

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
)	CIVIL ACTION NO.
)	
v.)	
)	
TOWN OF SWAMPSCOTT, MASSACHUSETTS,)	
)	
Defendant,)	
)	
and)	
)	
COMMONWEALTH OF MASSACHUSETTS,)	
)	
Nominal Party required by)	
33 U.S.C. § 1319(e).)	
_____)	

CONSENT DECREE

WHEREAS, the Town of Swampscott, Massachusetts (the "Town" or "Swampscott") discharges pollutants into navigable waters of the United States from a municipal separate storm sewer system ("MS4") pursuant to NPDES Permit No. MAR041064 ("Small MS4 General Permit");

WHEREAS, the plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), has filed a complaint simultaneously with this Consent Decree alleging that the Town has violated the Small MS4 General Permit and Section 301(a) of the Clean Water Act ("Act" or "CWA"), 33 U.S.C. § 1311(a);

WHEREAS, entry of this Consent Decree by the Court will resolve all claims in the complaint of the United States, referred to herein collectively as the "Complaint";

WHEREAS, the United States and the Town (collectively, the "Parties") agree, without admission of facts or law except as expressly stated herein, and the Court by entering this Consent Decree finds, that the Consent Decree is fair and reasonable, has been negotiated in good faith, is in the public interest, and entry of this Consent Decree, to which the parties consent, without further litigation is an appropriate resolution of the dispute;

NOW, THEREFORE, it is hereby ordered, adjudged, and decreed as follows:

I. STATEMENT OF CLAIM

1. The Complaint states claims upon which relief can be granted against the Defendant pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 309(b) of the CWA, 33 U.S.C. §1319(b), and 28 U.S.C. §§ 1331, 1345, and 1355. This Court has personal jurisdiction over the Parties to this Consent Decree. Venue properly lies in this district pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), 28 U.S.C. §§ 1391(b) and (c), and 28 U.S.C. § 1395. The Town waives all objections it might have raised to such jurisdiction or venue.

III. APPLICABILITY

3. The provisions of this Consent Decree shall apply to and be binding upon the Town and its officers, directors, agents, employees acting in their official capacities, its successors, and assigns.

4. No transfer of any ownership interest in or any interest in the operation of the Town's MS4, whether in compliance with this Paragraph or otherwise, shall relieve the Town of its obligation to ensure that the terms of this Consent Decree are implemented. Any transfer

involving ownership or operation of the MS4, or any portion thereof, to any other person or entity must be conditioned upon the transferee's agreement to be added as a party to the Consent Decree and to be jointly and severally liable with the Defendant to undertake all obligations required by the provisions of the Consent Decree. At least thirty (30) Days prior to such transfer, the Town 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 above-referenced proposed written agreement, to EPA, the United States Attorney, and the United States Department of Justice in accordance with Section XIV (Form of Notice). Any noncompliance with this Paragraph constitutes a violation of this Consent Decree.

5. The Town shall provide a copy of this Consent Decree to all officers and agents whose duties might reasonably include compliance with any provisions of this Consent Decree. The Town shall also provide a copy of this Consent Decree to all contractors and consultants retained to perform any obligation required by this Consent Decree on behalf of the Town, and condition any such contract upon performance of the work in conformity with the terms of this Consent Decree. The Town shall require that such contractors and consultants provide a copy of this Consent Decree to their subcontractors to the extent the subcontractors are performing work subject to this Consent Decree. Such contractors, consultants and subcontractors shall be deemed agents of the Town for the purposes of this Consent Decree. In an action to enforce this Consent Decree, the Town shall not assert as a defense against an action by EPA the failure by any of its officers, directors, employees, agents, servants, consultants, engineering firms, contractors, successors, and assigns to take actions necessary to comply with this Consent Decree.

