo shall commence the Flow Characterization Study in accordance with the approved work plan and schedule set forth in the approved work plan.

20. Within thirty (30) days after completion of the Flow Characterization Study, Toledo shall submit a written report (the “Flow Characterization Report”) to U.S. EPA and Ohio EPA, for approval, which (a) demonstrates that Toledo performed the Flow Characterization Study in accordance with the approved work plan and schedule set forth in the approved work plan, (b) provides the results of the Flow Characterization Study including, but not limited to, (i) the digitized map(s) and schematics described above in Paragraphs 18(d) and (e); (ii) a detailed description of all CSO, WWTP, flow, groundwater level and rainfall monitoring carried out; and (iii) a summary of existing data that Toledo will use to support development of the Hydraulic Model (required pursuant to Paragraphs 26-27), the Water Quality Model (required pursuant to Paragraphs 28-29) and the Long Term Control Plan (required pursuant to Paragraphs 30-34); and the data collected in the Flow Characterization Study.

21. Upon receipt of U.S. EPA’ s/Ohio EPA’ s final approval of the Flow Characterization



Report, Toledo shall utilize the collected data to complete the development of the Hydraulic Model (required pursuant to Paragraphs 26-27), the Water Quality Model (required pursuant to Paragraphs 28-29), and the Long Term Control Plan (required pursuant to Paragraphs 30-34).

## 22. Water Quality Study

Within thirty (30) days after entry of this Consent Decree, Toledo shall submit to U.S. EPA and Ohio EPA, for approval, a work plan for conducting a study (“Water Quality Study”) to characterize the water quality of the receiving streams into which Toledo’s CSOs discharge. The Water Quality Study is to be used to facilitate the calibration and validation of the Water Quality Model (required pursuant to Paragraphs 28-29) and to be used in developing the Long Term Control Plan (required pursuant to Paragraphs 30-34). The Water Quality Study shall incorporate the results of water quality monitoring and modeling efforts previously carried out by Toledo. The work plan shall include a schedule for performing and completing the Water Quality Study within one year after approval of such work plan. At a minimum, the Water Quality Study shall include (and so the work plan shall describe how Toledo’s study will accomplish) the following:

(a) Water quality monitoring consistent with the water quality monitoring described in the “Requirements Imposed Pursuant to Section 308(a) of the Clean Water Act” issued by U.S. EPA on September 30, 1999. (Attachment 1);

(b) Water quality monitoring and sediment oxygen demand characterization necessary to determine the impact that CSO discharges are having on dissolved oxygen levels throughout the Ottawa River and the Swan Creek. The monitoring shall include monitoring to determine dissolved oxygen levels immediately upstream and in appropriate locations

downstream of CSOs that discharge into the Ottawa River and the Swan Creek, both during wet and dry weather; and monitoring necessary to characterize sediment oxygen demand in appropriate locations in the Ottawa River and the Swan Creek;

(c) A summary of existing water quality monitoring data and modeling efforts and a description of how the existing data and additional monitoring to be carried out shall together adequately support development of the Water Quality Model (required pursuant to Paragraphs 28-29) and the Long Term Control Plan (required pursuant to Paragraphs 30-34);

(d) a description of the data management system that will organize, analyze, and report all of the data that Toledo will be utilizing as part of this Water Quality Study;

(e) a description of the quality assurance and quality control program Toledo will follow to ensure the accuracy and reliability of data collected in accordance with this Water Quality Study; and

(f) a schedule for the expeditious completion of all monitoring activities; and a schedule for the expeditious completion and submission of the Water Quality Study Report, pursuant to the requirements of Paragraph 24.

23. Upon approval by U.S. EPA and Ohio EPA of the work plan submitted in accordance with Paragraph 22, Toledo shall commence the Water Quality Study in accordance with the approved work plan and schedule set forth in the approved work plan.

24. Within thirty (30) days after completion of the Water Quality Study, Toledo shall submit a written Water Quality Study Report to U.S. EPA and Ohio EPA, for approval, which (a) demonstrates that Toledo performed the Water Quality Study in accordance with the approved work plan and schedule set forth in the approved plan, (b) provides the results of the

Water Quality Study including, but not limited to: (i) a detailed description of all monitoring carried out; (ii) a summary of existing data that Toledo will use to support development of the Water Quality Model (required pursuant to Paragraphs 28-29) and the Long Term Control Plan (required pursuant to Paragraphs 30-34); and (iii) a summary of the data collected in the Water Quality Study.

25. Upon receipt of U.S. EPA's/Ohio EPA's final approval of the Water Quality Study Report, Toledo shall utilize the collected data to complete the development of the Water Quality Model (required pursuant to Paragraphs 28-29) and the Long Term Control Plan (required pursuant to Paragraphs 30-34).

26. Hydraulic Model

Within thirty (30) days after entry of this Consent Decree, Toledo shall submit to U.S. EPA and Ohio EPA, for approval, a work plan for developing a hydraulic model of Toledo's Combined Sewer System ("Hydraulic Model") to be used, in conjunction with the Water Quality Model (required pursuant to Paragraphs 28-29) for use in developing the Long Term Control Plan (required pursuant to Paragraphs 30-34). The Hydraulic Model shall also 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. At a minimum, the Hydraulic Model shall be capable of (i) predicting stormwater flows generated by various wet weather events in combined areas; (ii) predicting the hydraulic grade lines, volume and flow rates of wastewater in force mains and gravity sewer lines; (iii) predicting the hydraulic pressure and flow of wastewater at any point in force mains throughout the Combined Sewer System; (iv) predicting the flow capacity of each pump station (Toledo may elect to perform

manual calculations in lieu of utilizing the Model to evaluate pump station capacity); (v) predicting the flow capacity of gravity sewer lines; (vi) predicting the peak flows during wet weather and dry weather conditions for pump stations and gravity sewer lines; (vii) predicting the likelihood, location, duration and volume of discharge from each CSO for a variety of storm events (of varying durations and return frequencies); and (viii) developing wet weather hydrographs for the separate sewer areas that are tributary to the Combined Sewer System. These storms shall include, but not be limited to, the most critical storm(s) having a ten year return frequency, and duration of between 1 hour and 24 hours. The hydrographs shall be developed for various storm recurrence intervals and shall be combined with baseline wastewater flow and routed through gravity sewer lines, pump stations, force mains, regulators and interceptors by the Model. The Model shall include methods for estimating wastewater flow, groundwater infiltration, and rain induced infiltration and inflow (“I/I”). The hydrographs shall be developed using historical flow and rainfall data and data collected by Toledo during the Flow Characterization Study (required pursuant to Paragraphs 18-20). The work plan for developing the Hydraulic Model shall include:

- (a) a description of the Hydraulic Model;
- (b) specific attributes, characteristics, and limitations of the Hydraulic Model;
- (c) identification of all input parameters, constants, assumed values, and expected outputs;
- (d) a digitized map(s) that identifies and characterizes the portions (including the specific gravity sewer lines) of the Sewer System that shall be included in the Hydraulic Model;
- (e) identification of input data to be used;

- (f) configuration of the Hydraulic Model;
- (g) procedures and protocols for performance of sensitivity analyses (i.e., how the Hydraulic Model responds to changes in input parameters and variables);
- (h) procedures for calibrating the Hydraulic Model to account for values representative of the Sewer System and WWTP using actual system and WWTP data (e.g., flow data);
- (i) procedures to verify the Hydraulic Model's performance using actual system and WWTP data (e.g., flow data);
- (j) procedures for modeling wet weather flows from separate sewer areas;
- (k) how representative values of the Hydraulic Model's constant values shall be determined by tests conducted in Toledo's Sewer System and WWTP; and
- (l) an expeditious schedule for the development and utilization of the Hydraulic Model.

27. Upon approval by U.S. EPA and Ohio EPA of the work plan submitted in accordance with Paragraph 26, Toledo shall develop and utilize the Hydraulic Model in accordance with the schedule included in the approved work plan.

28. Water Quality Model

Within thirty (30) days after entry of this Consent Decree, Toledo shall submit to U.S. EPA and Ohio EPA, for approval, a work plan for developing a water quality model (the "Water Quality Model") to be used, in conjunction with the Hydraulic Model (required pursuant to Paragraphs 26-27) in developing the Long Term Control Plan (required pursuant to Paragraphs 30-34). At a minimum, the Water Quality Model shall be capable of (a) accurately modeling

water quality in the Ottawa River, Swan Creek, and the Maumee River under existing and future predicted conditions, during an appropriate range of both dry and wet weather conditions, and across an appropriate range of river flows; (b) assessing the impacts on water quality (both absolute and relative to other sources) of CSOs under the aforementioned ranges of conditions; and (c) assessing the changes in CSO impact which will be expected to occur following implementation of the various CSO control measures that Toledo evaluates in developing its Long Term Control Plan (required pursuant to Paragraphs 30-34). The work plan for developing the Water Quality Model shall include:

- (a) a description of the Water Quality Model;
- (b) specific attributes, characteristics, and limitations of the Water Quality Model;
- (c) identification of all input parameters, constants, assumed values, and expected outputs;
- (d) identification of input data to be used;
- (e) configuration of the Water Quality Model;
- (f) procedures and protocols for performance of sensitivity analyses (i.e., how the Water Quality Model responds to changes in input parameters and variables);
- (g) procedures for calibrating the Water Quality Model to account for values representative of the receiving streams using actual water quality monitoring data;
- (h) procedures to verify the Water Quality Model's performance using actual water quality monitoring data; and
- (i) an expeditious schedule for the development and implementation of the Water

Quality Model.

29. Upon approval by U.S. EPA and Ohio EPA of the work plan submitted in accordance with Paragraph 28, Toledo shall implement the Water Quality Model in accordance with the schedule included in the approved work plan.

