

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

UNITED STATES OF AMERICA and)
STATE OF OHIO,)
)
Plaintiffs,)
)
v.)
)
)
NORTHEAST OHIO REGIONAL SEWER)
DISTRICT,)
)
Defendant)
_____)

Civil Action No. 1:10-CV-02895-DCN

[CONSOLIDATED FIFTH AMENDED](#)
CONSENT DECREE

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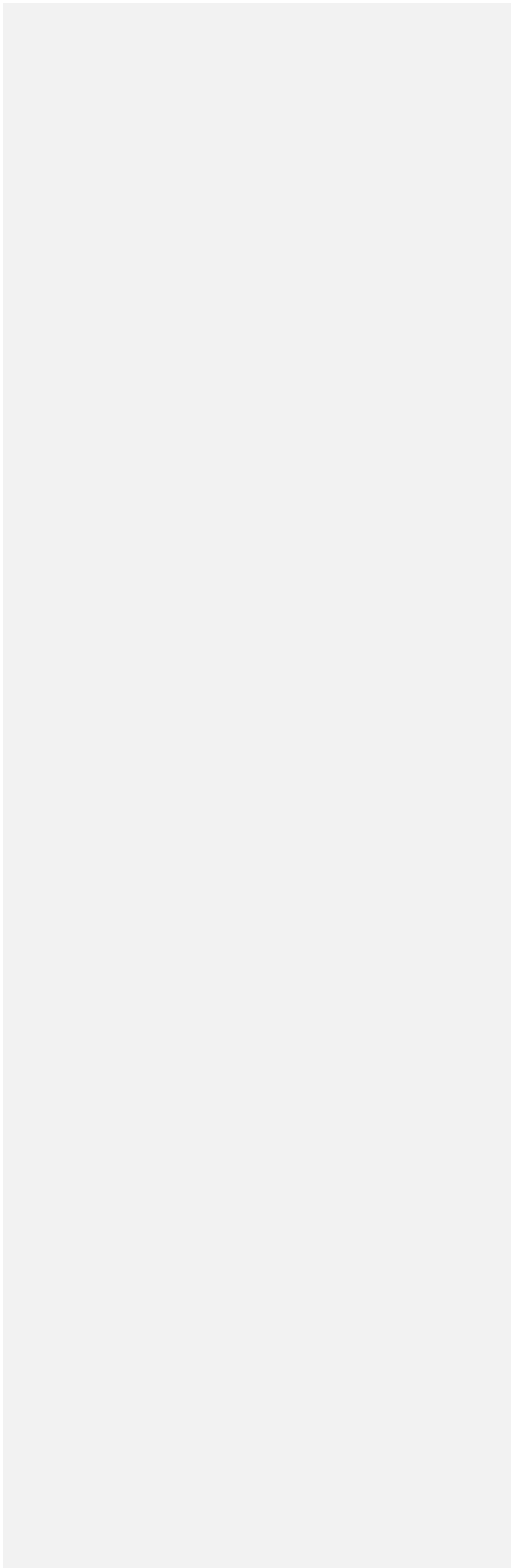
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Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), jointly with Plaintiff the State of Ohio (the “State”), on behalf of the Ohio Environmental Protection Agency (“Ohio EPA”), have filed a complaint in this action concurrently with this Consent Decree, alleging that the Defendant, the Northeast Ohio Regional Sewer District (“NEORSRD” or the “District”), violated Section 301(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1311(a) and of Chapter 6111 of the Ohio Revised Code (“O.R.C.”).

The Complaint against NEORSRD alleges that NEORSRD discharged pollutants in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), Chapter 6111 of the O.R.C. and the terms and conditions of NEORSRD’s National Pollutant Discharge Elimination System (“NPDES”) permits issued to NEORSRD in accordance with the provisions of Section 402(a) of the CWA, 33 U.S.C. § 1342, by discharging pollutants in violation of its NPDES permits from Combined Sewer Overflow (“CSO”) outfalls and by discharging wastewater flows that bypassed primary and/or secondary treatment from the outfalls at its Easterly and Southerly Wastewater Treatment Plants (“WWTPs”).

NEORSRD denies any liability to the United States or the State arising out of the transactions or occurrences alleged in the Complaints. NEORSRD states that it was created in 1972 by an Order of the Cuyahoga County Court of Common Pleas to assume the operation and management of specific wastewater collection, treatment and disposal facilities serving the Cleveland metropolitan area.

NEORSRD serves all or part of 62 communities and over one million people in a 350 square-mile tributary area, 80 square miles of which is served by combined sewers. NEORSRD is responsible for operation and maintenance of 305 miles of interceptor sewers including 40 miles

of intercommunity relief sewers. The system includes 126 permitted combined sewer overflow outfalls and 26 automated regulators. These facilities were built as early as 1876.

NEORS is responsible for operation and maintenance of three WWTPs, Easterly, Southerly and Westerly, which were built in 1922, 1928, and 1922 respectively. Improvements to these plants have been made continuously.

NEORS is also responsible for operation and maintenance of the Combined Sewer Overflow Treatment Facility (CSOTF) located near the Westerly plant, which was constructed in 1983.

NEORS states that it has invested over \$2.0 billion in facilities and collection system improvements since 1972, and has spent over \$850 million to reduce CSO discharges by nearly 50%.

NEORS states that between 1972 and 2006, NEORS constructed the Northwest Interceptor, Cuyahoga Valley Interceptor, Southwest Interceptor and Heights/Hilltop Interceptor. These interceptors have diverted approximately 1.65 billion gallons of sanitary flow out of the combined system directly to the WWTPs.

In addition, NEORS states that it has taken certain incremental steps to reduce CSO discharges that it believes are in compliance with EPA's CSO Policy. It states that these steps are: (a) NEORS completed a system-wide CSO Facilities Plan Phase I Study in 1994; (b) Pursuant to its CSO NPDES Permit, NEORS's CSO Operational Plan was submitted in 1998 and approved by Ohio EPA in 1999; (c) In 1995 NEORS began developing its CSO Long Term Control Plan, which is embodied in separate Facilities Plans for the Mill Creek, Westerly, Southerly and Easterly sewersheds. Facility planning efforts included interceptor inspection and evaluation, extensive system investigation, mapping and flow monitoring during facilities

planning, and sewer and stream modeling; (d) NEORS D submitted for Ohio EPA approval the Mill Creek and Westerly Facilities Plans in 1999, and the Southerly and Easterly Facilities Plans in 2002; (e) In 2008 NEORS D completed its studies of feasible alternatives to minimize wet weather bypasses at the Southerly and Easterly WWTPs; (f) Implementation of the District's facilities plans has included rehabilitation and early action projects in all three treatment plant service areas. The early action projects have controlled approximately 480 million gallons of CSO; (g) NEORS D has completed construction of the major portion of the Mill Creek Tunnel, which is designed to reduce overflows to Mill Creek by over 500 million gallons per year.

NEORS D states that it has imposed appropriate and necessary rate increases to pay for these efforts. The District states that it has raised rates in 17 out of the last 20 years, in amounts varying from 4.5% to 22.2%, resulting in rate increases during this period of 350%.

NEORS D states that throughout the Long Term Control Plan facilities planning process NEORS D has conducted significant public outreach, including developing a website, producing brochures, communicating with the media, holding public meetings and participating in community events, coordinating beach testing with appropriate agencies, and implementing an overflow notification program. NEORS D states that it has also participated in a number of scientific studies aimed toward development of more rapid water quality testing methods and protocols.

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

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

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and over the Parties. This Court has supplemental jurisdiction over the State law claims asserted by the State of Ohio pursuant to 28 U.S.C. § 1367. This Court also has personal jurisdiction over the Parties to this action. Venue is proper in this District pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and 1395(a) because Defendant is located in this judicial district and the violations alleged in the Complaint are alleged to have occurred in this judicial district. For purposes of this Decree, or any action to enforce this Decree, Defendant consents to the Court's jurisdiction over this Decree and any such action and over Defendant and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Section 301(a) of the CWA, 33 U.S.C. § 1311(a) and Chapter 6111 of the O.R.C.

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States and the State of Ohio, and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

4. No transfer of ownership or operation of NEORSD's WWTPs, or its collection system, or any portion of its WWTPs or its collection system, whether in compliance with the

procedures of this Paragraph or otherwise, shall relieve NEORS D of its obligation to ensure that the terms of the Decree are implemented. At least 60 Days prior to such transfer, NEORS D shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 5, the United States Attorney for the Northern District of Ohio, the United States Department of Justice, and the State, in accordance with Section XVII of this Decree (Notices). Any attempt to transfer ownership or operation of any WWTP or any portion thereof, or the collection systems or any portion thereof, without complying with this Paragraph constitutes a violation of this Decree.