IV. DEFINITIONS

6. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in the CWA or in regulations promulgated under the CWA shall have the meaning ascribed to them in the CWA or in the regulations promulgated thereunder. Whenever the terms listed below are used in this Consent Decree, the following definitions shall apply:

a. "Act" or "CWA" shall mean the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act), as amended, 33 U.S.C. §§ 1251-1387.

b. "Approval by EPA" or "Approved by EPA" shall mean the issuance of a written approval document from EPA approving or approving with conditions a submission in accordance with Section IX (Approval of Submissions).

c. "Best Management Practices or BMPs" shall mean schedules of activities, practices and prohibition of practices, structures, vegetation, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site and road runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

d. "Building/Private Property Backup" shall mean any release of wastewater from the Collection System into buildings or onto private property, except a release that is the result of blockages, flow conditions, or malfunctions of a building lateral or other piping/conveyance system that is not owned or operationally controlled by the Town, or is the result of overland, surface flooding not emanating from the Collection System.

e. "Bypass" shall mean the intentional diversion of waste streams from any portion of a treatment facility.

f. "Catchment" shall mean the geographical area served by and draining to an individual outfall regulated under the Town's MS4 Permit.

g. "Collection System" shall mean the wastewater collection, storage and transmission system (a.k.a. sanitary and combined sewer system) owned or operated by the Town, including, but not limited to, all devices, Sewersheds, pump stations, force mains, gravity sewer lines, manholes, and appurtenances.

h. "Commonwealth" shall mean the Commonwealth of Massachusetts.

i. "Complaint" shall mean the complaint filed by the United States.

j. "Consent Decree" or "Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Decree and any appendix, this Decree shall control.

k. "Construction Sites" shall mean any development or redevelopment or other construction activity of a site, parcel and/or building disturbing equal to or greater than one (1) acre of land. Construction Sites shall include sites of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre.

l. "Date of lodging" shall mean the Day this Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the District of Massachusetts.

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

- n. “Effective Date” shall have the definition provided in Section XVII (Effective Date).
- o. “EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
- p. “Exfiltration” shall mean the water that exits the Collection System (including sewer service connections) through such means as, but not limited to, defective pipes, pipe joints, connections or manhole structures.
- q. “Green Infrastructure/Low Impact Development (GI/LID)” shall mean the range of stormwater control measures that use natural or engineered systems to direct stormwater to areas where it can be stored, infiltrated, evapotranspired, or reused. GI/LID may include, but is not limited to, bioretention and extended detention wetland areas, vegetated swales, pocket wetlands, rain gardens, infiltration planters, green roofs, and porous and permeable pavements.
- r. “IDDE” shall mean illicit discharge, detection, and elimination.
- s. “Infiltration” shall mean the water that enters the Collection System (including sewer service connections) from the ground through such means as, but not limited to, defective pipes, pipe joints, connections or manholes. Infiltration does not include, and is distinguished from, Inflow.
- t. “Inflow” shall mean all water that enters the Collection System and sewer service connections from sources such as, but not limited to, roof leaders, cellar drains, yard drains, sump pumps, area drains, foundation drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, Infiltration.

- u. “Infiltration/Inflow” or “I/I” shall mean the total quantity of water from both Infiltration and Inflow without distinguishing the source.
- v. “MassDEP” shall mean the Massachusetts Department of Environmental Protection and any successor departments or agencies of the Commonwealth.
- w. “Municipal Separate Storm Sewer System” or “MS4” shall mean a system of municipal conveyances designed to collect, convey, and discharge stormwater to receiving waters.
- x. “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.
- y. “Parties” shall mean the United States and the Town of Swampscott, Massachusetts.
- z. “Sanitary Sewer Overflow” or “SSO” shall mean any overflow, spill, diversion, or release of wastewater from, or caused by, the Collection System. SSOs include, but are not limited to, discharges to waters of the United States from the Collection System, as well as any release of wastewater from the Collection System to public or private property that does not reach waters of the United States, including wastewater backups onto public streets, into buildings, or onto private property.
- aa. “Section” shall mean a portion of this Consent Decree identified by a Roman numeral.
- bb. “Sewershed” shall mean a major portion of the Collection System that drains to one, or a limited number of, major sewer(s).
- cc. “Sub-watershed,” for the purpose of this Consent Decree only, shall mean the land that serves as a drainage basin to the Nahant and Massachusetts Bays.

dd. "United States" and "U.S." shall mean the United States of America.

V. OBJECTIVES

7. It is the express purpose of the Parties in entering into this Consent Decree to require the Town to take all measures necessary to fulfill the objectives of the CWA, and to achieve and maintain compliance with NPDES Permit No. MAR041064 (the "Small MS4 General Permit"), the requirements of the Clean Water Act (the "CWA"), and the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26 through 53 ("Massachusetts Act"), and all applicable federal and Commonwealth regulations.