30. Long Term Control Plan

Within thirty (30) days after entry of this Consent Decree, Toledo shall submit to U.S. EPA and Ohio EPA, for approval, a work plan for developing a long term control plan (the “Long Term Control Plan”) for insuring that Toledo’s CSOs comply with the requirements of Toledo’s Current Permit, the Clean Water Act and the objectives of U.S. EPA’s April 19, 1994 “Combined Sewer Overflow (CSO) Policy.” The work plan shall include a schedule for completing development of the Long Term Control Plan within thirty months after approval by U.S. EPA and Ohio EPA of the work plan. At a minimum, the Long Term Control Plan shall include (and so the work plan shall describe how Toledo’s development of the Long Term Control Plan will accomplish) the following:

(a) an assessment of the costs, effectiveness (in terms of pollutant loading reductions, regardless of water quality impacts) and water quality benefits of a wide range of alternatives for eliminating or reducing and treating CSOs. Toledo shall use the results of the Flow Characterization Study (performed in accordance with the requirements of Paragraphs 18-20), the results of the Water Quality Study (performed in accordance with the requirements of Paragraphs 22-24), the Hydraulic Model (developed pursuant to the requirements of Paragraphs 26-27) and the Water Quality Model (developed pursuant to the requirements of Paragraphs 28-29) in performing this assessment. The alternatives that shall be considered include taking no-

action (other than the improvements required by Section V.B); complete sewer separation; separation of specific portions of the combined system; various sizes of storage basins or tunnels at locations throughout the collection system; construction of additional facilities (such as high rate treatment or ballasted flocculation facilities) for providing primary treatment or advanced primary treatment to CSOs; construction of additional facilities for providing disinfection and dechlorination of CSOs; construction of facilities for removing floatables from CSOs; construction of relief sewers; relocation of CSOs; implementation of pretreatment measures to reduce flows and or pollutants discharged into the collection system from industrial users; and construction and/or implementation of combinations of these alternatives. The United States Environmental Protection Agency's "Combined Sewer Overflows Guidance for Long-Term Control Plan," ("Guidance for LTCP") provides Guidance on performing alternatives analyses.

This assessment shall include:

(i) An evaluation of a range of "sizes" of each alternative that will reduce the number of untreated CSOs down to a range of numbers of overflows per CSO outfall (such as 0, 1-3, 4-7 and 8-12).

(ii) An evaluation of the "Project Costs," as that term is described on pages 3-49 through 3-51 of the United States Environmental Protection Agency's "Combined Sewer Overflows Guidance for Long-Term Control Plan," ("Guidance for LTCP") for each alternative, or mix of alternatives, that Toledo has evaluated. The determination of Project Costs shall include: (a) the total "project costs" for each alternative or mix of alternatives, and a break down of the "capital costs," "annual O & M costs," and "life cycle costs" which went into calculating the total "project costs" for each alternative or mix of alternatives; and (b) the



“project costs” for each separate component of each alternative or mix of alternatives, and a break down of the “capital costs,” “annual O & M costs,” and “life cycle costs” which went into calculating the “project costs” for each separate component of each alternative or mix of alternatives. The terms “capital costs,” “annual O & M costs,” and “life cycle costs” are described on pages 3-49 through 3-51 of the Guidance for LTCP.

(iii) An evaluation of Toledo’s financial capability to fund all improvements that have been considered. This evaluation shall include an evaluation 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;
  - vi. Bond rating;
  - vii. Grant and loan availability;
  - viii. Current and projected residential, commercial and industrial user fees;
  - ix. Other viable funding mechanisms and sources of financing;
- and
24. Other factors which Toledo believes are important for this financial evaluation.

(iv) An analysis of the water quality impacts of each alternative or mix of

alternatives that are being considered. This analysis, which shall utilize the results of the Water Quality Study (performed in accordance with the requirements of Paragraphs 22-24) and the Water Quality Model (developed in accordance with the requirements of Paragraphs 28-29), shall include an analysis of the reductions in BOD<sub>5</sub>, suspended solids, fecal coliform, any pollutant parameters that the Water Quality Characterization determined are exceeding or approaching the State of Ohio's water quality criteria for those parameters in the Maumee River, Ottawa River or Swan Creek, and effluent toxicity that will result from implementation of each alternative; as well as an analysis of the impacts to the pollutant and dissolved oxygen levels in the receiving streams that will result from each alternative or mix of alternatives.

(v) An analysis of the impact that each alternative or mix of alternatives will have on the peak instantaneous and sustained flows to the Bayview WWTP for a variety of storm events of varying durations and return frequencies, including, but not limited to, the most critical storm having a ten-year return frequency and duration of between one and twenty-four hours.

(vi) "Knee of the curve" cost-performance analyses of the range of options that are being considered that will allow for the comparison of the costs per unit of measure (in mass) of pollutants removed from the discharge for each of the alternatives that are being considered.

(b) Identification and selection of additional remedial measures (the "Long Term Control Plan") that are necessary to insure that Toledo's CSOs comply with the requirements of Toledo's Current Permit, including, but not limited to, any specific or general water quality or technology based effluent limitations applicable to Toledo's CSOs, the Clean Water Act and the

CSO Policy.

310 Upon approval by U.S. EPA and Ohio EPA of the work plan submitted in accordance with Paragraph 30, Toledo shall commence development of the Long Term Control Plan in accordance with the schedule and terms set forth in the approved work plan. Development of the Long Term Control Plan shall be consistent with the terms of this Consent Decree, the CSO Policy and the Clean Water Act.

320 Within thirty (30) days after completion of development of the Long Term Control Plan, Toledo shall submit a written report (the “Long Term Control Plan Report”) to U.S. EPA and Ohio EPA, for approval, which incorporates the Long Term Control Plan and explains what steps Toledo took to comply with its Public and Regulatory Agency Participation Plan (required pursuant to Paragraphs 16-17), including how (if at all) Toledo took information provided by the public into account in developing its Long Term Control Plan; and which demonstrates that Toledo developed its Long Term Control Plan in accordance with the work plan and schedule set forth in the approved work plan and provides the results of the work Toledo performed in developing the Long Term Control Plan including, but not limited to:

(a) All of the information described in Paragraph 30 pertaining to Toledo’s assessment of the costs, effectiveness, and water quality benefits of alternatives for eliminating or reducing and treating CSOs;

(b) Identification and selection of additional remedial measures that are necessary to insure that Toledo’s CSOs comply with the requirements of Toledo’s Current Permit, including, but not limited to, any specific or general water quality or technology based effluent limitations and conditions applicable to Toledo’s CSOs, the Clean Water Act and the CSO

Policy; and

(c) As expeditious a schedule as possible for design, construction and implementation of all measures described in Paragraph 32(b). If it is not possible for Toledo to design and construct all measures simultaneously, Toledo shall develop a phased schedule based on the relative importance of each measure, with highest priority being given to eliminating discharges to sensitive areas and then to those projects which most reduce the discharge of pollutants. The schedule shall specify critical construction milestones for each specific measure, including, at a minimum, deadlines for: (i) submission of applications for all permits required by law, such as State of Ohio permits to install; (ii) commencement of construction; (iii) completion of construction; (iv) commencement of operation; and (v) achievement of full operation. The schedule also shall include a deadline for the completion of all construction and full implementation of all measures under the Long Term Control Plan, which must be as early as possible but in no event later than August 31, 2016.

330 Upon approval by U.S. EPA and Ohio EPA of the report submitted in accordance with Paragraph 32, the Long Term Control Plan shall be incorporated into this Consent Decree and Toledo shall implement the Long Term Control Plan in accordance with the schedule included in the approved Long Term Control Plan.

340 Upon completion of all construction and full implementation of all measures under the Long Term Control Plan, Toledo's CSOs shall comply with the requirements of Toledo's Current Permit, including, but not limited to, any specific or general water quality or technology based effluent limitations applicable to Toledo's CSOs, the Clean Water Act and the CSO Policy.

350 Toledo currently anticipates that it will spend \$236,000,000 to complete the CSO improvements required by Sections V.B and V.C.

D. Elimination of SSDs

360 Toledo shall take the following measures, which are generally consistent with the Ohio EPA's Director's Final Findings and Orders (the "SSD DFFO") issued to Toledo on June 23, 1999, to eliminate all SSDs by November 1, 2006:

(a) In accordance with the SSD DFFO, Toledo has completed intensive sewer cleaning to eliminate root intrusions and grease accumulations, correct deficiencies of the 116<sup>th</sup> Street interceptor sewer which runs from Summit Street west to 290<sup>th</sup> Street, constructed a relief pump station at Manhattan Boulevard, eliminated thirty-two cross-connections between its storm and sanitary sewer systems, and eliminated the cross-connection between the Lakeside Avenue sanitary sewer and the Maumee Bay;

(b) By April 1, 2002, Toledo shall submit to U.S. EPA and Ohio EPA, for approval, a plan for construction of Phase 2 improvements in the Point Place area. The plan shall include an analysis of Toledo's pilot rehabilitation project as described in the SSD DFFO and the improvements described above in Paragraph 36(a); a detailed description of the remediation alternatives that Toledo considered in developing its Phase 2 plan as described in the SSD DFFO, including information regarding the costs and effectiveness of each alternative that was considered; a detailed explanation of why Toledo chose the alternatives that it chose; and a schedule for construction of the all Phase 2 improvements necessary to eliminate SSDs from the Point Place area. The schedule shall include (i) submission to Ohio EPA and U.S. EPA of a complete Permit to Install application package and detailed plans for necessary Phase 2

improvements by June 1, 2003, (ii) awarding of contracts for construction of Phase 2 improvements by November 1, 2003, and (iii) completion of construction of all improvements necessary to eliminate all SSDs in the Point Place area by November 1, 2006. Upon approval by U.S. EPA and Ohio EPA, Toledo shall implement the plan in accordance with the schedule in the approved plan.

(c) In accordance with the SSD DFFO, Toledo submitted to Ohio EPA a report of the results of its flow monitoring study of the sanitary sewer system contributing to surcharging in the River Road and Midland Avenue area. The report includes a map indicating flow monitoring locations, a full description of the project, presentation of the results of the monitoring, structural and hydraulic problems observed during the flow monitoring activities, a table ranking each sub-basin according to its severity of rainfall induced inflow and infiltration, and a plan for performing a Sanitary Sewer Evaluation Study (“SSES”) in those sub-basins in which an SSES is warranted based upon the results of Toledo’s flow monitoring study. The SSES includes smoke testing, dye testing, televising, and other investigative techniques as needed to determine causes and potential remedies for the sewer surcharging in the River Road and Midland Avenue area. The plan for performing the SSES described in this Paragraph 36(c) includes a detailed description of the steps that Toledo will take to perform the SSES and a schedule for performing the SSES, which includes (i) awarding contracts for the SSES by January 1, 2001, (ii) completing the SSES by November 1, 2001, and (iii) submission of a final SSES Report to U.S. EPA and Ohio EPA, for approval, by January 1, 2002. Toledo shall implement the plan in accordance with the schedule in the plan for performing the SSES described in this Paragraph 36(c).