5. NEORS D shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. NEORS D shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

6. In any action to enforce this Consent Decree, NEORS D shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. OBJECTIVES

7. 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 NEORS D to achieve and maintain full compliance with the terms and conditions of NEORS D's NPDES Permits, the Clean Water Act, Chapter 6111 of the O.R.C.,

and the rules and regulations adopted pursuant thereto, and to meet the objectives of EPA's April 19, 1994 "Combined Sewer Overflow (CSO) Policy."

IV. DEFINITIONS

8. The terms used in this Decree that are defined in the Clean Water Act, the regulations promulgated pursuant to the Clean Water Act, Chapter 6111 of the O.R.C. or the rules promulgated under that chapter, shall have the meanings assigned to them in the Clean Water Act, Chapter 6111 of the O.R.C., or such regulations or rules, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. "Achievement of Full Operation" shall mean completion of construction and installation of equipment or infrastructure such that the equipment or infrastructure has been placed in full operation, and is expected to both function and perform as designed, plus completion of shakedown and related activities, as well as completion of in-situ modified operations and maintenance manuals. This specifically includes all control systems and instrumentation necessary for normal operations and all residual handling systems. Certain specified CSO Control Measures set forth in Appendix 1 consist of separate components. For those specified CSO Control Measures, "Achievement of Full Operation" shall not be achieved until the last component is completed.

b. "CE HRT" shall mean chemically enhanced high rate treatment, as described further in this Consent Decree and in Appendix 1.

c. "Clean Water Act" or "CWA" shall mean the Federal Water Pollution Control Act found at 33 U.S.C. § 1251 et seq., and the regulations promulgated thereunder.

d. “Collection System” shall mean the municipal wastewater collection and transmission system owned or operated by NEORSD including all pipes, interceptors, force mains, gravity sewer lines, lift stations, pumping stations, manholes and appurtenances thereto designed to collect and convey municipal sewage (domestic, commercial, and industrial) to any of NEORSD’s three WWTPs or to a Combined Sewer Overflow Outfall. “Collection System” includes both NEORSD’s “Combined Sewer System” and its “Sanitary Sewer System.”

e. “Combined Sewer Overflow” or “CSO” shall mean any discharge from NEORSD’s Combined Sewer System at a CSO Outfall designated in NEORSD’s CSO Permit.

f. “Combined Sewer Overflow Policy” or “CSO Policy” shall mean the policy issued by EPA regarding combined sewer overflows, entitled “Combined Sewer Overflow (CSO) Policy,” 59 Fed. Reg. 18,688 (April 19, 1994).

g. “Combined Sewer System” shall mean the portion of NEORSD’s Collection System designed to convey only municipal sewage (domestic, commercial and industrial wastewaters) and stormwater to any of NEORSD’s three WWTPs or to a CSO Outfall.

h. “Completion of the Bidding Process” shall mean NEORSD has: (i) appropriately allocated funds for a specific CSO Control Measure (or portion thereof) or for a project specified in Appendix 1 (or portion thereof); (ii) accepted and awarded the bid for construction of the specific CSO Control Measure or project specified in Appendix 1; and (iii) issued a notice to proceed with construction, which remains in effect for the CSO Control Measure or project specified in Appendix 1.

i. “Consent Decree” or “Decree” shall mean this Decree, all Appendices hereto, and all plans, schedules, reports, memoranda, or other submittals approved by EPA and/or Ohio EPA, as applicable, pursuant to the requirements of this Decree or any Appendix

hereto. In the event of any conflict between the Decree and any Appendix, this Decree shall control.

j. “CSO Control Measures” shall mean the construction, control measures, actions, and other activities set forth in Appendices 1 and 3 or any EPA and Ohio EPA approved modification of those items in Appendices 1 or 3.

k. “CSO Outfall” shall mean an outfall in the Combined Sewer System from which CSOs are discharged. NEORS D’s CSO Outfalls are identified in NEORS D’s CSO Permit as “combined sewer overflows” at Part II.A. in NEORS D’s CSO Permit and are labeled by outfall numbers beginning with 3PA00002001 through 3PA00002127.

l. “Date of Entry” shall mean the date that this Consent Decree is entered by the Clerk of the Court for the United States District Court for the Northern District of Ohio after being signed by a federal district judge.

m. “Date of Lodging” shall mean the date that this Consent Decree is lodged with the Clerk of the Court for the United States District Court for the Northern District of Ohio.

n. “Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day.

o. “Design Criteria” shall mean the specified minimum attributes of a given project, such as storage volumes, treatment capacities, or pumping, and/or conveyance capacities specified in Appendices 1 and 3 or any EPA and Ohio EPA approved modification of such criteria.

p. “Green Infrastructure” shall mean, for purposes of this Consent Decree, the range of stormwater control measures that use plant/soil systems, permeable pavement, or stormwater harvest and reuse, to store, infiltrate, or evapotranspire stormwater and reduce flows to the combined sewer system. Green infrastructure may include, but is not limited to, bioretention and extended detention wetland areas as well as green roofs and cisterns.

q. “Gray Infrastructure” for purposes of this Consent Decree shall mean engineered structural control practices to control CSO discharges that are not Green Infrastructure as defined in this Decree. Examples of “Gray Infrastructure” include tunnel systems, storage tanks, in-line storage facilities, sewer lines, and pump stations.

r. “NEORSRD” or “the District” shall mean the defendant, the Northeast Ohio Regional Sewer District.

s. “NEORSRD’s CSO Permit” shall mean Ohio EPA Permit No. 3PA00002*FD issued to NEORSRD by Ohio EPA, effective April 1, 1997, issued pursuant to the NPDES permit program, and any succeeding, amended, or renewal permit governing NEORSRD’s CSOs.

t. “NEORSRD’s Easterly Permit” shall mean Ohio EPA Permit No. 3PF00001*KD, issued to NEORSRD by Ohio EPA, effective August 1, 2000, issued pursuant to the NPDES permit program, and any succeeding, amended, or renewal permit governing NEORSRD’s Easterly WWTP.

u. “NEORSRD’s NPDES Permits” shall mean collectively NEORSRD’s CSO, Easterly, Southerly, and Westerly permits.

v. “NEORSRD’s Southerly Permit” shall mean Ohio EPA Permit No. 3PF00002*LD, issued to NEORSRD by Ohio EPA, effective December 1, 2002, issued pursuant

to the NPDES permit program, and any succeeding, amended, or renewal permit governing NEORSD's Southerly WWTP.

w. "NEORSD's Westerly Permit" shall mean Ohio EPA Permit No. 3PE00001*LD, issued to NEORSD by Ohio EPA, effective August 1, 2000, issued pursuant to the NPDES permit program, and any succeeding, amended, or renewal permit governing NEORSD's Westerly WWTP.

x. "Nine Minimum Controls" or "NMCs" shall mean those controls identified in Section II.B. of EPA's CSO Policy and Part II.B. of NEORSD's CSO Permit.

y. "NPDES" shall mean EPA's National Pollutant Discharge Elimination System permit program established pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1318.

z. "Ohio EPA" shall mean the Ohio Environmental Protection Agency and any successor departments or agencies of the State of Ohio.

aa. "Paragraph" shall mean a provision of this Consent Decree identified by an Arabic number.

bb. "Parties" shall mean the United States, the State of Ohio, and NEORSD.

cc. "Performance Criteria" shall mean the Performance Criteria identified in Paragraph 21 of the Consent Decree and specified in Appendix 1.

dd. "Plaintiffs" shall mean the United States and the State of Ohio.

ee. "Post-Construction Monitoring Program" shall mean the Post-Construction Monitoring Program set forth in Appendix 2.

ff. “Sanitary Sewer System” shall mean the separate portion of the Collection System designed to convey municipal sewage (domestic, commercial, and industrial wastewater) to the WWTP.

gg. “Section” shall mean a portion of this Consent Decree identified by an uppercase Roman number.

hh. “Semi-annual Progress Report” shall mean the reports due on a semi-annual basis under Section IX of this Consent Decree.

ii. “Sensitive Areas” shall mean those areas designated by the NPDES authority in coordination with state and federal agencies, as appropriate, Outstanding National Resource Waters, National Marine Sanctuaries, waters with threatened or endangered species and their habitat, waters with primary contact recreation, public drinking water intakes or their designated protection areas, and shellfish beds, as set forth in Section II.C.3. of the CSO Policy.

jj. “Six-month Period” shall mean a six-month period ending on June 30 and December 31.

kk. “State” shall mean the State of Ohio, acting on behalf of Ohio EPA.

ll. “United States” shall mean the United States of America, acting on behalf of EPA.

mm. “Unpermitted Discharge” shall mean any discharge from the combined portions of NEORSD’s Collection System at other than a CSO Outfall designated in the CSO permit.

nn. “U.S. EPA” or “EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

oo. “Easterly WWTP” shall mean the Easterly Wastewater Treatment Plant owned and operated by NEORS D located at 14021 Lakeshore Boulevard, Cleveland, Ohio.

pp. “Southerly WWTP” shall mean the Southerly Wastewater Treatment Plant owned and operated by NEORS D and located at 6000 Canal Road, Cleveland, Ohio.

qq. “Westerly WWTP” shall mean the Westerly Wastewater Treatment Plant owned and operated by NEORS D and located at 5800 Cleveland Memorial Shoreway, Cleveland, Ohio.

rr. “WWTP” shall mean a wastewater treatment plant.