8. Engineering designs and analyses required to be performed pursuant to this Consent Decree shall be conducted using sound, generally accepted engineering practices, and, as applicable, consistent with: (a) EPA's "Handbook: Sewer System Infrastructure Analysis and Rehabilitation," EPA/625/6-91-030, October 1991; (b) EPA's "Handbook for Sewer System Evaluation and Rehabilitation," EPA/430/9-75-021, December 1975; (c) the currently effective edition of "Existing Sewer Evaluation and Rehabilitation," WEF MOP FD-6; (d) "Guide to Short Term Flow Surveys of Sewer Systems," WRC Engineering (Undated); (e) the National Association of Sewer Service Companies "Manual of Practice;" (f) the Massachusetts Department of Environmental Protection's document entitled "Guidelines for Performing Infiltration/Inflow Analysis and Sewer System Evaluation Survey," revised January 1993; (g) the currently effective edition of "TR 16: Guides for the Design of Wastewater Treatment Works;" and (h) EPA's "Stormwater Best Management Practices (BMP) Performance Analysis," revised March 2010 (Tetra Tech, Inc.). Should there be a conflict between two or more of these sources, EPA's judgment as to which source to follow shall control.

VI. CIVIL PENALTY

9. The Town shall pay a civil penalty in the amount of sixty-five thousand dollars (\$65,000) ("Civil Penalty"), together with interest accruing from the Date of lodging, at the rate specified in 28 U.S.C. § 1961, to the United States in satisfaction of the claims for civil penalties alleged in the Complaint. Payment of the civil penalty shall be made within thirty (30) Days of entry of the Consent Decree in the manner set forth in Paragraph 10 below. If the Town fails to tender payment within thirty (30) Days of entry of this Consent Decree, then interest shall accrue from the date of entry of this Consent Decree, at the rate provided for in 28 U.S.C. § 1961.

10. Within thirty (30) Days after receiving notice of entry of the Consent Decree, the Town shall make payment of sixty-five thousand dollars (\$65,000) by FedWire Electronic Funds Transfer ("EFT") to the United States Department of Justice in accordance with written instructions to be provided to the Town, of lodging of the Consent Decree by the United States Attorney's Office for the District of Massachusetts, Financial Litigation Unit, Boston, Massachusetts. The costs of such electronic funds transfer shall be the responsibility of the Town. At the time of payment, the Town shall send a copy of the EFT authorization form, the EFT transaction record, and a transmittal letter, which shall state that the payment is for the Civil Penalty owed pursuant to the Consent Decree in *United States v. Town of Swampscott*, Massachusetts, and shall reference the civil action number and DOJ case number <90-5-1-1-10994> to the EPA and the United States Department of Justice as specified in Section XIV (Form of Notice) by email to acctsreceivable.CINWD@epa.gov, and by mail to:

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

VII. REMEDIAL MEASURES

A. Illicit Discharge Prohibition

11. Within one hundred and eighty (180) Days of lodging of this Consent Decree, the Town shall effectively prohibit, through an ordinance or other regulatory mechanism enacted and passed by the Town, non-stormwater discharges into the MS4 as required by Part II.B.3(b) of the Small MS4 General Permit.

B. Illicit Discharge Detection

12. The Town shall continue its efforts to identify and eliminate unauthorized discharges of sewage from its MS4 to waters of the United States and shall complete its investigations and eliminate all identified unauthorized sewage discharges from its MS4 to waters of the United States in accordance with the timeframes established by this Consent Decree. To achieve this result, the Town shall implement the work as described below.

13. The Town shall inspect and sample its MS4 outfalls and components of its underdrain/storm sewer system in accordance with the following requirements. The Town shall utilize the following IDDE screening thresholds as guidelines for its analysis of the data generated for each field sample to include:

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|--------------|--|
| Bacteria: | Class A or B waters - E. coli: greater than 235 coliform forming units /100 milliliters ("cfu/100 ml") and/or Enterococcus: greater than 61 cfu/100 ml |
| | Class SA or SB waters – Enterococcus: greater than 104 cfu/100 ml |
| Surfactants: | equal to or greater than 0.25 milligrams per liter ("mg/l") (via field kits) or 0.1 mg/l via laboratory analysis |
| Ammonia: | equal to or greater than 0.5 mg/l |
| Chlorine: | greater than non-detect (0.02 mg/l method detection limit) |