(d) The SSES report required in Paragraph 36(c), above, shall include a detailed description of the results of the SSES; a detailed description of all remediation alternatives that Toledo considered in determining additional remedial measures needed to eliminate SSDs in the River Road and Midland Avenue area, including information regarding the costs and effectiveness of each alternative that was considered; a detailed explanation of why Toledo chose the alternatives that it chose; and a schedule for construction of the Phase 3 and Phase 4 improvements as described in the SSD DFFO necessary to eliminate SSDs from the River Road and Midland Avenue area. The schedule shall include (i) submission to U.S. EPA and Ohio EPA of a complete Permit to Install application package and detailed plans for necessary Phase 3 improvements by September 1, 2002; (ii) awarding of contracts for construction of Phase 3 improvements by February 1, 2003; (iii) completion of construction of all Phase 3 improvements by June 1, 2004; (iv) submission to U.S. EPA and Ohio EPA of a complete Permit to Install application package and detailed plans for necessary Phase 4 improvements by June 1, 2005; (v) awarding of contracts for construction of Phase 4 improvements by November 1, 2005; and completion of construction of all improvements necessary to eliminate all SSDs in the River Road and Midland Avenue area by November 1, 2006. Upon approval by U.S. EPA and Ohio EPA, Toledo shall implement the plan in accordance with the schedule in the approved plan. Toledo currently anticipates that it will spend between \$40,000,000 and \$80,000,000 to complete the SSD improvements required by this Section V.D.

370 Toledo shall eliminate all points where Toledo knows SSDs may occur by November 1, 2006. Following that date, Toledo shall have no SSDs.

380 Any SSD that occurs prior to November 1, 2006, shall be considered to be a

violation of this Consent Decree if Toledo is out of compliance with its Sewer System Management, Operation and Maintenance Plan.

E. Separate Sewer System Monitoring And Reporting

390 Within 120 days after entry of this Consent Decree, Toledo shall submit a Separate Sewer System Monitoring and Reporting Plan to U.S. EPA and Ohio EPA, for approval, which will assure that Toledo provides timely and complete notice to Ohio EPA, and other appropriate Federal, State, and local agencies as required below, of all relevant information regarding all SSDs:

(a) Timely notice of SSDs includes at least the following:

(i) Telephonic or electronic reporting of all SSDs to Ohio EPA within twenty-four (24) hours from the time Toledo becomes aware of such SSD;

(ii) Complete written notice (as described in Paragraph 39(b), below) to Ohio EPA within five (5) days of the time Toledo becomes aware of the SSD;

(iii) If Toledo requires more than twenty-four (24) hours to stop a particular SSD discharge event, submission of a separate written status report to Ohio EPA every five (5) days until the SSD discharge has ceased; and

(b) Complete written notice to Ohio EPA as required by Paragraph 39(a)(ii), above, shall include at least the following:

(i) the cause of the SSD (known or suspected causes);

(ii) estimated volume (if determinable);

(iii) description of the source (e.g., manhole, pump station);

(iv) location, by street address or any other appropriate method;



(v) date and duration of event;

(vi) ultimate destination of the flow (e.g., name of surface water body, land use location, name of surface water body via municipal separate storm sewer system [reference location by basin and street address and/or cross streets]);

(vii) corrective actions or plans to eliminate future discharges from the same location;

(viii) name and title of person reporting the discharge; and

(ix) weather conditions.

(c) Toledo shall provide Ohio EPA and the Lucas County Health Department with written monthly summaries of the information collected pursuant to this Paragraph 39 within 30 days of the close of the month for which the report is due.

(d) Toledo shall provide Ohio EPA with quarterly written summaries of all information in Toledo's possession pertaining to any wastewater backups into buildings that occurred during the calendar quarter for which the summaries are prepared.

400 Toledo shall implement the plan submitted in accordance with Paragraph 39 upon U.S. EPA and Ohio EPA's approval of that plan.

#### F. SSD Response Plan

410 Within 120 days after entry of this Consent Decree, Toledo shall submit an SSD Response Plan to U.S. EPA and Ohio EPA, for approval, which will assure that Toledo takes appropriate measures to minimize, to the extent practical, the environmental impacts and potential human health risks of SSDs. The SSD Response Plan shall include the following:

(a) procedures to provide timely and appropriate public notice, including

notification through the local news media where appropriate;

(b) procedures to determine the need to limit public access to areas impacted by SSDs and procedures for determining when it is appropriate to no longer limit public access to such areas following halting of the SSD and implementation of appropriate response measures;

(c) procedures to limit, as appropriate, public access to and contact with areas affected by an SSD. The geographic extent and duration of a public access limitation shall be determined in consultation and cooperation with the County Health Department, where appropriate;

(d) procedures to remediate, where appropriate, as expeditiously as possible, unsanitary conditions near or from the SSD after discharge from that SSD;

(e) procedures to ensure the rapid dispatch of personnel and equipment to correct or repair the condition causing or contributing to any SSD;

(f) procedures to ensure the preparedness, including responsiveness training, of Toledo's employees and contractors necessary for the effective implementation of the contingency plan in the event of any SSD. The program should include coordination with other agencies as appropriate;

(g) procedures to minimize the volume of untreated wastewater discharged during an SSD, including revisions to Toledo's pretreatment program; and

(h) procedures to insure that adequate staff and equipment resources committed and available to respond to SSDs.

420 Toledo shall implement the plan submitted in accordance with Paragraph 41 upon U.S. EPA and Ohio EPA's approval of that plan.

#### G. Industrial Wastewater Release Minimization Plan

430 Within 180 days after entry of this Consent Decree, Toledo shall submit an Industrial Wastewater Release Minimization Plan to U.S. EPA and Ohio EPA, for approval, which will demonstrate how Toledo shall make all practicable efforts to minimize the discharge of industrial pollutants through CSOs and SSDs. These steps should include, among others, imposition of Industrial User permit requirements and cooperative efforts with industries to minimize their discharges of pollutants during CSO and SSD events, as well as other measures described in U.S. EPA's 1995 document entitled *Combined Sewer Overflows—Guidance for Nine Minimum Controls* (U.S. EPA, 1995b) (EPA 832-B-95-003).

440 Toledo shall implement the plan submitted in accordance with Paragraph 43 upon U.S. EPA and Ohio EPA's approval of that plan.

#### H. Sewer System Management, Operation and Maintenance Plan

450 Within 180 days after entry of this Consent Decree, Toledo shall submit a Management, Operation and Maintenance ("MOM") Plan to U.S. EPA and Ohio EPA, for approval, which will demonstrate how Toledo will provide proper management, operation and maintenance of the gravity sewer lines, force mains, pump/ejector stations, and other equipment associated with its Sewer System; minimize Sewer System failures (such as wastewater backups into buildings) and discharges from the Sewer System; maximize flow to the Bayview WWTP; and provide maximum possible treatment to all CSOs. The Plan shall include, but not be limited to, the following:

(a) physical inspection and testing procedures (CCTV, visual, smoke, dyed water, and others);

- (b) preventative and routine maintenance schedules and procedures and operating procedures and schedules;
- (c) corrective maintenance;
- (d) schedules for the maintenance of right-of ways (e.g., on-street and off-street) and easements;
- (e) current staffing, organization, and resource commitments;
- (f) an inventory management system that includes:
  - (i) lists of critical equipment and critical spare parts;
  - (ii) an inventory of the critical spare parts and critical equipment stored at Toledo's facilities and other locations to assure that they may be secured to allow repairs in a minimal amount of time to maintain proper operation of Toledo's Sewer System; and
  - (iii) procedures for maintaining and updating the routine/critical spare parts and equipment inventories;
- (g) an information system that Toledo shall use to track implementation of the MOM Program and to calculate management, operation, and maintenance performance indicators such as:
  - (i) the annual linear footage of gravity sewer inspections;
  - (ii) the annual linear footage of gravity sewers mechanically cleaned;
  - (iii) the number of manholes visually inspected annually; and
  - (iv) the number of SSDs per mile of gravity sewer;
- (h) a tracking system for all maintenance activities, including pump station equipment histories;

(i) procedures for generation of maintenance work orders; and

(j) reports listing equipment problems and work orders generated during the prior month;

460 The Plan also shall contain procedures to assure that preventative maintenance activities are scheduled appropriately, and shall include, but not be limited to, the following:

(a) periodic service and calibration of all instrumentation such as flow meters, liquid level sensors, alarm systems, elapsed time meters, and remote monitoring equipment;

(b) routine inspection and service for all pumps including, but not limited to: engines, motors, generators, pumps, wet wells, impellers, seals, bearings, wear clearances, couplings, drives, and related equipment; and routine inspection and service for air release valves;

(c) inspection and cleaning of Toledo's Sewer System and manholes in accordance with a schedule that ensures that Toledo cleans its entire Sewer System at least once every three years;

(d) inspection and maintenance of all force mains and siphons;

(e) routine inspection of all sewer and force main right-of-ways, including inspection of: creek crossings and related appurtenances, stream bank encroachment towards gravity sewer lines and force mains, and right-of-way or easement accessibility (including the need to control vegetative growth or encroachment of man-made structures or activities that could threaten the integrity of the affected gravity sewer lines or force mains). Inspections shall include the development of written reports, and, where appropriate, representative photographs or videos of appurtenances being inspected (manholes, creek crossings, etc.). The MOM

Program shall specifically include procedures by which field inspection personnel shall report, both verbally and in writing, to designated management officials of any observed SSDs, dry weather CSOs and any evidence of SSDs and dry weather CSOs that may have occurred since the last inspection; and

(f) provisions governing replacement of sewers as necessary to assure the proper operation and maintenance of Toledo's Sewer System.

470 The Plan also shall include provisions for insuring that the maximum flow is transported to the WWTP prior to discharging from any CSOs and that CSO discharges are minimized and treated to the maximum extent practicable.

480 Within six months of completion of all of the improvements required pursuant to Section V.B, above, and on a biannual basis thereafter, Toledo shall submit to U.S. EPA and Ohio EPA for approval an updated MOM plan which takes into account any improvements at the Bayview WWTP or in Toledo's Sewer System which could impact Toledo's management, operation and maintenance of Toledo's Sewer System, and Toledo's practical experience in using those improvements. The updated plan shall contain the provisions described in Paragraphs 45-47.

490 Toledo shall implement the plans submitted in accordance with Paragraphs 45-47 upon U.S. EPA and Ohio EPA's approval of that plan.

I. WWTP Operations and Maintenance Plan

500 Within three months following entry of this Consent Decree, Toledo shall submit to U.S. EPA and Ohio EPA for approval an operations and maintenance plan for the Bayview WWTP that addresses, at a minimum, the following:

(a) provisions to keep, to the maximum extent feasible, all essential units online at all times or maintained in a full state of readiness;

(b) provisions to assure that Toledo maximizes wastewater flows through its aeration basins and secondary clarifiers prior to bypassing those portions of the Bayview WWTP;

(c) provisions to assure that Toledo maximizes flows through its primary clarifiers prior to bypassing those portions of the Bayview WWTP;

(d) provisions to assure the prompt and efficient emptying of the grit collection boxes;

(e) provisions to assure the elimination of waste activated sludges or other sludges and recycle streams from being recycled back to the head of the plant; and

(f) provisions to assure that Toledo operates and maintains all treatment facilities at the Bayview WWTP in a manner that maximizes the removal of pollutants from any discharge.