V. CIVIL PENALTY

9. Within 30 Days after the Date of Entry, NEORS D shall pay the sum of \$600,000 as a civil penalty to the United States, together with interest accruing from the Date of Entry, at the rate specified in 28 U.S.C. § 1961 as of the Date of Entry.

10. NEORS D shall pay the civil penalty due by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with written instructions to be provided to NEORS D, following lodging of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney’s Office for the Northern District of Ohio, 801 West Superior Avenue Suite 400, Cleveland, OH 44113, (216) 622-3600. At the time of payment, NEORS D shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States and State of Ohio v. Northeast Ohio Regional Sewer District, and shall reference the civil action number and DOJ case number 90-5-1-1-08177/1, to the United States in accordance with Section XVII of this Decree (Notices); by email to acctsreceivable.CINWD@epa.gov; and by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

11. NEORSD shall not deduct any penalties paid under this Decree pursuant to this Section or Section X (Stipulated Penalties) in calculating its federal, state, or local income tax.

12. Within thirty (30) Days after the Date of Entry, NEORSD shall pay a civil penalty in the amount of \$600,000 to the State of Ohio. Payment will be made by cashier's check or certified funds, payable to "Treasurer, State of Ohio," and will be sent to:

Karen Pierson, Paralegal
Attorney General's Office
Environmental Enforcement Section
30 East Broad St., 25th Floor
Columbus, OH 43215-3400

13. Payment may also be made by electronic funds transfer to the designated accounts pursuant to instructions sent by the State of Ohio upon notice by the State of Ohio. A copy of the check and transmittal letter or other evidence of payment will also be sent to the Ohio Attorney General's Office and Ohio EPA, as provided in Section XVII (Notices).

VI. PERMANENT INJUNCTION AND COMPLIANCE REQUIREMENTS

14. NEORSD shall achieve and maintain full compliance with the terms and conditions of NEORSD's NPDES Permits and the provisions of the Act, 33 U.S.C. § 1281 et seq., and O.R.C. Chapter 6111, and the rules promulgated thereunder in accordance with the compliance program and the schedules set forth below.

15. Nine Minimum Controls. As of the date of lodging of this Decree, NEORSD has implemented the Nine Minimum Controls as described in its report, approved by Ohio EPA, entitled "Combined Sewer Operational Plan" as required by Part II.B. of NEORSD's CSO Permit and as set forth in Section II.B. of the CSO Policy, which include the following:

- a. Proper operation and regular maintenance programs for sewer systems and CSOs;
- b. Maximum use of collection system for storage;
- c. Review and modification of pretreatment requirements to assure CSO impacts are minimized;
- d. Maximization of flow to the POTW for treatment;
- e. Prohibition of CSOs during dry weather;
- f. Control of solid and floatable materials in CSOs;
- g. Pollution prevention;
- h. Public notification to ensure that the public receives adequate notification of CSO occurrences and CSO impacts;
- i. Monitoring to effectively characterize CSO impacts and the efficacy of CSO controls.

16. Construction and Implementation of CSO Control Measures.

a. NEORS D shall perform the activities and construct the CSO Control Measures in accordance with the descriptions, Design Criteria, and dates for Completion of the Bidding Process and Achievement of Full Operation for each CSO Control Measure set forth in Appendix 1.

b. NEORS D currently estimates that the costs of implementing the CSO Control Measures set forth in Appendix 1 will be \$2,996,000,000 (in 2009 dollars). The parties have determined that in combination with the additional \$2,251,000,000 in non-CSO related capital costs contained in the District's Capital Improvement Plan, these expenditures constitute a "high burden" on District ratepayers as defined in U.S. EPA's "Combined Sewer Overflows –

Guidance for Financial Capability Assessment and Schedule Development” (February 1997).

Based on these estimated costs, the Parties agree that the schedule for implementing the CSO Control Measures set forth in Appendix 1 is a reasonable and appropriate schedule based on the likelihood that the District’s ratepayers will incur a substantial financial impact.

c. If, following Achievement of Full Operation of any specific CSO Control Measure or CSO Control Measures set forth in Appendix 1, NEORS D needs additional time to implement additional measures necessary to achieve the Performance Criteria pertaining to the specific CSO Control Measure or Measures, NEORS D may submit to EPA and Ohio EPA as a part of its Corrective Action Plan (“CAP”), described in Section 2.4.4. of Appendix 2 to this Consent Decree, a request for an extension of the previously applicable deadline for Achievement of Full Operation for the CSO Control Measure or Measures at issue to allow for implementation of the additional measures set forth in the CAP. EPA and Ohio EPA shall then review the request for extension of time as part of their review of the CAP, as set forth in Section 2.4.4. of Appendix 2. Any extension of the deadline for Achievement of Full Operation for a CSO Control Measure approved by EPA and Ohio EPA under this procedure shall be considered the applicable date for Achievement of Full Operation as set forth in Appendix 1.

17. Post Construction Monitoring. NEORS D shall perform the Post-Construction Monitoring Program set forth in Appendix 2, in accordance with the provisions and schedule set forth therein.

18. Approval and Implementation of CEHRT Pilot Projects.

A. Chemically Enhanced High Rate Treatment Pilot Studies and Implementation.

(1) Purpose of Studies – NEORS D shall perform Chemically-Enhanced High Rate Treatment (“CE HRT”) Pilot Studies, to determine the effectiveness of

treating flows transported during wet weather events to NEORSD's Easterly WWTP, to be discharged from CSO-001; to NEORSD's Southerly WWTP, to be discharged from Southerly's Outfall 002; and to the Combined Sewer Overflow Treatment Facility ("CSOTF") located at NEORSD's Westerly WWTP, to be discharged from the CSOTF Outfall CSO-002. NEORSD shall conduct the pilot studies to determine whether flow that would be treated at the proposed CE HRT facilities at the Easterly, Westerly, and Southerly WWTPs would meet the CE HRT Performance Criteria, set forth below. The studies will also allow the parties to assess the feasibility, cost, and expected performance of the CE HRT systems.

(2) CE HRT Pilot Work Plans - By January 1, 2011, NEORSD shall submit to U.S. EPA and Ohio EPA for review, comment, and approval in accordance with the terms of Paragraph 23 (Approval of Deliverables) of the Consent Decree, work plans (the "CE HRT Pilot Work Plans") to conduct the CE HRT Pilot Studies. The CE HRT Pilot Work Plans shall contain the following elements:

(a) Design Criteria - A description of the facilities to be constructed or otherwise used in the Pilot Study, including the following: (1) the size and configuration of each basin, treatment unit, or other piece of equipment, that will provide CE HRT treatment and disinfection prior to discharge at the Easterly, Southerly, and Westerly WWTPs; (2) plans and section views of the relevant treatment units and the hydraulic and process operating parameters; (3) the anticipated flow pattern through the equipment, including the hardware NEORSD will install to achieve the desired flow pattern; (4) the CE HRT facilities' capacity for treatment (including anticipated pollutant influent concentrations and flow rates, descriptions of the method of chemical enhancement, chemical mixing, flocculation, and sludge removal and handling); and (5) the cost of the improvements to be installed to conduct the Pilot

Study at the Easterly, Southerly, and Westerly WWTPs. NEORS shall design the facilities to meet the CE HRT Performance Criteria set forth in Subparagraph 2(b) below, except that NEORS shall design the facilities to meet a concentration of total suspended solids (“TSS”) of 30 mg/l over an average of seven consecutive discharge events.

(b) CE HRT Performance Criteria - A description of the methods NEORS shall use to determine the effectiveness of the study, including the CE HRT post-construction monitoring plan for meeting the following performance criteria on a continuous basis:

(i) A concentration of TSS, calculated as a flow-weighted arithmetic mean and reported as a running average, of no more than 40.0 mg/l over the seven most recent discharge events based upon composite sampling;

(ii) A concentration of E. coli of no more than 126 colony forming units per 100 ml, calculated as a geometric mean for each day in which a discharge occurs for the entire recreational season (May 1 through October 31), based upon a single grab sample per day of discharge;

(iii) A concentration of E. coli of no more than 284 colony forming units per 100 ml, calculated as a rolling geometric mean for each seven-day period (the rolling mean is recalculated each day in which a discharge occurs using the most recent seven days of discharge), based upon a single grab sample per day of discharge; and

(iv) A concentration of total residual chlorine of no more than 0.038 mg/l monitored continuously.