14. Dry-weather inspections: By June 30, 2016, under dry-weather conditions (less than 0.1 inches of rain in the preceding 24 hours and no significant snowmelt), the Town shall inspect all MS4 outfalls other than the Stacey Brook Outfall, and sample those with flow. If no flow is observed, but evidence of dry-weather flow exists, the Town shall revisit the outfall during dry weather, to perform a second dry-weather inspection and sampling of any observed flow. If an outfall is inaccessible or submerged, the Town shall proceed to the first accessible upstream manhole or structure for the dry-weather inspection and sampling. For dry-weather conditions, the samples shall be analyzed for E. coli (for freshwater receiving water bodies) or enterococcus bacteria (for saline or brackish receiving water bodies), surfactants, ammonia, and total residual chlorine. The Town shall maintain detailed and accurate records of the date and time that sampling was conducted, the weather conditions both during, and in the 24 hours prior to, each sampling event, and the physical condition and presence of potential non-stormwater discharge indicators (including presence or evidence of suspect flow and sensory observations such as odor, color, turbidity, floatables, or oil sheen) at the time of the dry-weather sampling. Samples shall be analyzed for the parameters outlined in Paragraph 13, above, using sound, generally accepted sampling and analysis practices.

15. Wet-weather inspections: By June 30, 2016, under wet-weather conditions, the Town shall sample all MS4 outfalls other than the Stacey Brook Outfall. To facilitate sample planning and execution, "wet-weather conditions" may also include those precipitation events of sufficient intensity to produce flow in outfalls and conduits to be sampled. If an outfall is inaccessible or submerged, the Town shall proceed to the first accessible upstream manhole or structure for the wet-weather inspection and sampling. For wet-weather conditions, the samples shall be analyzed for E. coli (for freshwater receiving water bodies) or enterococcus bacteria (for

saline or brackish receiving water bodies), surfactants, ammonia, and total residual chlorine.

The Town shall maintain detailed and accurate records of the date and time that sampling was conducted, the weather conditions both during, and in the 24 hours prior to, each sampling event, and the physical condition and presence of potential non-stormwater discharge indicators (including presence or evidence of suspect flow and sensory observations such as odor, color, turbidity, floatables, or oil sheen) at the time of the wet-weather sampling. Samples shall be analyzed for the parameters outlined in Paragraph 13, above, using sound, generally accepted sampling and analysis practices.

16. Within five (5) days of entry of this Consent Decree, the Town shall submit a proposed scope of work to EPA for review and approval which identifies the steps and the schedule the Town will undertake to investigate and identify all non-stormwater discharges which ultimately discharge through the Stacey Brook outfall.

17. By October 31, 2016, the Town shall design the infrastructure improvements necessary to prevent non-stormwater discharges, including contaminated flows from the Town's sewer underdrain system, from contributing pollutants to stormwater discharged through the Stacey Brook outfall and submit a report to EPA for review and approval describing such improvements in detail along with a proposed schedule for implementing them. The Town shall construct those infrastructure improvements proposed under this Paragraph and approved by EPA in accordance with the approved Schedule.

18. By September 30, 2017, the Town shall submit a proposed scope of work to EPA for review and approval which identifies the steps and the schedule the Town will undertake to investigate and identify all non-stormwater discharges occurring through all MS4 outfalls draining areas in Swampscott not tributary to the Stacey Brook outfall catchment area.

19. By April 1, 2019, the Town shall design the infrastructure improvements necessary to prevent flows other than stormwater, including flows from the Town's sewer underdrain system, from contributing non-stormwater discharges to stormwater outfalls draining areas in Swampscott not tributary to the Stacey Brook stormwater catchment area outfall and submit a report to EPA for review and approval describing such infrastructure improvements in detail along with a proposed schedule for implementing them. The Town shall construct those infrastructure improvements proposed under this Paragraph and approved by EPA in accordance with the approved Schedule.

20. For purposes of this Consent Decree, the "date of verification" of a non-stormwater or illicit discharge shall be the date on which the Town has identified a point of entry from a specific location or address that contributes non-stormwater flow to the MS4 system.