510 Within one year after completion of construction of all of the improvements required pursuant to Section V.B, above, and on a biannual basis thereafter, Toledo shall submit to U.S. EPA and Ohio EPA for approval an updated operations and maintenance plan which takes into account any improvements at the Bayview WWTP or in Toledo's Sewer System which could impact Toledo's operation and maintenance of the Bayview WWTP, and Toledo's practical experience in using those improvements. The updated plan shall contain the provisions described in Paragraph 50. The updated plan also shall set forth the procedures for starting up the ballasted flocculation facilities during wet weather events which will cause those facilities to

achieve optimal suspended solids removal rates as rapidly as possible; procedures for steady state operations of the ballasted flocculation facilities including specific provisions governing chemical and ballast feed rates; procedures for maintaining the ballasted flocculation facilities; and shall specify the percent removal of suspended solids that the ballasted flocculation facilities will consistently achieve during steady state operations. The parties anticipate that the ballasted flocculation facilities will be able to achieve at least 40% (and probably much greater than 40%) removal of suspended solids on a continuous basis during steady state operations.

520 Toledo shall immediately and continuously implement its approved plans, submitted pursuant to Paragraphs 50-51, upon approval by U.S. EPA and Ohio EPA.

J. EPA Approval of Designs and Plans Prepared in Accordance With Parts V.B Through V.I

530 For all designs and plans submitted by Toledo for U.S. EPA approval in accordance with Sections V.B through V.I, above, U.S. EPA, after providing Ohio EPA with reasonable opportunity for consultation, may (a) approve the plan, in whole or in part; (b) approve the plan upon specified conditions, directing that Toledo modify its submission, or (c) any combination of the above. In reviewing submissions under this paragraph, EPA's primary approval criteria will be technical feasibility, appropriateness, cost-effectiveness and compliance with the requirements of Toledo's Current Permit, this Consent Decree, the Clean Water Act and, where applicable, the CSO Control Policy. Within 21 working days following receipt of a notice of disapproval or direction to modify the submission from U.S. EPA (or within such longer time set forth in such notice), Toledo shall submit a modified plan to U.S. EPA and Ohio EPA in accordance with U.S. EPA's directions. Any stipulated penalties applicable to the submission



shall accrue during the 21-day or otherwise specified period but shall not be payable if U.S. EPA determines that Toledo has complied with U.S. EPA's directions upon resubmission of the plan.

540 Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 53, Toledo shall proceed, if directed by U.S. EPA, to take any action required by any nondeficient portion of Toledo's submission. Implementation of any nondeficient portion of a submission shall not relieve Toledo of any liability for stipulated penalties.

550 In the event that a resubmitted plan or portion thereof is disapproved in whole or in part or approved with conditions by U.S. EPA, U.S. EPA may again require Toledo to correct the deficiencies or conditions in accordance with the preceding paragraphs. U.S. EPA also retains the right to modify or develop any disapproved or conditioned portion of the resubmitted plan. Toledo shall implement any such plan, report or item as modified or developed by U.S. EPA, subject only to its right to invoke the procedures set forth in Section XII, Dispute Resolution.

560 If upon resubmission, a plan is disapproved or modified in whole or in part by U.S. EPA due to a material defect previously identified and not corrected, Toledo shall be deemed to have failed to submit its plan timely and adequately unless it invokes the dispute resolution procedures set forth in Section XII and U.S. EPA's action is overturned pursuant to that Section. If U.S. EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, except as provided in Paragraph 97. Whether U.S. EPA and Ohio EPA disapprove of Toledo's submissions or approve the submissions with modifications shall not affect the burden of proof or the standard of review set forth in Section XII, Dispute Resolution, of this Consent Decree.

K. Class IV Operator Compliance

570 Toledo shall implement all necessary steps to assure that the Bayview WWTP is under the responsible charge of a State of Ohio certified Class IV wastewater treatment plant operator. The term "responsible charge" means the physical on-site supervision of technical operations and maintenance of the wastewater treatment works at all times.

L. Wastewater Monitoring

580 Upon completion of construction of the ballasted flocculation facilities as required by Paragraph 8(f):

(a) Toledo shall monitor all discharges from outfall 001 in accordance with all monitoring requirements for all parameters specified in Toledo's Current Permit at a location after the location where all wastestreams that are discharged from outfall 001 are joined. This sampling location shall be referred to for purposes of this Consent Decree as "sampling location 001."

(b) Whenever Toledo is utilizing its ballasted flocculation facilities, Toledo shall also monitor its secondary effluent flows in accordance with all monitoring requirements specified in Toledo's Current Permit for volume, suspended solids, CBOD<sub>5</sub> and pH at a location downstream of Toledo's secondary clarifiers but before where those flows are joined with flows from Toledo's ballasted flocculation facilities. This sampling location shall be referred to for purposes of this Consent Decree as "sampling location 602."

(c) Toledo shall monitor all flows from its ballasted flocculation facilities in accordance with all monitoring requirements specified in Toledo's Current Permit for volume, suspended solids and CBOD<sub>5</sub>. This sampling location shall be referred to for purposes of this Consent Decree as "sampling location 603."

(d) Toledo shall include the results of its monitoring under this paragraph in the Monthly Operating Reports that it submits to the Ohio EPA.

## VI. FUNDING

590 Compliance with the terms of this Consent Decree by Toledo is not conditioned on the receipt of federal or state grant funds or upon Toledo's financial capabilities. In addition, failure to comply is not excused by the lack of federal or state grant funds, or by the processing of any applications for the same, or by Toledo's financial capabilities. Toledo reserves the right to petition EPA and Ohio EPA for a change in compliance dates if it experiences significant adverse changes in its financial capabilities.

## VII. REPORTING

600 Beginning with the end of the next full calendar quarter after entry of this Consent Decree and for every calendar quarter thereafter until this Consent Decree terminates in accordance with Section XXVII, Termination, below, Toledo shall submit written status reports to U.S. EPA and Ohio EPA. In each report, Toledo shall provide the following:

(a) a statement setting forth the deadlines and other terms that Toledo is required by this Consent Decree to meet since the date of the last quarterly statement, whether and to what extent Toledo has met these requirements, and the reasons for any noncompliance;

(b) a general description of the work completed within the three-month period, and a projection of work to be performed pursuant to this Consent Decree during the three-month period. Notification to U.S. EPA and Ohio EPA of any anticipated delay shall not, by itself, excuse the delay; and

(c) copies of all Monthly Operating Reports, monthly SSD reports and quarterly

reports of wastewater backups into buildings that Toledo submitted to Ohio EPA pursuant to Paragraphs 39-40, above, in the previous calendar quarter; and copies of all written reports of 002 discharges and bypass notifications that Toledo submitted to Ohio EPA pursuant to Paragraphs 61-62, below.

610 For each discharge from outfall 002, whether such discharge was anticipated or unanticipated, Toledo shall submit to Ohio EPA a written report containing all information required under Toledo's NPDES Permit No. 2PF00000\*JD, Part III, Sections 11-12, pertaining to such discharge including, but not limited to, a detailed explanation of why the discharge was necessary to avoid loss of life, personal injury, or severe property damage, why Toledo believed that there were no feasible alternatives to the discharge based upon existing equipment at the Bayview WWTP, the total amount of wastewater discharged from outfall 001 during the 24-hour period during which the discharge from outfall 002 occurred, and the total amount of flow discharged from outfall 002. Toledo must submit each such report to Ohio EPA no later than five days from the date of such discharge from outfall 002.

620 For each time Toledo bypasses wastewater flow from any equipment at the Bayview WWTP, including but not limited to the aeration basins and secondary clarifiers, Toledo shall submit to Ohio EPA a written report containing all information required under Toledo's NPDES Permit No. 2PF00000\*JD, Part III, Sections 11-12, pertaining to such bypass including, but not limited to, a detailed explanation of why the discharge was necessary to avoid loss of life, personal injury, or severe property damage; whether there were feasible alternatives to the bypass based upon existing equipment at the Bayview WWTP and, if not, the reasons supporting Toledo's conclusions; and the total amount of wastewater bypassed during the 24-

hour period of time. Toledo must submit each such report to Ohio EPA no later than five days from the date of such bypass.

### VIII. COMMUNICATIONS

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

As to the United States Department of Justice:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Post Office Box 7611  
Washington, D.C. 20044-7611  
Reference Case No. 90-5-1-1-3554

As to the United States Attorney:

Holly Taft Sydlow  
Assistant United States Attorney  
Northern District of Ohio  
Western Division  
1716 Spielbush Avenue  
305 United States Courthouse  
Toledo, Ohio 43624

As to U.S. EPA :

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

and

Gary O. Prichard

Associate Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson, Blvd.  
Chicago, Illinois 60604

As to the State:

Northwest District Office  
Division of Surface Water  
Attn: Enforcement Group Leader  
Ohio Environmental Protection Agency  
347 Dunbridge Rd.  
P.O. Box 466  
Bowling Green, Ohio 43402-0466,

Margaret A Malone  
Assistant Attorney General  
State of Ohio Office of Attorney General  
30 East Broad Street, 25th Floor  
Columbus, Ohio 43215-3824,

and

Randy Bournique  
Enforcement Coordinator  
Division of Surface Water  
Ohio Environmental Protection Agency  
122 South Front Street  
Columbus, Ohio 43216-3669

As to Toledo:

Law Director  
City of Toledo  
One Government Center, Suite 2250  
Toledo, Ohio 43604

Director of Public Utilities  
420 Madison Street, Suite 100  
Toledo, Ohio 43604

Any party, upon written notification to the other parties, may change the addresses to

whom communications with that party shall be sent. All notifications or communications shall be deemed submitted on the date they are postmarked and sent by first class mail or certified mail, return receipt requested.

**IX. STIPULATED PENALTIES**

640 Toledo shall be liable for stipulated penalties in the amounts set forth in this Section to the United States and the State of Ohio for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section X, Force Majeure. "Compliance" by Toledo shall include all requirements of this Consent Decree, including, but not limited to, completion of the activities required under this Consent Decree or any work plan or other plan approved pursuant to this Consent Decree within the specified time schedules and deadlines established by and approved under this Consent Decree or any work plan or other plan.