(c) Schedule - A description of the schedule for construction of the equipment to conduct the Pilot Study, milestone dates of construction, and date of submission

of the Pilot Performance Report (described below), consistent with the schedules set forth in Appendix 1 of this Consent Decree.

(3) Upon approval of a CE HRT Pilot Work Plan by U.S.EPA and Ohio EPA, NEORS shall commence design and construction of the CE HRT pilot system to which the CE HRT Pilot Work Plan pertains, complete construction of the pilot, operate the completed pilot system, and conduct post-construction monitoring as set forth in the pertinent CE HRT Work Plan.

(4) CE HRT Pilot Performance Reports – Within 42 months of U.S. EPA’s and Ohio EPA’s approval of the CE HRT Pilot Work Plans for Easterly and for Southerly; and within 54 months of U.S. EPA’s and Ohio EPA’s approval of the CE HRT Pilot Work Plan for Westerly; NEORS shall submit to U.S. EPA and Ohio EPA for review, comment and approval, reports (the “CE HRT Pilot Performance Reports”) that contain the following:

(a) The relevant information and supporting documentation that demonstrates that NEORS performed the CE HRT Pilot Study in accordance with the approved CEHRT Pilot Work Plan;

(b) The results of the study including, but not limited to, an evaluation of whether the CE HRT Pilot at the WWTP pertinent to the study meets all CE HRT Performance Criteria contained in Subparagraph 2(b) for treating wet weather flows in accordance with the approved CE HRT Work Plans;

(c) All operational and performance monitoring data collected during the CE HRT Pilots, provided as attachments; and

(d) An analysis of additional feasible measures identified during the Pilot Study that can be taken to maximize treatment at the CE HRT facilities at the three WWTPs. The analysis shall: (i) describe in detail such additional or alternative measures to maximize treatment, including the measures' predicted impact on the CE HRT performance; (ii) estimate the capital and operation and maintenance costs of the additional or alternative measures; and (iii) recommend those additional or alternative control measures for NEORS D to construct or install that will allow NEORS D to maximize TSS treatment.

(5) Pilot Results - If the evaluation of the CE HRT Pilot Studies show that the CE HRT meets the Performance Criteria in Subparagraph 2(b) at the Easterly, Westerly, and Southerly locations, NEORS D shall include in the CE HRT Pilot Performance Reports the plans and schedules for construction or completion of CE HRT basins and associated treatment equipment, including the implementation of the additional or alternative measures to maximize treatment recommended in Paragraph 4(d), above, at the Easterly, Westerly, and Southerly WWTPs in accordance with the criteria set forth in Appendix 1 to the Consent Decree.¹

(6) NEORS D shall complete the construction of the CEHRT system at Southerly WWTP ("Southerly CEHRT") in accordance with Control Measure 5-2 in Appendix 1 to the Consolidated Fifth Amended Consent Decree.

(7) NEORS D shall complete the construction of the CEHRT system at the Westerly WWTP ("Westerly CEHRT") in accordance with Control Measure 3-2 in Appendix 1 to the Consolidated Fifth Amended Consent Decree.

¹ After NEORS D completed the requirements set forth in Paragraph 18(A)(1) through 18(A)(5) of this Consent Decree, the Parties agreed to modify this Consent Decree. As such, Control Measures 3, 3A, 5 and 5A of Appendix 1 no longer apply to this Consent Decree as amended and Control Measure 2A has been deleted. Construction of the CM 2 at Easterly, CM 3-2 at Westerly and CM 5-2 at Southerly shall be done in accordance with Paragraphs 18(A)(6), 18(A)(7) and 18(A)(8).

Deleted: <#>U.S. EPA and Ohio EPA Review of CE HRT Pilot Performance Reports - The submission of NEORS D's CE HRT Pilot Performance Report for the Easterly WWTP shall be governed by the provisions of Paragraph 23 (Approval of Deliverables) of the Consent Decree, except that within 60 days of receiving comments from U.S. EPA and Ohio EPA, NEORS D shall submit revised CE HRT Pilot Performance Reports that answer and respond fully to U.S. EPA and Ohio EPA's comments. Upon receipt of U.S. EPA and Ohio EPA's final approval of the CE HRT Pilot Performance Reports, as applicable, NEORS D shall complete the construction of the recommended CE HRT systems at the Easterly WWTP in accordance with the approved plans and all schedules contained therein.[¶]

If the results of the CE HRT Pilot for Easterly show that the pilot facility at the Easterly WWTP does not meet the CE HRT Performance Criteria for TSS set forth in Subparagraph 2(b), above, and in Appendix 1, NEORS D shall, within 60 days of U.S. EPA and Ohio EPA approval of the Pilot Performance Reports, submit an Alternative High Rate Treatment Plan (the "Alternative HRT Plan"), which shall include the plans and schedules for construction or completion of a ballasted flocculation system in place of the CE HRT basin(s) at the Easterly WWTP upon failure of the Easterly CE HRT. The ballasted flocculation system shall meet the design criteria and time deadlines set forth in Appendix 1 and achieve a performance standard for TSS of 30.0 mg/l over an average of seven consecutive discharge events. NEORS D shall also include with the Alternative HRT Plan a description of the additional monitoring needed to assess the operation of the ballasted flocculation system, including an analysis as to whether NEORS D has achieved the TSS design and performance standards for the ballasted flocculation system at the Easterly plant, and a schedule for performing such monitoring. U.S. EPA and Ohio EPA's review of the Alternative HRT Plan shall be governed in accordance with the provisions of Paragraph 23 (Approval of Deliverables) of the Consent Decree.[¶] If the results of the CE HRT Pilot Study show that the pilot facility at the Easterly location does not meet the CE HRT Performance Criteria for E. coli or residual chlorine set forth in Subparagraph 2(b), above, and Appendix 1, NEORS D shall submit, within 60 days of EPA and Ohio EPA's approval of the CE HRT Pilot Performance Reports, an Alternative HRT Plan, which shall include a proposal for such additional or alternative equipment that would meet the performance standards set forth in Paragraph 2(b), above, and Appendix 1. NEORS D shall include in the Alternative HRT Plan a schedule that will meet the deadlines set forth in Appendix 1 to this Consent Decree and a description of the additional monitoring needed to assess the operation of the CE HRT system, including whether the performance of the CE HRT system has achieved the performance standards set forth in Subparagraph 2(b) and Appendix 1 and a schedule for performing such monitoring. U.S. EPA and Ohio EPA's review of the Alternative HRT Plan shall be governed in accordance with the provisions of Paragraph 23 of the Consent Decree (Approval of Deliverables).[¶]

Upon receipt of U.S. EPA and Ohio EPA's final approval of the applicable Alternative HRT Plan, if any, described in Subparagraphs 7 and 8, above, NEORS D shall complete the construction and/or installation of such equipment to be constructed or installed at the Easterly WWTP in accordance with Appendix 1, the approved plans, and all schedules contained in such Plan.[¶]

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(8) NEORSD shall complete the construction of the CEHRT facility and Euclid Creek/Dugway Storage Tunnel drop structure at the Easterly WWTP in accordance with Control Measure 2 in Appendix 1 to the Consolidated Fifth Amended Consent Decree.

19. Initial Green Infrastructure Component of CSO Control Measures. No later than December 31, 2011, NEORSD shall submit a Green Infrastructure Plan (“Plan”) for approval to EPA and the Ohio EPA. The Plan shall identify control measures which use Green Infrastructure to meet the requirements and Performance Criteria set forth in Appendix 3 (Green Infrastructure). The provisions of Paragraph 23 (Approval of Deliverables) and Paragraph 82(a) (Standard of Review) shall govern EPA and the State’s approval of NEORSD’s Green Infrastructure Plan and any dispute arising from the approval process.