21. Except as provided in Paragraph 22, the Town shall remove identified illicit discharges under the Small MS4 General Permit, including those identified during investigations completed in accordance with Paragraphs 16, and 18, above, within sixty (60) Days of the date of verification.

22. If the Town cannot remove an illicit discharge within 60 Days of the date of verification, the Town shall submit for review and approval a schedule to EPA to remove the illicit discharge as expeditiously as possible. The Town shall meet all milestones in such schedule unless EPA responds to the submitted proposal with a different date in accordance with Paragraph 35. Schedules for removal of verified illicit discharges, including those existing at the time of lodging of this Consent Decree, shall be consistent with the following criteria unless special design requirements dictate an alternative schedule:

a. Within 30 Days of the date of verification, the Town shall either refer the case of the illicit discharge to its engineering department for removal of the illicit discharge in accordance with Paragraphs 21 and 22, or, if the Town determines that the removal of the illicit discharge is the responsibility of the property owner, notify the property owner in writing, sent both by certified mail/return receipt requested and regular mail, that it is responsible for eliminating the illicit discharge. If the Town determines that removal of the illicit discharge is the responsibility of the property owner, and the property owner has not eliminated the illicit discharge, within sixty (60) Days of the date of verification, the Town's legal department shall send the property owner a letter that notifies the property owner of its responsibility to remove the illicit discharge as expeditiously as possible, the legal consequences of its failure to do so, and details the range of available enforcement options from penalties to terminating service.

b. If the Town determines that removal of the illicit discharge is the responsibility of the property owner, and the property owner has not eliminated the illicit discharge within ninety (90) Days of the date of verification, the Town's legal department shall send the property owner a second letter. This letter shall notify the property owner that imposition of fines is commencing, that fines will continue to escalate until removal of the illicit discharge, and that fines will be included in the property owner's water and sewer bill. In addition, the letter shall enumerate further actions that the Town may take in accordance with its regulations governing the use of sanitary and combined sewers and storm drains. Thereafter, the Town's legal department shall diligently prosecute its action against the property owner for removal of the illicit discharge. Under Section VIII (Reporting) of this Consent Decree, the Town shall report on each legal action and the steps it has taken to escalate enforcement.

23. Within one (1) year of removing all known illicit discharges within an outfall's catchment area, the Town shall conduct at least two rounds of both dry- and wet-weather monitoring, as described in Paragraphs 14 and 15, to confirm that all non-stormwater discharges under the Small MS4 General Permit have been eliminated.

24. The Town shall comply with all schedules of this Consent Decree for investigations, design development, removal of verified non-stormwater discharges, or reporting, which are established pursuant to Paragraphs 16, 17, 18 and 19 (including as modified in accordance with Paragraph 77, below).

C. IDDE Investigations

25. At a minimum, the investigations and remedial work conducted pursuant to Paragraphs 16 through 19 shall:

- a. conform with EPA New England's draft Bacterial Source Tracking Protocol dated January 2012 (Attachment 1), which advises, but does not require, testing for pharmaceutical and personal care products in certain circumstances;
- b. comply with the IDDE program requirements proposed in the Town's approved Stormwater Management Plan and Small MS4 General Permit, employing analytical screening parameters as outlined in Paragraph 13;
- c. include the evaluation and investigation of all common/twin-invert manholes or structures which provide access to both the underdrain/storm sewer and sanitary sewer collection system through shared manholes. Reports submitted pursuant to Paragraphs 17 and 19 shall identify the steps and actions (e.g., sampling and flow monitoring) to be taken by the Town
 - i. to identify the location of all such manholes;

ii. to determine the type and condition of all valving and devices used in the common/twin-invert manhole or structure to prevent flows from the sanitary sewer collection system from reaching the underdrain/storm sewer or vice versa;

iii. to determine whether the common/twin-invert manholes or structures are acting as a source of non-stormwater discharges to the Towns MS4, and if so, quantify the frequency and volume that such discharges are occurring;

iv. and to develop a plan and schedule to eliminate all discharges in the most expeditious manner.