650 For each failure to comply with the compliance schedule deadlines (including schedule deadlines contained in any plan or report approved by U.S. EPA and Ohio EPA) specified in Section V, Compliance Program or with the Supplemental Environmental Project completion deadlines set forth in Paragraphs 107 and 119 (other than those requirements specifically identified in other Paragraphs of this Section, if any), Toledo shall pay the following stipulated penalties per violation per day:

<u>Period of Noncompliance With Requirement</u>	<u>Penalty Per Day</u>
1st day to 30th day	\$ 1000
31st day to 60th day	\$ 2500
Each day beyond 60 days	\$ 5000

660 Prior to completion of construction of the ballasted flocculation facilities as required by Paragraph 8(f), for any failure to comply with any effluent limitations in Toledo's Current

Permit applicable to Outfall 001 other than acute or chronic toxicity limitations, Toledo shall pay the following stipulated penalties per violation per day:

<u>Period of Noncompliance With Requirement</u>	<u>Penalty</u>
Daily Effluent Limit	\$1,000 per day
7-Day Average Limit	\$2,500 per 7-day period
30-Day Average Limit	\$10,000 per 30-day period

Toledo shall pay a stipulated penalty of \$5,000 for violations of any acute or chronic toxicity effluent limits. Mass limits and concentration limits for the same parameter shall be separate effluent limitations so that, for example, a violation of a seven-day concentration limitation for suspended solids and a violation of a seven-day mass limitation for suspended solids shall be considered to be two separate “7-Day Average Limit” violations. Seven-day and thirty-day effluent limitations apply to any and all consecutive seven and thirty-day periods. Toledo is required to pay only one stipulated penalty for each day per violation of a seven-day or thirty-day effluent limitation (e.g., Toledo will not have to pay a penalty for seven days of violation of the seven-day concentration limitation for suspended solids if it is also required to pay a stipulated penalty for the same days for violation of the thirty-day concentration limitation for suspended solids).

670 Following completion of construction of the ballasted flocculation facilities as required by Paragraph 8(f), for any failure to comply with any effluent limitations in Toledo's Current Permit applicable to discharges from the Bayview WWTP as determined based upon compliance monitoring performed in accordance with the monitoring requirements in Toledo's Current Permit, other than acute or chronic toxicity limitations, Toledo shall pay the following stipulated penalties per violation per day:



<u>Period of Noncompliance With Requirement</u>	<u>Penalty</u>
Daily Effluent Limit	\$1,000 per day
7-Day Average Limit	\$2,500 per 7-day period
30-Day Average Limit	\$10,000 per 30-day period

Toledo shall pay a stipulated penalty of \$5,000 for violations of any acute or chronic toxicity effluent limits. Loading limits and concentration limits for the same parameter shall be separate effluent limitations so that, for example, a violation of a seven-day concentration limitation for suspended solids and a violation of a seven-day loading limitation for suspended solids shall be considered to be two separate “7-Day Average Limit” violations. Seven-day and thirty-day effluent limitations apply to any and all consecutive seven and thirty-day periods. Toledo is required to pay only one stipulated penalty for each day per violation of a seven-day or thirty-day effluent limitation (e.g., Toledo will not have to pay a penalty for seven days of violation of the seven-day concentration limitation for suspended solids if it is also required to pay a stipulated penalty for the same days for violation of the thirty-day concentration limitation for suspended solids).

680 Following completion of construction of the ballasted flocculation facilities as required by Paragraph 8(f), Toledo also shall be liable for the following stipulated penalties if its wastewater as measured at sampling locations 001 or 602 (as defined in Paragraphs 58(a) and (b) of this Consent Decree), contains suspended solids or CBOD<sub>5</sub> levels in excess of the effluent limitations specified for those parameters in Table 1, or if the critical pH levels, as measured at sampling locations 001 or 602 are greater than the maximum levels and/or are less than the minimum levels set forth in Table 1:

<u>Period of Noncompliance With Requirement</u>	<u>Penalty</u>
Daily Effluent Limit	\$1,000 per day
7-Day Average Limit	\$2,500 per 7-day period
30-Day Average Limit	\$10,000 per 30-day period

For purposes of this Consent Decree, loading limits and concentration limits for the same parameter shall be separate effluent limitations so that, for example, a violation of a seven-day concentration limitation for suspended solids and a violation of a seven-day loading limitation for suspended solids shall be considered to be two separate “7-Day Average Limit” violations. Seven-day and thirty-day effluent limitations apply to any and all consecutive seven and thirty-day periods. For purposes of calculating compliance with the seven and thirty-day effluent limitations for suspended solids or CBOD<sub>5</sub> set forth in Table 1 for sampling station 602, Toledo shall report in its Monthly Operating Reports, and shall use, the monitoring results at sampling station 602 for each day the ballasted flocculation facilities are used, and the results at sampling station 001 for each day the ballasted flocculation facilities are not used. Toledo is required to pay only one stipulated penalty for each day per violation of a seven-day or thirty-day effluent limitation (e.g., Toledo will not have to pay a penalty for seven days of violation of the seven-day concentration limitation for suspended solids if it is also required to pay a stipulated penalty for the same days for violation of the thirty-day concentration limitation for suspended solids). Toledo shall not be required to pay a stipulated penalty under this Paragraph if Toledo is already required to pay a stipulated penalty under Paragraph 67 for a violation of the same effluent limitation for the same period of time for discharges as monitored pursuant to Toledo’s Current Permit.

690 For each failure to submit a timely and adequate plan or permit to install required

under Sections V.B through V.I, Toledo shall pay the following stipulated penalties per violation per day:

<u>Period of Noncompliance With Requirement</u>	<u>Penalty Per Day</u>
1st day to 30th day	\$ 1000
31st day to 60th day	\$ 2500
Each day beyond 60 days	\$ 5000

Stipulated penalties under this Paragraph shall begin to accrue on the date that Toledo receives written notice from U.S. EPA or Ohio EPA of disapproval of the report, plan, or schedule and shall continue to accrue until Toledo submits a revised report, plan or schedule to U.S. EPA and Ohio EPA which U.S. EPA and Ohio EPA ultimately approve.

700 For each failure to submit timely and adequate reports or other written documents required by this Consent Decree, but not included in Paragraph 69, Toledo shall pay the following stipulated penalties per violation per day:

<u>Period of Noncompliance With Requirement</u>	<u>Penalty Per Day</u>
1st day to 30th day	\$ 250
31st day to 60th day	\$ 500
Each day beyond 60 days	\$ 1000

710 Prior to completion of the work required under Section V.B of this Consent Decree, for each twenty-four hour period that Toledo discharges flows from the Bayview WWTP' s 001 outfall that have not been treated by the WWTP' s secondary aeration basins and secondary clarifiers when the effluent flow rate from outfall 001 has not exceeded 170 million gallons per day for at least one entire hour during that twenty-four hour period, Toledo shall pay a stipulated penalty of \$1,000.

720 Prior to completion of the work required under Section V.B of this Consent Decree, for each twenty-four hour period that Toledo discharges from outfall 002 at any time during that twenty-four hour period when the effluent flow rate from outfall 001 has not exceeded 170 million gallons per day for at least one entire hour during that twenty-four hour period, Toledo shall pay a stipulated penalty of \$10,000.

730 Following completion of the work required under Section V.B of this Consent Decree, for each twenty-four hour period that Toledo discharges flows from the Bayview WWTP' s 001 outfall that have not been treated by the WWTP' s secondary aeration basins and secondary clarifiers when the effluent flow rate from outfall 001 has not exceeded 195 million gallons per day for at least one entire hour during that twenty-four hour period, Toledo shall pay a stipulated penalty of \$1,000.

740 Following completion of the work required under Section V.B, for each 24-hour period that Toledo discharges at any time from outfall 002 when the effluent flow rate from outfall 001 has not exceeded 400 million gallons per day for at least one entire hour during that 24-hour period, Toledo shall pay a stipulated penalty of \$10,000

750 For each day that Toledo discharges from a combined sewer overflow in violation of Paragraph 6 of this Consent Decree, Toledo shall pay a stipulated penalty of \$5,000 per day per outfall.

760 For each day that an SSD occurs prior to November 1, 2006, while Toledo is out of compliance with its Sewer System Management, Operation and Maintenance Plan, Toledo shall pay stipulated penalties of \$3,000 per day for each day of each SSD occurring. These stipulated penalties shall be in addition to any stipulated penalties for Toledo' s failure to comply with its

Sewer System Management, Operation and Maintenance Plan.

770 For each day that an SSD occurs on or after November 1, 2006, Toledo shall pay stipulated penalties of \$10,000 per day per location for each day of each SSD occurring except that Toledo shall not be liable for stipulated penalties for SSDs which are caused by a ten-year storm event.

780 For each CSO that violates the water quality-based or technology-based effluent limitations and conditions in Toledo's NPDES permit (including the General Effluent Limitations) that occurs subsequent to completion of all construction and full implementation of all measures under the Long Term Control Plan or August 31, 2016, whichever is earlier, Toledo shall pay stipulated penalties of \$5,000 per day for each day of each CSO occurring.

79. For each failure to comply with any other requirement of this Consent Decree not specified in Paragraphs 65-78 above, Toledo shall pay the following stipulated penalties:

<u>Period of Noncompliance With Requirement</u>	<u>Penalty Per Day</u>
1st day to 30th day	\$ 250
31st day to 60th day	\$ 500
Each day beyond 60 days	\$ 1000

80. Multiple penalties may accrue on any one day for different violations of different requirements of this Consent Decree even if such violations are caused by the same set of circumstances.

81. Except as described in Paragraph 69, above, and Paragraph 97, below, all penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity.

82. Following U.S. EPA or Ohio EPA's determination that Toledo has failed to comply with a requirement of this Consent Decree, U.S. EPA or Ohio EPA may give Toledo written notification of the same, describe the noncompliance, and demand payment of stipulated penalties for the noncompliance. All penalties accruing under this Section shall be due and payable to the United States and the State of Ohio within 30 days following Toledo's receipt of such demand for payment which describes the noncompliance. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether or when U.S. EPA or Ohio EPA has notified Toledo of a violation.

83. Any stipulated penalties incurred by Toledo shall be paid as follows. Sixty-seven percent (67%) of the penalty shall be paid to the United States by a cashier's check or certified funds payable to "Treasurer of the United States," and shall be tendered to U.S. EPA, Region V, Post Office Box 70753, Chicago, Illinois 60673, within 30 days of Toledo's receipt of a demand for payment of stipulated penalties from either the United States (or EPA) or the State of Ohio (or Ohio EPA). The transmittal letter accompanying the check shall specify the caption and docket number of this action and the facility and the violations for which the stipulated penalties are being paid. A copy of the letter and the check shall simultaneously be sent to U.S. EPA Region V, Water Compliance Branch, Compliance Section, WCC-15J, 77 West Jackson Boulevard, Chicago, Illinois 60604, and to Chief, Environmental Enforcement Section, United States Department of Justice, Post Office Box 7611, Washington, D.C. 20044-7611. Thirty-three percent (33%) of the penalty shall be paid to the State of Ohio by a cashier's check or certified funds payable to "Treasurer, State of Ohio," within 30 days of Toledo's receipt of a demand for payment of stipulated penalties from either the United States (or EPA) or the State of

Ohio (or Ohio EPA) along with a copy of the same letter to be submitted to the United States, and sent to

Jena Suhadolnik, Administrative Assistant (or by a person subsequently designated by the State of Ohio)  
Office of the Attorney General  
Environmental Enforcement Section  
30 East Broad Street, 25th Floor  
Columbus, Ohio 43266-0410.