20. Revision of Control Measures to Incorporate Additional Green Infrastructure Proposals. In accordance with the terms and conditions set forth in Appendix 4 of this Consent Decree, NEORSD may propose revisions to Appendix 1 to use Green Infrastructure control measures to substitute fully or in part for Gray Infrastructure control measures included in Appendix 1, provided that any proposed Green Infrastructure control measures provide the same or greater level of control, in terms of gallons controlled and the number of CSO activations in a typical year, as those Gray Infrastructure control measures to be reduced or replaced, subject to the limitations listed in Appendix 4. The terms of Paragraph 23(a) through (e) (Approval of Deliverables) and Section XIII (Dispute Resolution) of this Consent Decree do not apply to EPA and Ohio EPA’s review of any Green Infrastructure Project Proposal (“Proposal”) submitted by NEORSD; rather, the review process set forth herein shall control. In the event that EPA or Ohio EPA is unable to complete its review of a Proposal within 90 days, the terms of Paragraph 23(f) of the Consent Decree shall apply to the extension of any milestone dates dependent upon

EPA's and/or Ohio EPA's action. Upon review of NEORSR's Proposal, EPA and Ohio EPA will either approve or disapprove the Proposal or approve the Proposal upon certain specified conditions. If the Proposal is disapproved by either EPA or Ohio EPA, the disapproval decision is final. If the Proposal is approved by EPA and Ohio EPA, NEORSR shall either (a) construct and implement the Green Infrastructure control measures in accordance with the provisions and schedule in the approved Proposal and Appendix 4, or (b) construct and implement the original Gray Infrastructure control measures in accordance with the design criteria and schedules set forth in Appendix 1. Following construction, implementation, and evaluation of any Green Infrastructure Proposal, if NEORSR is required to prepare either a Modified Proposal or a Green Infrastructure Corrective Action Plan ("GICAP") as described in Appendix 4, the terms of Paragraph 23 (Approval of Deliverables) shall apply to EPA and Ohio EPA's review of any Modified Proposal or GICAP, but Section XIII (Dispute Resolution) of this Consent Decree shall not apply to EPA and Ohio EPA's review. Upon review of the Modified Proposal or GICAP, following an opportunity for consultation with Ohio EPA, EPA's decision is final.

21. Achievement of Performance Criteria. NEORSR shall ensure that all facilities are designed in accordance with good engineering practices to ensure that corresponding facility-specific, watershed-wide, and system-wide Performance Criteria will be achieved. NEORSR shall achieve the Performance Criteria for each CSO Control Measure by the date for Achievement of Full Operation for the CSO Control Measure, as set forth in Appendix 1. The procedure set forth in Appendix 2 shall be used to determine whether NEORSR has achieved the Performance Criteria.

22. Compliance Following Implementation. By the date specified for Achievement of Full Operation of all CSO Control Measures as set forth in Appendix 1, (i) NEORSR's

remaining CSOs shall comply with NEORSD's CSO Permit in effect at the time of any CSO discharge; and (ii) NEORSD shall have eliminated bypasses at its Easterly, Westerly, and Southerly WWTPs, or any remaining bypasses shall comply with NEORSD's NPDES Permits that are applicable at the time of any such bypass.

23. Approval of Deliverables.

a. After review of any plan, report, or other item that is required to be submitted pursuant to this Consent Decree, EPA and the State shall in writing: 1) approve the submission; 2) approve the submission upon specified conditions; 3) approve part of the submission and disapprove the remainder; or 4) disapprove the submission.

b. If the submission is approved pursuant to Paragraph 23.a.1, NEORSD shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part, pursuant to Paragraph 23.a.2 or a.3, NEORSD shall, upon written direction from EPA and the State, take all actions required by the approved plan, report, or other item that EPA and the State determine are technically severable from any disapproved portions, subject to NEORSD's right to dispute only the specified conditions or the disapproved portions, under Section XIII of this Decree (Dispute Resolution).

c. If the submission is disapproved in whole or in part pursuant to Paragraph 23.a.3 or a.4, NEORSD shall, within 45 Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission

is approved in whole or in part, NEORSD shall proceed in accordance with the preceding Paragraph.

d. Any stipulated penalties applicable to the original submission, as provided in Section X of this Decree, shall accrue during the 45-Day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of NEORSD's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

e. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA, after consultation with the State, may again require NEORSD to correct any deficiencies, in accordance with the preceding Paragraphs, or may itself correct any deficiencies, subject to NEORSD's right to invoke Dispute Resolution and the right of EPA and the State to seek stipulated penalties as provided in the preceding Paragraphs.

f. EPA and the State agree to use their best efforts to expeditiously review and comment on submittals that NEORSD is required to submit for approval pursuant to the terms and provisions of this Consent Decree. If EPA and the State fail to act on a submittal within 90 days, any subsequent milestone date dependent upon such action by EPA and the State shall be extended by the number of Days beyond the 90-Day period that EPA and the State use to act on the submittal, provided that NEORSD notifies EPA and the State in writing, at the time of its submittal, of the end date of the 90-Day review period plus any specific milestone dates that NEORSD believes would be extended under this Paragraph if EPA and the State fail to act within 90 Days. This Paragraph does not apply to EPA and State review of, or actions taken

with regard to, revisions to water quality standards, permits, or any matters other than submittals that NEORS D is specifically required to submit for approval pursuant to this Consent Decree.

24. Permits. Where any compliance obligation under this Section requires NEORS D to obtain a federal, state, or local permit or approval, NEORS D shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

NEORS D may seek relief under the provisions of Sections XI (Force Majeure) and XII (Force Majeure Between NEORS D and the State of Ohio) of this Consent Decree for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if NEORS D has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

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

VII. FEDERAL SUPPLEMENTAL ENVIRONMENTAL PROJECT

26. NEORS D shall implement a Supplemental Environmental Project (“SEP”), providing for the collection and disposal of household hazardous waste at a special waste convenience center (Center) or an alternative location in accordance with the provisions of Appendix 5 of this Consent Decree. The SEP shall be completed in accordance with the schedule set forth in Appendix 5.

27. NEORSD is responsible for the satisfactory completion of the SEP in accordance with the requirements of this Decree. NEORSD may use contractors or consultants in planning and implementing the SEP.

28. With regard to the SEP, NEORSD certifies the truth and accuracy of each of the following:

a. that all cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate and that NEORSD in good faith estimates that the cost to implement the SEP is \$1,000,000;

b. that, as of the date of executing this Decree, NEORSD is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

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

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

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

29. SEP Completion Report

a. Within 30 days after the date set for completion of the SEP, NEORSD shall submit a SEP Completion Report to the United States and the State, in accordance with XVII of this Consent Decree (Notices). The SEP Completion Report shall contain the following information:

- i. a detailed description of the SEP as implemented;
- ii. a description of any problems encountered in completing the SEP and the solutions thereto;
- iii. an itemized list of all eligible SEP costs expended;
- iv. certification that the SEP has been fully implemented pursuant to the provisions of this Decree; and
- v. a description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

30. EPA or the State may, in either entity's sole discretion, require information in addition to that described in the preceding Paragraph, in order to evaluate NEORSD's completion report.

31. After receiving the SEP Completion Report, the United States and the State shall notify NEORSD whether or not NEORSD has satisfactorily completed the SEP. If NEORSD has not completed the SEP in accordance with this Consent Decree, stipulated penalties may be assessed under Section X of this Consent Decree.

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

33. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 48.

34. Any public statement, oral or written, in print, film, or other media, made by NEORSD making reference to the SEP under this Decree shall include the following language:

This project was undertaken in connection with the settlement of an enforcement action, *United States and State of Ohio v. Northeast Ohio Regional Sewer District*, taken on behalf of the U.S. Environmental Protection Agency under the Clean Water Act.

35. NEORSRD represents that as a governmental entity it does not pay federal or state income taxes.

VIII. STATE SUPPLEMENTAL ENVIRONMENTAL PROJECT

36. NEORSRD shall implement a SEP known as Canal Pump Station Operation and Maintenance. The SEP shall include the operation and maintenance of the pump station installed to maintain flow in the canal remnant located in the Cuyahoga Valley National Park in the vicinity of State Route 82, provided that the project for the Canal Diversion Dam Removal and the Construction of the Pump Station is selected for implementation following the completion of the Environmental Impact Statement and the pump station is constructed. The SEP shall be performed for a period of 25 years in accordance with all provisions of this Section VIII and Appendix 6 of this Consent Decree. The SEP shall be accomplished in accordance with the schedule set forth in Appendix 6. In the event that the Canal Diversion Dam Removal and Construction of the Pump Station is not selected for implementation following the conclusion of the Environmental Impact Statement, NEORSRD shall implement the following Alternative SEP. NEORSRD shall pay the sum of \$800,000.00 to Ohio EPA for deposit into the Surface Water Improvement Fund for use by Ohio EPA for any project(s) related to water quality protection and/or water quality restoration consistent with the operation and use of that fund as established pursuant to O.R.C. 6111.0381. Such payment shall be made within sixty (60) days after NEORSRD has received notice from Ohio EPA that the Canal Diversion Dam Removal will not be implemented, or by January 31, 2012, whichever occurs later. This money shall be used by

Ohio EPA to provide grant funding for water quality improvements within the Chagrin, Cuyahoga, or Rocky River Watersheds, or the watersheds of the Lake Erie Direct Tributaries that are located within the service area of the Northeast Ohio Regional Sewer District (including, but not limited to, the watersheds of Euclid Creek, Doan Brook, Dugway Brook, and Nine Mile Creek).