84. In any dispute over the applicability of stipulated penalties, Toledo shall bear the burden of proving that it is not subject to stipulated penalties, in accordance with Section XII, Dispute Resolution.

85. The stipulated penalties herein shall be in addition to other remedies or sanctions available to the United States by reason of Toledo's failure to comply with the requirements of this Consent Decree, Toledo's Current Permit, or the Clean Water Act. The payment of such stipulated penalties shall not be construed to relieve Toledo from specific compliance with this Decree or federal or state law, or limit the authority of U.S. EPA or Ohio EPA to require compliance with such laws. The United States and State of Ohio are specifically authorized to seek injunctive relief in this civil action to address any violation of this Consent Decree.

86. If Toledo invokes dispute resolution as provided in Section XII, below, penalties shall continue to accrue as provided in Paragraphs 69, 81 and 97 during such dispute resolution period, but need not be paid to the United States until the following:

(a) If the dispute is resolved by agreement or by a decision of U.S. EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to the United States within 30 days of the agreement or the receipt of U.S. EPA's decision or order;

(b) If the dispute is appealed to this Court and the United States prevails in whole

or in part, Toledo shall pay all accrued penalties determined by the Court to be owed to the United States within 60 days of receipt of the Court's decision or order, except as provided in subparagraph 86(c) below;

(c) If the District Court's decision is appealed by any Party, Toledo shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to U.S. EPA or to Toledo to the extent that such party(ies) prevail(s).

87. If Toledo fails to pay stipulated penalties when due, the United States or Ohio may institute proceedings in this action to collect the penalties, as well as interest.

88. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Toledo's violation of this Decree or of Toledo's Current Permit or of the Act.

#### X. FORCE MAJEURE

89. "Force Majeure" for the purposes of this Consent Decree is defined as an event arising from causes beyond the control of Toledo or the control of any entity controlled by Toledo, including its consultants and contractors, which delays or prevents the performance of any obligation under this Consent Decree. Nothing in this section is intended to relieve Toledo of its duty to use all due diligence to complete the requirements of this Consent Decree in a timely matter or of Toledo's obligation to meet all discharge limitations and other obligations contained in Toledo's Current Permit and as set forth in Paragraph 6 of this Consent Decree.



Unanticipated or increased costs or changed financial circumstances are not Force Majeure events. 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 necessary to meet the requirements of this Consent Decree, are not Force Majeure events. However, if a permitting authority fails to issue, renew or modify--or delays in issuing, renewing or modifying--a lawful permit, order or other action required for any part of the work under this Consent Decree, Toledo is entitled to seek relief under the Force Majeure provisions of this Consent Decree.

90. If any event occurs that causes or may cause delay in the completion of any requirement of this Consent Decree, whether or not due to a Force Majeure event, Toledo shall so notify U.S. EPA, in writing, within fourteen (14) days after Toledo knows, or, in the exercise of due diligence should have known of the event. The notice shall describe in detail the bases for Toledo's contention that it experienced a Force Majeure event, the precise cause or causes of the event, the measures taken or to be taken to prevent or minimize the noncompliance or event, and the timetable by which those measures will be implemented. Failure to so notify U.S. EPA shall constitute a waiver of any claim of Force Majeure as to the event in question.

91. If U.S. EPA finds that a delay in performance is, or was, caused by a Force Majeure event, it shall extend the time for performance, in writing, for a period to compensate for the delay resulting from such event and stipulated penalties shall not be due for such period. In proceedings on any dispute regarding a delay in performance, the provisions of Section XII, Dispute Resolution, shall apply, and Toledo shall have the burden of proving that the delay is, or was, caused by a Force Majeure event, and that the amount of additional time requested is necessary to compensate for that event.

92. Compliance with a requirement of this Consent Decree shall not by itself constitute compliance with any other requirement. An extension of one compliance date based on a particular event shall not automatically extend another compliance date or dates. Toledo shall make an individual showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought. Toledo may petition for the extension of more than one compliance date in a single request.

#### XI. FORCE MAJEURE BETWEEN TOLEDO AND THE STATE

93. If any event occurs that causes or may cause Toledo to violate any provision of this Consent Decree, Toledo shall notify the Ohio EPA in writing within fourteen (14) days from when it knows, or in the exercise of reasonable diligence under the circumstances should have known, that compliance with the Decree would be prevented or delayed, describing in detail the precise cause or causes of the delay or violation, the anticipated length of the delay if applicable, the measures taken by Toledo to prevent or minimize the delay and the timetable by which those measures will be implemented. Toledo shall adopt all reasonable measures to avoid or minimize any such violation. Toledo shall make all reasonable efforts to identify events that cause or may cause a violation of this Consent Decree.

94. In any action by the State of Ohio to enforce any of the provisions of this Consent Decree, Toledo may raise at that time the question of whether it is entitled to a defense that its conduct was caused by circumstances beyond its control such as, by way of example and not limitation, acts of God, strikes, acts of war or civil disturbances. While the State of Ohio does not agree that such a defense exists, it is, however, hereby agreed by Toledo and the State of Ohio that it is premature at this time to raise and adjudicate the existence of such a defense and

that the appropriate point at which to adjudicate the existence of such a defense is at the time, if ever, that the proceeding to enforce this Consent Decree is commenced by the State. At that time the burden of proving that any delay was or will be caused by circumstances beyond the control of Toledo shall rest with Toledo. Failure by Toledo to timely comply with the notice requirements of Paragraph 93 shall, at the option of Ohio EPA, constitute a waiver by Toledo of any right it may have to raise such a defense. Changed financial circumstances or increased costs associated with the implementation of any action required by this Consent Decree shall not in any event constitute circumstances entirely beyond the control of Toledo or serve as a basis for an extension of time under this Section XI.

## XII. DISPUTE RESOLUTION

95. Any dispute that arises between Toledo and the United States or State of Ohio with respect to the meaning or application of any of the requirements of this Consent Decree shall be, in the first instance, the subject of informal negotiations between those parties to attempt to resolve such disputes. Such period of informal negotiations shall not extend beyond thirty (30) days from the date when notice of a dispute is given by one party to the others, unless all parties to the dispute have agreed in writing to extend that period. After informal negotiations, if the parties to the dispute are unable to agree upon the meaning or application of the requirements of this Consent Decree, then Toledo shall comply with the position taken by the United States and the State of Ohio, subject only to Toledo's right to petition the Court as set forth in Paragraph 96, below. This dispute resolution process shall not apply to the issuance, renewal, modification, denial or revocation of a permit and the issuance of orders or other actions of the Director of Environmental Protection (Ohio EPA). Notwithstanding the preceding sentence, the dispute

resolution process shall in any event apply to disputes between Toledo and the State of Ohio with respect to the meaning or application of any requirements of this Consent Decree that relate to the review, modification, disapproval and/or approval of the Long Term Control Plan and/or Long Term Control Plan Report submitted to Ohio EPA pursuant to Paragraphs 30 and/or 32 of this Consent Decree.

96. Within thirty (30) days of the end of the informal negotiations period for resolution of the dispute set forth in Paragraph 95, above, Toledo may petition the Court for relief. Such petition shall set forth the nature of the dispute and proposal for its resolution. The United States and/or the State of Ohio shall have thirty (30) days to respond to the petition and propose an alternate resolution. In any such dispute, the Court will conduct a de novo review in which Toledo shall bear the burden of demonstrating that its actions or positions taken are in accordance with, and will assure Toledo's compliance with, the terms, conditions, requirements and objectives of this Consent Decree, the Clean Water Act, Toledo's Current Permit, and where applicable, the CSO Policy. Any party may request an evidentiary hearing for good cause.

97. Except as provided in this Consent Decree, agreed to in writing by the parties, or ordered by the Court, the filing of a petition asking the Court to resolve a dispute shall not in and of itself extend or postpone any deadline or obligation of Toledo, provided that payment of any stipulated penalties with respect to the disputed matter shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of any failure or refusal to comply with any term or condition of this Consent Decree, except as provided in Paragraph 69. In the event that Toledo does not prevail on the disputed issue, stipulated penalties, if applicable, shall be assessed and paid as provided in Section IX,

Stipulated Penalties. For any dispute which may arise out of a disapproval in whole or in part or an approval with conditions by U.S. EPA or the State of Ohio of Toledo's Long Term Control Plan Report submitted in accordance with Paragraph 32, stipulated penalties shall not accrue during the period, if any, beginning on the 31<sup>st</sup> day after the Court's receipt of the United States' and/or the State of Ohio's response submission, as set forth in Paragraph 96, above, regarding the dispute until the date that the Court issues a final decision regarding such dispute. The preceding sentence shall not apply if Toledo did not have a reasonable basis for the dispute or if the petition was filed for the purposes of delay.

### XIII. CIVIL PENALTY

98. Toledo shall pay a civil penalty of \$435,000 to the United States and \$65,000 to the State of Ohio within 30 days following entry of this Consent Decree. Payment to the United States shall be made via Fed wire Electronic Funds Transfer ("EFT") to the Department of Justice Lockbox Bank in accordance with specific instruction to be timely provided to Toledo upon entry of this Consent Decree and shall reference DOJ case No. 90-5-1-1-3554, the Civil Action Number assigned to this case by the United States District Court, Northern District of Ohio, and File No. \_\_\_ for the United States Attorney's Office for the Northern District of Ohio. Any funds received at the Lockbox bank after 11:00 a.m. (Eastern Time) shall be credited on the next business day. Toledo shall advise the Financial Litigation Unit of the United States Attorney's Office for the Northern District of Ohio at the time payment is being wire-transferred. In addition, Toledo shall confirm to U.S. EPA and the Department of Justice that payment has been made by providing notice in the manner specified in Section VIII, Communications, above.

Payment to Ohio shall be made by cashier's check or certified funds, payable to "Treasurer, State of Ohio," and shall be sent to:

Jena Suhadolnik, Administrative Assistant (or a person subsequently designated by the State of Ohio) at:  
Office of the Attorney General  
Environmental Enforcement Section  
30 East Broad Street, 25th Floor  
Columbus, Ohio 43266-0410.

Payment may also be made by electronic transfer to the designated accounts pursuant to instructions sent by Ohio upon request by Toledo. A copy of the check and transmittal letter or other evidence of payment shall be sent to Ohio and Ohio EPA at the addresses set forth in Section VIII, Communications, above.