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

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

a. that all cost information provided to Ohio EPA in connection with Ohio EPA's approval of the SEP is complete and accurate and that NEORSRD in good faith estimates that the cost to implement the SEP is \$800,000;

b. that, as of the date of executing this Decree, NEORSRD is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

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

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

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

39. State SEP Performance and Completion Report

a. After NEORS D has commenced operation of the pump station, NEORS D shall submit an Annual Report, within 30 days after the end of each year of operation, and on the date set for completion of the SEP NEORS D shall submit a State SEP Completion Report to the United States and the State, in accordance with XVII of this Consent Decree (Notices). The Annual Report shall include the following information:

- i. a detailed description of the SEP as implemented within the prior year;
- ii. a description of any problems encountered in operation and maintenance of the pump station and the solutions thereto;
- iii. an itemized list of all eligible SEP costs expended;
- iv. certification that the pump station has been fully operational throughout the year and has been maintained or had replacement components installed consistent with providing for the continued operation of the pump station as designed throughout the 25 year period so that at the conclusion of that period the pump station continues to be fully operational;

40. The State SEP Completion Report shall contain the following information:

- i. a detailed description of the SEP as implemented;
- ii. a description of any problems encountered in completing the SEP and the solutions thereto;
- iii. an itemized list of all eligible SEP costs expended;
- iv. certification that the SEP has been fully implemented pursuant to the provisions of this Decree.

41. Ohio EPA or the State may, in either entity's sole discretion, require information in addition to that described in the preceding Paragraph, in order to evaluate NEORSRD's Annual Report or State SEP Completion Report.

42. After receiving the State SEP Completion Report, Ohio EPA or the State will notify NEORSRD whether or not NEORSRD has satisfactorily completed the SEP. If NEORSRD has not completed the SEP in accordance with this Consent Decree, stipulated penalties may be assessed under Section X of this Consent Decree (Stipulated Penalties).

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

43. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 48.

44. Any public statement, oral or written, in print, film, or other media, made by NEORSRD making reference to the SEP under this Decree shall include the following language: This project was undertaken in connection with the settlement of an enforcement action, *United States and State of Ohio v. Northeast Ohio Regional Sewer District*, taken on behalf of the Ohio EPA.

45. NEORSRD represents that as a governmental entity it does not pay federal or state income taxes.

IX. REPORTING REQUIREMENTS

46. On a semi-annual basis on January 31 and July 31, each Six-month Period commencing with the first full six-month period after Entry of this Consent Decree and continuing until termination, NEORSRD will submit to U.S. EPA and the State a progress report

(“Semi-Annual Progress Report”) regarding the implementation of the requirements of this Decree in the previous Six-month Period. The Semi-Annual Progress Report will include at a minimum:

a. A statement setting forth the deadlines and other terms that NEORSD is required by this Consent Decree to meet since the date of the last Semi-Annual Progress Report, whether and to what extent NEORSD has met these requirements, and the reasons for any noncompliance;

b. A general description of the work completed within the Six-month Period, and a projection of work to be performed pursuant to this Consent Decree during the next or succeeding Six-month Period. Notification to U.S. EPA and Ohio EPA of any anticipated delay shall not, by itself, excuse the delay;

c. A summary of the submissions under this Decree that were sent to U.S. EPA and/or Ohio EPA, including the dates submitted;

d. NEORSD shall also submit, with each Semi-Annual Status report, copies (to EPA only) of all monthly monitoring reports, noncompliance reports, and other reports pertaining to CSO discharges and bypasses that NEORSD submitted to or is required to submit to Ohio EPA in the preceding six months.

47. All reports shall be submitted to the persons designated in Section XVII of this Consent Decree (Notices).

48. Each report submitted by NEORSD under this Section shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system,

or those persons directly responsible for gathering 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 a fine and imprisonment for knowing violations.

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

49. The reporting requirements of this Consent Decree do not relieve NEORS D of any reporting obligations required by the Clean Water Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

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

X. STIPULATED PENALTIES

51. NEORS D shall be liable for stipulated penalties to the United States and the State for violations of this Consent Decree as specified below, unless excused under Sections XI (Force Majeure) and XII (Force Majeure Between NEORS D and the State of Ohio). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

52. Late Payment of Civil Penalty. If NEORS D fails to pay the civil penalty required to be paid under Section V of this Decree (Civil Penalty) when due, NEORS D shall pay a stipulated penalty of \$ 675 per Day for each Day that the payment is late.

53. For each failure to adequately construct and implement the measures in accordance with all requirements of Appendices 1 and 3 (including all applicable design criteria), meet the dates for Achievement of Full Operation, and/or demonstrate achievement of the performance criteria in accordance with Appendices 1 and 3, as required by Section VI, NEORS shall pay the following stipulated penalties to the Plaintiffs per violation per Day:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
Days 1-15	\$1,000
Days 16-30	\$2,000
Over 30 Days	\$5,000

54. For each failure to implement the Nine Minimum Controls pursuant to Paragraph 15 of Section VI, NEORS shall pay the following stipulated penalties to the Plaintiffs per violation per Day:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
Days 1-15	\$500
Days 16-30	\$1,000
Over 30 days	\$1,500

55. For each failure to submit a timely and adequate plan, report, schedule or other submission identified in Sections VI, VII, or VIII and/or Appendices 1 through 6, NEORS shall pay the following stipulated penalties to the Plaintiffs per violation per day:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
Days 1-15	\$500
Days 16-30	\$1,000
Over 30 days	\$1,500

56. Federal and State SEP Compliance.

a. For each calendar month in which NEORS fails to, in compliance with applicable law, provide a collection point location for the Cuyahoga County communities to

deliver household hazardous waste collected from residents and dispose of the waste, NEORS shall pay to the United States a stipulated penalty of \$14,583. This provision will not apply if the date or dates that NEORS planned as the collection date, Cuyahoga County offices are closed due to inclement weather. This provision shall remain in force for a minimum of four years from the date of the first collection or until NEORS spends \$1,000,000 in complying with the Federal SEP requirements, whichever is longer.

b. If NEORS fails to implement the SEP, or halts or abandons work on the SEP, NEORS shall pay to the United States a stipulated penalty of \$700,000 minus seventy percent of NEORS's expenses for complying with the SEP up to the point of halting or abandoning its work.

c. If NEORS fails to implement the State SEP, NEORS shall pay the following stipulated penalties to the State per violation per Day:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
Days 1-15	\$500
Days 16-30	\$1,000
Over 30 days	\$2,000

57. For each failure to comply with any requirement of this Consent Decree not specified in Paragraphs 52-56, NEORS shall pay the following stipulated penalties:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
Days 1-15	\$500
Days 16-30	\$1,000
Over 30 days	\$2,000

58. Except as provided in subparagraph 56 a. and b., above, stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily

completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

59. NEORS shall pay stipulated penalties to the United States and the State within 30 Days of a written demand by either Plaintiff. Unless otherwise specified in this Section, NEORS shall pay 50 percent of the total stipulated penalty amount due to the United States and 50 percent to the State. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff.

60. The United States or the State may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

61. Stipulated penalties shall continue to accrue as provided in Paragraph 58, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA or the State that is not appealed to the Court, NEORS shall pay accrued penalties determined to be owing, together with interest, to the United States or the State within 30 Days of the effective date of the agreement or the receipt of EPA's or the State's decision or order.

b. If the dispute is appealed to the Court and the United States or the State prevails in whole or in part, NEORS shall pay all accrued penalties determined by the Court to be owing, together with interest, within 90 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, NEORS shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

62. NEORSD shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 10, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid. NEORSD shall pay stipulated penalties owing to the State in the manner set forth and with the confirmation notices required by Paragraphs 12-13. A copy of the transmittal letter to the United States and other evidence of payment to the State will also be sent to the Ohio Attorney General's Office and Ohio EPA.

63. If NEORSD fails to pay stipulated penalties according to the terms of this Consent Decree, NEORSD shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States or the State from seeking any remedy otherwise provided by law for NEORSD's failure to pay any stipulated penalties.

64. Subject to the provisions of Section XV of this Consent Decree (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for NEORSD's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of any of NEORSD's NPDES Permits or the Clean Water Act, NEORSD shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

XI. FORCE MAJEURE

65. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond NEORSD's control, or of any entity controlled by NEORSD, or of NEORSD's contractors, that delays or prevents the performance of any obligation under this

Consent Decree despite NEORSD's best efforts to fulfill the obligation. The requirement that NEORSD exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force majeure" does not include NEORSD's financial inability to perform any obligation under this Consent Decree.

66. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, NEORSD shall provide notice orally or by electronic or facsimile transmission to U.S. EPA, within 14 days of when NEORSD first knew that the event might cause a delay. Within thirty days thereafter, NEORSD shall provide in writing to U.S. EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; NEORSD's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in NEORSD's opinion, such event may cause or contribute to an endangerment to public health, welfare or the environment. NEORSD shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure event. Failure to comply with the above requirements shall preclude NEORSD from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure.

67. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by

the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify NEORS in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event. An extension of time granted pursuant to a force majeure event shall not be deemed a modification of this Decree.

68. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify NEORS in writing of its decision within 60 days of receiving the written explanation and description required by Paragraph 66 above.

69. If NEORS elects to invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, NEORS shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that NEORS complied with the requirements of Paragraphs 65 and 66, above. If NEORS carries this burden, the delay at issue shall be deemed not to be a violation by NEORS of the affected obligation of this Consent Decree identified to EPA and the Court.

XII. FORCE MAJEURE BETWEEN NEORS AND THE STATE OF OHIO

70. If any event occurs or has occurred that may delay the performance of any obligation under this consent Decree, whether or not caused by a force majeure event, NEORS shall provide notice orally or by electronic or facsimile transmission to Ohio EPA, within 14 days of when NEORS first knew that the event might cause a delay. Within thirty days

thereafter, NEORSD shall provide in writing to the State and Ohio EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; NEORSD's rationale for attributing such a delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in NEORSD's opinion, such event may cause or contribute to an endangerment to public health, welfare or the environment. NEORSD shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude NEORSD from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. For purposes of this section, NEORSD may provide the same notice provided to U.S. EPA, as described in Paragraph 66.

71. If the State and Ohio EPA agree that the delay or anticipated delay is attributable to an event which is entirely beyond NEORSD's control and that the time for performance of the obligations under this Consent Decree that are affected by the event should be extended by the State and Ohio EPA for such time as is necessary to complete those obligations, the State and Ohio EPA will inform NEORSD in writing. An extension of the time for performance of the obligations affected by the event shall not, of itself, extend the performance of any other obligations. The State and Ohio EPA will notify NEORSD in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event. An extension of time granted pursuant to a force majeure event shall not be deemed a modification of this Decree.

72. In any action by the State to enforce any of the provisions of this Consent Decree, NEORSR may raise that they are entitled to a defense that its conduct was caused by reasons entirely beyond its control such as, by way of example and not limitations, acts of God, strikes, acts of war or civil disturbances. While the State does not agree that such defense exists, it is, however, hereby agreed upon by NEORSR and the State 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 a court proceeding to enforce this Consent Decree is commenced by the State. At that time, NEORSR will bear the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of NEORSR.

XIII. DISPUTE RESOLUTION

73. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. If a dispute is subject to this section, NEORSR's failure to seek resolution of the dispute under this Section shall preclude NEORSR from raising any such issue as a defense to an action by the United States to enforce any obligation of NEORSR arising under this Decree.

74. The issuance, renewal, modification, denial, or revocation of a permit and the issuance of orders or other actions of the Director of Environmental Protection (the Director of Ohio EPA), including, but not limited to decisions with respect to revisions to water quality standards, are not subject to dispute resolution under this Decree but, rather, shall be subject to challenge under Chapter 3745, O.R.C. The term "actions of the Director of Environmental Protection" shall be consistent with the definitions set forth in Chapter 3745, O.R.C.

75. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when NEORSO sends the Plaintiffs a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 30 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the Plaintiffs shall be considered binding unless, within 30 Days after the conclusion of the informal negotiation period, NEORSO invokes formal dispute resolution procedures as set forth below.

76. Formal Dispute Resolution. NEORSO shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by submitting to the Plaintiffs a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting NEORSO's position and any supporting documentation relied upon by NEORSO.

77. The Plaintiffs shall submit their Statement of Position within 45 Days of receipt of NEORSO's Statement of Position. The Plaintiffs' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the Plaintiffs.

78. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to Paragraphs 75-77.

79. The Plaintiffs' Statement of Position shall be binding on NEORSO, unless NEORSO files a motion for judicial review of the dispute in accordance with the following

Paragraph. In the event that the United States and the State are unable to reach agreement with regard to NEORSD's claim, the position of the United States shall be the Plaintiffs' final position.

80. NEORSD may seek judicial review of the dispute by filing with the Court and serving on the Plaintiffs, in accordance with Section XVII of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 30 Days of receipt of the Plaintiffs' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of NEORSD's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

81. The Plaintiffs shall respond to NEORSD's motion within the time period allowed by the Local Rules of this Court. NEORSD may file a reply memorandum, to the extent permitted by the Local Rules.

82. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 76 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by the Plaintiffs under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, NEORSD shall have the burden of demonstrating, based on the administrative record, that the Plaintiffs' position is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 76, NEORSR shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the objectives of the Consent Decree. Any judicial review of such dispute shall not be based on the administrative record.

83. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of NEORSR under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 61. If NEORSR does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section X (Stipulated Penalties).

XIV. INFORMATION COLLECTION AND RETENTION

84. The United States, the State, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

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

85. Upon request, NEORSD shall provide U.S. EPA and the State or its authorized representatives splits of any samples taken by NEORSD. Upon request and if practicable, U.S. EPA and/or the State shall provide NEORSD splits of any samples taken by U.S. EPA and/or the State or its authorized representatives.

86. Until five years after the termination of this Consent Decree, NEORSD shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to NEORSD's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or the State, NEORSD shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

87. At the conclusion of the information-retention period provided in the preceding Paragraph, NEORSD shall notify the United States and the State at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or the State, NEORSD shall deliver any such documents, records, or other information to EPA or the State. NEORSD may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If NEORSD asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document,

record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by NEORS. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

88. NEORS may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that NEORS seeks to protect as CBI, NEORS shall follow the procedures set forth in 40 C.F.R. Part 2.

89. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or the State pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of NEORS to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

90. This Consent Decree resolves the civil claims of the United States and the State for the violations alleged in the Complaints filed in this action through the date of lodging.

91. The United States and the State reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 90. This Consent Decree shall not be construed to limit the rights of the United States or the State to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 90. The United States and the State further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment

at, or posed by NEORSD's Westerly, Easterly, or Southerly WWTPs, or NEORSD's Combined or Separate Sanitary Sewer Systems, whether related to the violations addressed in this Consent Decree or otherwise.

92. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, civil penalties, other appropriate relief relating to NEORSD's WWTPs or its Combined or Separate Sanitary Sewer Systems, NEORSD shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 90 of this Section.

93. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. NEORSD is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and NEORSD's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and the State do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that NEORSD's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CWA, 33 U.S.C. § 1311 et seq., or with any other provisions of federal, State, or local laws, regulations, or permits.

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

limit the rights of third parties, not party to this Consent Decree, against NEORS, except as otherwise provided by law.

95. Nothing in this Consent Decree limits the rights or defenses available under Section 309(e) of the Clean Water Act, 33 U.S.C. § 1319(e), in the event that the laws of the State, as currently or hereafter enacted, may prevent NEORS from raising the revenues needed to comply with this Decree.

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

XVI. COSTS

97. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and the State shall be entitled to collect the costs (including attorneys fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by NEORS.

XVII. NOTICES

98. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and sent to the United States, U.S. EPA, and the State via electronic mail (email) in accordance with Subparagraph 98.a. If any notification, submission, or communication includes attachments or files that are too large to send via email, NEORS shall transmit the attachments or files, including the original specified notification, submission, or communication, via a File Transfer Protocol (FTP) server established by NEORS in accordance with Subparagraph 98.b. All electronic files must be in final and text searchable format, such as Portable Document Format (PDF), with optical character recognition functionality applied, if necessary, to make images text

searchable. Any notifications, submissions or communications required by this Consent Decree that cannot be transmitted via email or an FTP server shall be transmitted via United States Mail to the addresses set forth in Subparagraph 98.c below.

a. Email addresses: All notifications, submissions or communications required by this Consent Decree shall be transmitted via email to the following email addresses:

To the United States:

eescdcopy.enrd@usdoj.gov
Re: DJ # 90-5-1-1-08177/1

And

R5weca@epa.gov and prichard.gary@epa.gov
Re: Northeast Ohio Regional Sewer District Consent Decree

To U.S. EPA:

R5weca@epa.gov and prichard.gary@epa.gov
Re: Northeast Ohio Regional Sewer District Consent Decree

To the State:

Mark.Navarre@OhioAGO.gov
Re: 1:10-cv-02895-DCN

And

Dean.Stoll@epa.ohio.gov and wetweather.npdes@epa.ohio.gov
Re: Northeast Ohio Regional Sewer District Consent Decree

To NEORSRD:

LuckageE@neorsd.org and HalperinR@neorsd.org
Re: Northeast Ohio Regional Sewer District Consent Decree

b. FTP Server: For any notification, submission or communication required under this Consent Decree that includes attachments or files that might not be easily transmittable via email , NEORSRD shall establish and utilize an FTP server to transmit the



attachment(s) or file(s) to the United States, U.S. EPA and the State. In these instances, the email transmission from NEORSD shall indicate that the notification, submission or communication includes such attachments and files and include instructions for accessing the FTP server.

c. United States Mail Addresses: Notifications, submissions or communication required by this Consent Decree that cannot be transmitted via email or an FTP server shall be sent by United States Mail to the following addresses:

To the United States:

EES Case Manager
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-1-1-08177/1

And

Chief, Water Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency
Region 5
77 West Jackson, Blvd., Mail Code ECW-15J
Chicago, IL 60604-3590

To U.S. EPA:

Chief, Water Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency
Region 5
77 West Jackson, Blvd., Mail Code ECW-15J
Chicago, IL 60604-3590
Re: Northeast Ohio Regional Sewer District Consent Decree

To the State:

Chief, Environmental Enforcement Section
Office of the Ohio Attorney General
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3400

And

Chief, Division of Surface Water
Ohio Environmental Protection Agency
50 West Town Street, Suite 700
Columbus, OH 43215

And

Ohio Environmental Protection Agency
Northeast District Office, Division of Surface Water
ATTN: Enforcement Supervisor
2110 East Aurora Road
Twinsburg, OH 44087

To NEORSD:

Chief Executive Officer
Northeast Ohio Regional Sewer District
3900 Euclid Avenue
Cleveland, OH 44115-2506

And

Chief Legal Officer
Northeast Ohio Regional Sewer District
3900 Euclid Avenue
Cleveland, OH 44115-2506

99. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

100. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XVIII. EFFECTIVE DATE

101. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket; provided, however, that NEORSD hereby agrees that it shall be bound to perform duties scheduled to occur prior to the Effective

Date. In the event the United States withdraws or withholds consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall terminate.

XIX. RETENTION OF JURISDICTION

102. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections XIII and XX, or effectuating or enforcing compliance with the terms of this Decree.

XX. MODIFICATION

103. Except as provided in Paragraph 67, the terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

104. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XIII of this Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 82, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XXI. TERMINATION

105. After NEORS has: (a) achieved compliance with all provisions contained in Sections VI and VII of this Consent Decree, and subsequently has maintained satisfactory compliance with each and every provision for twelve consecutive months; (b) paid all penalties and other monetary obligations due under the Consent Decree and no penalties or other monetary obligations due under the Consent Decree are outstanding or owed to the United States or the

State; and (c) at least 120 days prior to filing the motion described below, certified to the United States and the State that it has complied with the requirements of (a) and (b) of this Paragraph and has provided sufficient documentation to the United States and the State to support its certification, NEORSD may serve upon the United States and the State a Request for Termination, stating that NEORSD has satisfied those requirements.

106. Following receipt by the United States and the State of NEORSD's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether NEORSD has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States and the State agree that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

107. If the United States and the State do not agree that the Decree may be terminated, NEORSD may invoke Dispute Resolution under Section XIII of this Decree. However, NEORSD shall not seek Dispute Resolution of any dispute regarding termination, under Paragraph 76 of Section XIII, until 90 days after service of its Request for Termination. Any dispute arising under Section XXI (Termination) will be governed by Paragraph 82(b).

XXII. PUBLIC NOTICE AND COMMENT

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

challenge any provision of the Decree, unless the United States has notified NEORS in writing that it no longer supports entry of the Decree.

XXIII. SIGNATORIES/SERVICE

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

110. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. NEORS agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

111. The parties agree that NEORS need not file Answers to the Complaints in this action unless or until the Court expressly declines to enter this Consent Decree.

XXIV. INTEGRATION

112. This Consent Decree and its Appendices 1- 6 constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree. The Consent Decree and its Appendices supersede all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than any submittals subsequently approved pursuant to this Consent Decree, no other document, nor any representation, inducement, agreement, understanding, or promise constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree. The Appendices are not factual stipulations, and the United

States and the State reserve their rights to disagree or contest particular factual statements contained therein. In the event of conflict between this Consent Decree and any Appendix, this Consent Decree shall control.

XXV. FINAL JUDGMENT

113. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, the State, and NEORS. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

APPENDICES

The following appendices are attached to and part of this Consent Decree:

“Appendix 1” is the CSO Control Measures including schedule milestones and performance criteria;

“Appendix 2” is the Post Construction Monitoring Program;

“Appendix 3” contains provisions regarding the Green Infrastructure Program set forth in Paragraph 19 of the Consent Decree;

“Appendix 4” contains provisions regarding the Green Infrastructure Program set forth in Paragraph 20 of the Consent Decree;

“Appendix 5” contains provisions regarding the Federal Supplemental Environmental Project referenced in Paragraph 26 of the Consent Decree; and

“Appendix 6” contains provisions regarding the State Supplemental Environmental Project referenced in Paragraph 36 of the Consent Decree.

Dated and entered this day of _____, ____.

UNITED STATES DISTRICT JUDGE
Northern District of Ohio

THE UNDERSIGNED PARTY enters into this [Consolidated Fifth](#) Amended Consent Decree in the matter of United States and State of Ohio v. Northeast Ohio Regional Sewer District (N.D. Ohio)

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FOR PLAINTIFF UNITED STATES OF AMERICA:

[TODD KIM](#)

Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

Deleted: BRUCE S. GELBER¶
Deputy

By: _____ DATE: _____

[STEVEN D. ELLIS](#)

Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044

Deleted: ANNA E. CROSS¶

[REBECCA C. LUTZKO](#)

United States Attorney
Northern District of Ohio

Deleted: ¶
JUSTIN E. HERDMAN

By: _____ DATE: _____

[J. JACKSON FROLIKLONG](#)

Assistant United States
Attorney [United States Court House](#)
801 [West Superior Avenue](#), Suite 400
Cleveland, [OH](#) 44113
Phone: (216) 622-3818
Fax: (216) 522-2404
Email: joseph.froliklong@usdoj.gov

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¶

Deleted: _____

Deleted: STEVEN PAFFILAS¶

Deleted: Northern District of Ohio¶

Deleted: W.

Deleted: Ave.,

Deleted: Ohio

THE UNDERSIGNED PARTY enters into this [Consolidated Fifth](#) Amended Consent Decree in the matter of United States and State of Ohio v. Northeast Ohio Regional Sewer District (N.D. Ohio)

Deleted: Second

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

DATE: _____

JOSEPH G. THEIS

Associate Director, Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Deleted: MARK POLLINS

CHRISNA BAPTISTA

Attorney-Advisor
Water Enforcement Division
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

THE UNDERSIGNED PARTY enters into this [Consolidated Fifth](#) Amended Consent Decree in the matter of United States and State of Ohio v. Northeast Ohio Regional Sewer District (N.D. Ohio)

Deleted: Second

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

DATE: _____

ROBERT A. KAPLAN

Regional Counsel
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Deleted: T. LEVERETT NELSON

GARY PRICHARD

Associate Regional Counsel
U.S. EPA, Region 5 (C-14J)
Office of Regional Counsel
77 West Jackson Blvd.
Chicago, IL 60604-3590

THE UNDERSIGNED PARTY enters into this [Consolidated Fifth](#) Amended Consent Decree in the matter of United States and State of Ohio v. Northeast Ohio Regional Sewer District (N.D. Ohio)

Deleted: Second

FOR PLAINTIFF THE STATE OF OHIO

THE STATE OF OHIO
Ohio Attorney General

By: _____ DATE: _____

[MARK J. NAVARRE](#)
Principal Assistant Attorney General
[Environmental Enforcement Section](#) 30 E. Broad Street - 25th Floor
Columbus, Ohio 43215-3400

Deleted: LAWRENCE S. HELKOWSKI (0068622)*

Deleted: State Office Tower
30

THE UNDERSIGNED PARTY enters into this [Consolidated Fifth](#) Amended Consent Decree in the matter of United States and State of Ohio v. Northeast Ohio Regional Sewer District (N.D. Ohio)

Deleted: Second

FOR DEFENDANT THE NORTHEAST OHIO REGIONAL SEWER DISTRICT

By: _____ DATE: _____
KYLE DREYFUSS-WELLS
Chief Executive Officer
Northeast Ohio Regional Sewer District
3900 Euclid Avenue
Cleveland, Ohio 44115

The legal form and correctness of the within instrument are hereby approved.

_____ DATE: _____
ERIC J. LUCKAGE
Chief Legal Officer
Northeast Ohio Regional Sewer District
3900 Euclid Avenue
Cleveland, Ohio 44115