99. Nothing in this Section XIII, Civil Penalty, or in Section IX, Stipulated Penalties, shall be construed to limit any other remedies available for violations of this Consent Decree, any NPDES permit, or any regulation or provision of law, including, but not limited to, injunctive relief and civil or criminal contempt sanctions. Where an act or omission that constitutes a violation of this Consent Decree also constitutes a violation of statute, the United States, U.S. EPA or Ohio may elect, in the sole discretion of each, to seek civil penalties under statute. However, in an action for civil penalties based upon a violation of a statute, the parties stipulate that evidence that Toledo has paid a stipulated penalty to the United States, U.S. EPA, and/or the State of Ohio for the same violation for the same day in issue is admissible and can be considered as a factor in mitigation of a penalty.

100. Interest shall accrue on any amounts overdue to the United States under the terms of this Consent Decree at the rate established by the Secretary of the Treasury, pursuant to 31 U.S.C. § 1317. Interest shall accrue on any amounts overdue to Ohio under the terms of this

Consent Decree at the rate of 10 percent, pursuant to Ohio Revised Code § 1343.03.

#### XIV. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

101. In consideration of the settlement of this enforcement action under the Clean Water Act, the City shall conduct two Supplemental Environmental Projects, titled "The Duck Creek Wetland Restoration, Conservation and Public Access Project," or "Duck Creek Project," and the "Stickney West Industrial Park" ("SWIP") Project, respectively. Paragraphs 102 - 110 address the Duck Creek Project and Paragraphs 111 - 122 address the SWIP Project.

102. The parties agree that the goals of the Duck Creek Project will be: 1) to secure water quality improvement, 2) to restore, enhance and create wetlands in the Duck Creek basin, 3) to provide for public access to the project area for educational, recreational, and environmental purposes, 4) to mitigate the effects of storm water run off to the water quality, and 5) to apprise the public in the city of Toledo of the benefits of the Duck Creek Project.

103. The City will meet these goals by taking necessary actions: (a) to restore existing low ecological value wetlands in the Duck Creek riparian corridor to naturally functioning higher value wetlands; b) to place these wetlands in perpetual conservation, (c) to make improvements to roads, trails, and/or parking which will facilitate public access to the project area for recreational, educational, and environmental purposes, (d) to provide for vegetative buffer strips in the upland areas surrounding Duck Creek which will be designed to function as a filtering system for storm water run off that enters the creek, and (e) to sponsor a public outreach program about the Duck Creek Project. The public outreach program must acknowledge that the Project will be implemented as part of this Consent Decree.

104. The City shall expend not less than \$500,000 on this Project and this expenditure

shall be for the purpose of improving water quality as more fully described above. No part of this expenditure shall include federal funds, including low interest federal loans, federal contracts of federal grants. Expenditures unrelated to the goals of the Duck Creek Project as stated above will not count towards the requisite expenditure of \$500,000.

105. Within 180 days following entry of this Consent Decree, the City shall submit a Project Plan for EPA approval for the Duck Creek Project outlining the preliminary scope of work for the Project. This plan shall describe the work to be conducted under the various phases of the Project including, but not limited to, Site Suitability Review, Design, Construction, and Planting and Monitoring. The plan shall identify the specific wetland target sites which will be evaluated during the Site Suitability Review phase. Each phase shall include submittal for EPA approval of a detailed scope of work for the subsequent phase of the Project. The plan shall include a schedule of milestones for completing each phase and project area of the SEP.

106. The City may use outside consultants or agencies, contractors, or employees of any City agency or department to accomplish the tasks in the Duck Creek Project Plan. Project costs associated with using employees of the City shall be credited toward the Duck Creek Project costs at their actual pay rate and cost to City government.

107. Upon approval of the Duck Creek Project Plan by EPA, the City shall implement the plan according to the schedule of milestones included in the plan. The City shall submit a Duck Creek Project Completion Report no later than 5 years from the date of entry of this Consent Decree. The completion report shall contain the following information:

- a. A detailed description of the SEP as implemented;
- b. A description of the operating problems encountered and the solutions thereto;



c. Itemized costs, documented by purchase orders, force accounts and receipts or canceled checks (which must be made available to the United States, if requested);

d. A description of the environmental and public benefits resulting from the implementation of the Duck Creek Project.

108. If, following receipt of the Duck Creek Project Report, EPA determines that the Project has not been completed satisfactorily, and/or if the City fails to comply with any of the terms or provisions of the Duck Creek Project Plan requirements and this decree, and/or if the City fails to expend or obligate the full \$500,000 on the Duck Creek Project in accordance with the SEP Plan requirements, the City shall pay any portion of the amount not expended or obligated on the Duck Creek Project, up to \$500,000, to the United States Treasury and the State of Ohio as a stipulated penalty in accordance with Paragraph 83.

109. The City hereby certifies that it is not required to perform or develop the Duck Creek Project by any federal, State, or local law or regulation; nor is the City required to perform the Duck Creek Project by agreement, grant, or as injunctive relief in this or any other case or in compliance with State or local requirements. The City further certifies that it has not received, and is not presently negotiating to receive credit for the Duck Creek Project in any other enforcement action.

110. Within 120 days of the approval of the Duck Creek Project Plan by EPA, the City shall start submitting progress reports on a quarterly basis. The progress report shall outline the status of each ongoing Duck Creek Project phase and identify any impediment which may delay project progress or completion.

111. The parties agree that the goals of the SWIP Project will be to clean up certain

“brownfields” properties that have been abandoned or otherwise left in a state of disrepair so that such properties may be used for industrial or other beneficial purposes. Furthermore, EPA approves the City of Toledo, Ohio Supplemental Environmental Project Proposal For the Stickney West Industrial Park, dated November 27, 2000 (“SWIP SEP Proposal”), which documents the manner in which investigation and cleanup will be conducted and is attached as Exhibit “A.”

112. The City will meet these goals by taking necessary actions to: (a) Investigate and assess environmental conditions at the Gorney Parcel 4, Shepherd, and Toledo Recycling North Parcels (collectively, the “SWIP SEP Project Parcels”), as such properties are depicted on the photograph attached to the SWIP SEP Proposal as Exhibit “B;” and (b) Perform environmental remediation and restoration upon all or discrete portions of the SWIP SEP Project Parcels consistent with the State of Ohio’s Voluntary Action Program standards, Ohio Revised Code Chapter 3746 et seq., and as described in the SWIP SEP Proposal.

113. The City shall expend not less than \$500,000 on the SWIP SEP Project and this expenditure shall be for the purpose of improving environmental quality as more fully described above. No part of this expenditure shall include federal funds, including low interest federal loans, federal contracts or federal grants. Expenditures unrelated to the goals of the SWIP Project as stated above will not count towards the requisite expenditure of \$500,000 and a minimum of \$300,000 will be spent toward actual remediation and restoration of the SWIP SEP Project Parcels as provided in the SWIP SEP Proposal. The City shall also sponsor a public information program designed to apprise the public in the City of Toledo of the benefits of the SWIP SEP Project. The public information program must acknowledge that the SWIP SEP

Project will be implemented as a part of this Consent Decree.

114. Within 90 days following entry of this Consent Decree, the City shall submit to EPA a copy of signed contractual agreements to perform Task 1a pursuant to the SWIP SEP Proposal. Those agreements, which demonstrate a commitment to complete Phase I Property Assessments pursuant to the SWIP SEP Proposal, shall include a detailed description of the specific portions of the SWIP SEP Parcels which will be addressed and the specific technical plan for accomplishing the assessment and determining the scope and extent of remediation activities. The plan shall include a Project budget detailing assessment costs and estimating remediation priorities and costs.

115. Within 90 days of completion of Task 1a in accordance with Paragraph 114 above, the City shall submit to EPA signed copies of contractual agreements to perform Task 1b pursuant to the SWIP SEP Proposal. These agreements, which demonstrate a commitment to complete Phase II Property Assessments, Preliminary Risk Assessment and underground storage tank (“UST”) Investigations pursuant to the SWIP SEP Proposal, shall describe sampling and other activities that will be conducted under the SWIP SEP Project and shall include a detailed description of the specific portions of the SWIP SEP Parcels which will be addressed, the specific technical plan for accomplishing the activities and a Project budget detailing assessment and analytical costs.

116. Following completion of Task 1b in accordance with Paragraph 115 above, the City shall submit to EPA signed copies of contractual agreements to perform Tasks 2 and 3 pursuant to the SWIP SEP Proposal. These agreements, which demonstrate a commitment to complete cleanup of contaminated media, UST removal, building demolition and waste disposal,

as described more fully in the SWIP SEP Proposal, shall include detailed descriptions of the specific portions of the SWIP SEP Parcels which will be addressed, the specific technical plans for accomplishing the activities, a Project budget detailing the costs to perform these activities and a schedule of milestones for completing each phase of Tasks 2 and 3.

117. Following completion of Tasks 2 and 3 in accordance with Paragraph 116 above, the City shall submit to EPA, signed copies of contractual agreements to perform Task 4 pursuant to the SWIP SEP Proposal. These agreements, which demonstrate a commitment to prepare NFAs for the SWIP SEP Parcels and prepare a SEP Completion report for the SWIP Project, as more fully described in the SWIP SEP Proposal, shall include detailed descriptions of the specific portions of the SWIP SEP Parcels which will be addressed, a descriptions of the activities necessary to complete Task 4 and a Project budget detailing the costs to perform these.

118. The City may use outside consultants or agencies, contractors, or employees of any City agency or department to accomplish the tasks in the SWIP SEP Project. Projects costs associated with using employees of the City shall be credited toward the SWIP SEP Project costs at their actual pay rate and cost to City government.

119. The City shall submit a SWIP SEP Project Completion Report no later than 5 years from the date of entry of this Consent Decree. The Project Completion Report shall contain the following information:

- a. A detailed description of the SWIP SEP Project as implemented;
- b. A description of the operating problems encountered and the solutions thereto;
- c. Itemized costs, documented by purchase orders, force accounts and receipts or canceled checks (which must be made available to the United States, if requested);

d. A description of the environmental and public benefits resulting from the implementation of the SWIP Project.

120. If, following receipt of the SWIP Project Completion Report, EPA determines that the Project has not been completed satisfactorily, and/or if the City fails to comply with any of the terms or provisions of the SWIP SEP Proposal and this decree, and/or if the City fails to expend or obligate the full \$500,000 on the SWIP Project in accordance with the SWIP SEP Proposal, the City shall pay any portion of the amount not expended or obligated on the SWIP Project, up to \$500,000, to the United States Treasury and the State of Ohio as a stipulated penalty in accordance with Paragraph 83.

121. The City hereby certifies that it is not required to perform or develop any portion of the SWIP Project by any federal, State, or local law or regulation; nor is the City required to perform the SWIP Project by agreement, grant, or as injunctive relief in this or any other case or in compliance with State or local requirements. The City further certifies that all work done pursuant to the SWIP Project is not required to be performed by any other person under any contractual arrangement with the City. The City certifies that it has not received, and is not presently negotiating to receive credit for any portion of the SWIP Project in any other enforcement action.

122. Within 120 days of submitting signed contractual agreements to perform Task 1a pursuant to the SWIP SEP Proposal to EPA as described in Paragraph 114 above, the City shall start submitting progress reports on a quarterly basis. The progress report shall outline the status of each ongoing SEP project phase and identify any impediment which may delay project progress or completion.

## XV. RIGHT OF ENTRY

123. U.S. EPA and Ohio EPA, and their representatives, contractors, consultants, and attorneys shall have the right of entry into and upon the Bayview WWTP, at all reasonable times, upon proper presentation of credentials, for the purposes of:

- (a) Monitoring the progress of activities required by this Consent Decree;
- (b) Verifying any data or information required to be submitted pursuant to this Consent Decree;
- (c) Obtaining samples and, upon request, splits of any samples taken by Toledo or its consultants. Upon request, Toledo will be provided with splits of all samples taken by the United States or Ohio; and
- (d) Otherwise assessing Toledo's compliance with this Consent Decree.

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

## XVI. PERMIT OBLIGATIONS

125. This Consent Decree does not authorize or approve the construction of any physical structure or facilities, or the modification of any existing treatment works or sewer system. Approval of such construction or modification shall be as required by applicable county, state, or federal laws or regulations, including applicable requirements of Ohio law with regard to permits to install.

126. This Consent Decree is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342,

nor shall it be interpreted to be such. This Consent Decree does not relieve Toledo of any obligation to apply for, obtain and comply with the requirements of any new or existing NPDES permit or to comply with any federal, state or local laws or regulations.

#### XVII. CERTIFICATION

127. Any report, plan, or other submission that Toledo is required by this Consent Decree to submit, including reports, plans or other submissions that Toledo is also required to submit by its NPDES Permit, shall be signed by an official or authorized agent of Toledo and shall include the following certification:

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

128. Toledo shall not object to the admissibility into evidence of any report, plan, or other submission prepared in accordance with this Paragraph or the information contained in said reports in any proceeding to enforce this Consent Decree.

#### XVIII. AMENDMENT OF AMENDED COMPLAINT

129. Pursuant to Rule 15(b), Federal Rules of Civil Procedure, the parties have consented and requested, and the Court hereby orders that the Amended Complaints of the United States and the State of Ohio be amended to conform to certain issues raised and evidence brought forth during the course of this civil action. The United States and the State of Ohio

hereby add to their Amended Complaints the following claims: (1) the City of Toledo has violated and continues to violate Section 301 of the Clean Water Act, 33 U.S.C. § 1311(a), and Chapter 6111 of the Ohio Revised Code by discharging pollutants from CSOs in violation of general effluent limitations contained in Toledo's current permit; and (2) the City of Toledo has violated and continues to violate Section 301(a) of the Act, 33 U.S.C. § 1311(a), and Chapter 6111 of the Ohio Revised Code by discharging pollutants to waters of the State or United States from Toledo's Sanitary Sewer System through point sources without authorization under any NPDES permit or otherwise as provided in Section 301(a) of the Act.

#### XIX. EFFECT OF SETTLEMENT

130. This Consent Decree in no way affects or relieves Toledo of its responsibility to comply with any federal, state, or local law, regulation, or permit. The parties agree that Toledo is responsible for achieving and maintaining complete compliance with all applicable federal and State laws, regulations, and permits, and that compliance with this Consent Decree shall be no defense to any actions commenced pursuant to said laws, regulations, or permits.

131. Except as expressly provided herein, this Consent Decree is entered in full and final settlement of this action for all parties to the following extent: the Consent Decree resolves those civil claims specifically alleged in the United States' and Ohio's Amended complaints, as further amended by Paragraph 129 of this Consent Decree, that have occurred prior to July 1, 2001 that are disclosed in Monthly Operating Reports that were received by Ohio EPA before July 15, 2001, including all civil claims under the Act for the violations of numeric and general effluent limitations set forth in Toledo's NPDES permits, including Toledo's current permit, identified in the Preamble to this Decree as having the EPA permit number OH0027740, violations of



monitoring requirements and bypassing prohibitions set forth in those same permits that occurred prior to July 1, 2001 that are disclosed in Monthly Operating Reports that were received by Ohio EPA before July 15, 2001. Nothing in this Consent Decree is intended to nor shall be construed to operate in any way to resolve: (a) any civil claim based upon matters not disclosed in Monthly Operating Reports received by Ohio EPA before July 15, 2001, except for SSD violations that were otherwise disclosed to Ohio EPA before July 15, 2001, or upon violations of any kind occurring in whole or in part on or after July 1, 2001; and (b) any criminal liability of Toledo.

132. The United States and Ohio expressly reserve all remedies available to them for all violations of the Act or Ohio Revised Code Chapter 6111 not specifically described in Paragraph 131, above.

133. Nothing herein shall be construed to limit the authority of the United States or the State to undertake any action against any person, including Toledo, in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

134. Nothing herein shall be construed to limit the authority of the United States to act under Section 308 of the Act, 33 U.S.C. § 1318.

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

136. This Consent Decree does not limit or affect the rights of Toledo, the State of Ohio, or the United States as against any third parties (except as provided by operation of law), nor does it limit the rights of third parties, not parties to this Consent Decree, against Toledo.

## XX. FAILURE OF COMPLIANCE

137. The United States and Ohio reserve any and all legal and equitable remedies available to enforce the provisions of this Consent Decree. Toledo reserves all legal and equitable defenses to enforcement under this Consent Decree which are not specifically waived.

#### XXI. CONTINGENT LIABILITY OF STATE

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

#### XXII. COSTS OF SUIT

139. Each party shall bear its own costs and attorneys' fees in this action.

#### XXIII. PUBLIC COMMENT

140. The parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the requirements of 28 C.F.R. § 50.7, which provides for notice and an opportunity for public comment. Toledo shall not withdraw its consent to this Consent Decree during the period of governmental and judicial review between lodging and entry of this Consent Decree and hereby consents to entry of this Decree without further notice.

#### XXIV. PUBLIC DOCUMENTS

141. All information and documents submitted by Toledo to U.S. EPA or Ohio EPA pursuant to this Consent Decree shall be subject to public inspection, unless identified and supported as confidential by Toledo in accordance with 40 C.F.R. Part 2.

XXV. CONTINUING JURISDICTION

142. The Court shall retain jurisdiction over this case until termination of this Consent Decree in order to enforce or modify the Consent Decree and to interpret the rights and obligations of the parties to this Consent Decree. During the pendency of this Consent Decree, any party may apply to the Court for any relief necessary to construe and effectuate this Consent Decree.

XXVI. MODIFICATION

143. There shall be no material modification of this Consent Decree without written approval by all parties to this Consent Decree and the Court. Any modification to this Consent Decree shall be in writing and signed by the parties.

XXVII. TERMINATION

144. This Consent Decree shall terminate after the United States and the State of Ohio have certified to this Court that Toledo has been in compliance with all provisions of this Consent Decree for a period of two years following completion of all construction of all

improvements required by this Decree, including but not limited to completion of all projects required under Section XIV, Supplemental Environmental Projects.

The parties enter into this Consent Decree and submit it to the Court that it may be approved and entered.

FOR THE UNITED STATES OF AMERICA

\_\_\_\_\_  
JOHN C. CRUDEN  
Acting Assistant Attorney General  
Environmental and Natural Resources  
Division  
U.S. Department of Justice  
Washington, D.C. 20530

DATED: \_\_\_\_\_

\_\_\_\_\_  
STEVEN D. ELLIS  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044  
(202) 514-3163

DATED: \_\_\_\_\_

Consent Decree, *United States and State of Ohio v. City of Toledo, Ohio*, Civil Action No. 3:91:CV7646.

EMILY M. SWEENEY  
United States Attorney  
Northern District of Ohio

By: \_\_\_\_\_  
HOLLY TAFT SYDLOW  
Assistant United States Attorney  
Northern District of Ohio  
Western Division  
Four Seagate, Suite 308  
Toledo, Ohio 43604  
(419) 259-6376

DATED: \_\_\_\_\_

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

DATED: \_\_\_\_\_

Consent Decree, *United States and State of Ohio v. City of Toledo, Ohio*, Civil Action No. 3:91:CV7646.

\_\_\_\_\_  
DAVID A. ULLRICH  
Acting Regional Administrator  
United States Environmental Protection Agency  
Region 5 (R-19J)  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

DATED: \_\_\_\_\_

\_\_\_\_\_  
GARY O. PRICHARD  
Associate Regional Counsel  
United States Environmental Protection Agency  
Region 5 (C-14J)  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590  
(312) 886-0570

DATED: \_\_\_\_\_

FOR THE STATE OF OHIO

BETTY MONTGOMERY  
Attorney General of Ohio

By: \_\_\_\_\_  
MARGARET A. MALONE  
Assistant Attorney General  
Environmental Enforcement Section  
Office of the Attorney General  
30 East Broad Street/25th Floor  
Columbus, Ohio 43215-3824

DATED: \_\_\_\_\_

Consent Decree, *United States and State of Ohio v. City of Toledo, Ohio*, Civil Action No.

3:91:CV7646.

FOR THE CITY OF TOLEDO

By: \_\_\_\_\_  
BARBARA E. HERRING  
Director of Law  
City of Toledo  
One Government Center, Suite 2250  
Toledo, Ohio 43604

DATED: \_\_\_\_\_

Consent Decree, *United States and State of Ohio v. City of Toledo, Ohio*, Civil Action No. 3:91:CV7646.

Consent Decree entered and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

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JAMES G. CARR, JUDGE  
United States District Court  
Northern District of Ohio, Western Division



TABLE 1  
EFFLUENT LIMITATIONS FOR PARAGRAPHS 15 AND 68

Parameter	Concentration (mg/l)		Loading (kg/day)		Monitoring Rqmts.	
	30 day	7 day	30 day	7 day	Meas. Freq.	Sample Type
Total Suspended Solids	25	40	12,321	19,713	Daily	Composite
CBOD <sub>5</sub>	25	40	12,321	19,713	Daily	Composite

Monitoring for the parameter pH shall be continuous with the critical value reported daily. pH values shall not be less than 6.5 Standard Units (S.U.), nor greater than 9.0 S.U. Critical values shall be the minimum and maximum value reported each day.