26. By one year following entry of this Consent Decree, the Town shall develop a geographic information system ("GIS") or other digital map of the Collection System and the MS4 to facilitate the Town's operation and maintenance of its Collection System and MS4. Thereafter, on each January 31st through termination of this Consent Decree, the Town shall submit updated maps reflecting newly developed and/or discovered information, corrections, and modifications for review and Approval by EPA in conjunction with the Compliance Reports submitted pursuant to Section VIII (Reporting) of this Consent Decree. Such mapping shall be designed to provide a comprehensive depiction of key infrastructure and factors influencing the proper operation and maintenance of the Collection System and the MS4, and each update shall include progress toward achieving that design. Mapping themes shall include: water resource and topographic features; sanitary, stormwater, and combined sewer infrastructure; prior investigation and study findings; cleaning and repair activities; and capital projects. The scale and detail of the maps shall be appropriate to facilitate a clear understanding of the Collection System and the MS4 by the Town, EPA, and the MassDEP. In addition, the mapping shall serve as a planning tool for the implementation of future remedial measures, shall delineate the extent

of completed and planned investigations and corrections, and other related capital projects. To ensure legible mapping, information shall be grouped appropriately and represented thematically (e.g., by color coding) with legends or schedules where possible. Mapping shall be updated as necessary to reflect newly developed and discovered information, corrections, or modifications.

The following information and features shall, at a minimum, be included in the mapping:

Base Map:

- Municipal boundaries;
- Street names;
- Private property delineations;

Water Resources and Topographic Features:

- Water bodies and watercourses identified by name and all use impairments identified in Massachusetts' most recent Integrated List of Waters prepared to fulfill reporting requirements of section 303(d) of the Clean Water Act;
- Topography;

Infrastructure:

- MS4:
 - outfalls;
 - pipes (including size, material, and approximate age);
 - open channel conveyances (e.g., swales, ditches);
 - catch basins;
 - manholes;
 - inter-municipal connections;
 - municipally-owned stormwater treatment structures (e.g., detention and retention

basins, infiltration systems, bioretention areas, water quality swales, gross particle separators, oil/water separators, or other proprietary systems);

- delineation of catchment areas for each outfall;
- Collection System underdrains connected to the MS4 and underdrains connected directly to the Collection System.
- Collection System:
 - pipes (including size, material, and approximate age);
 - flow type (e.g., pressure, vacuum, gravity);
 - manholes;
 - pump stations (public and private), and other key sewer appurtenances;
 - locations of any interceptor sewers;
 - delineation of catchment areas for each connection to any interceptor sewer;
 - Collection System underdrains
- Sewersheds or sewer alignments experiencing inadequate level of service (with indication of reason(s));
- Common/twin-invert manholes or structures (i.e., structures serving or housing both separate storm and sanitary sewers);
- Collection System alignments served by known or suspected underdrain systems;
- Sewer alignments with common trench construction and major crossings representing high potential for communication during high groundwater conditions.

Investigations, Remediation, and Capital Projects completed on or after January 1, 2014 for the MS4 and Collection System:

- Alignments, dates, and thematic representation of work completed (with legend) of past

investigations (e.g. flow isolation, dye testing, closed-circuit television, etc.);

- Locations of suspected, confirmed, and corrected unauthorized discharges (with dates and flow estimates) to the MS4;
- Alignments and dates of past and planned infrastructure remediation projects;
- Planned Collection System and MS4 capital projects; and
- Proposed phasing of future capital projects.

D. Construction Site Stormwater

27. Within one hundred and eighty (180) Days of lodging of this Consent Decree, the Town shall require sediment and erosion control at construction sites through an ordinance or other regulatory mechanism as required by Part II(B)(4)(a) of the Small MS4 General Permit.

28. Within one hundred and eighty (180) Days of lodging of the Consent Decree, the Town shall develop and submit Construction Site inspection procedures and an enforcement program and procedures to EPA for Review and Approval. The enforcement program shall provide for use of a spectrum of enforcement remedies.

29. The Town's Construction Site inspection and enforcement program shall require developers to apply for EPA's Construction General Permit, where applicable, and shall require the use and maintenance of appropriate structural and non-structural BMPs designed to minimize the discharge of pollutants from Construction Sites to the Town's MS4. The BMPs shall include and emphasize the use of all appropriate available GI/LID techniques. The Town's Construction Site inspection and enforcement program shall also require that operators of Construction Sites submit a Storm Water Pollution Prevention Plan ("SWPPP") that meets the requirements of EPA's Construction General Permit and the Town's construction program requirements to the Town prior to site plan approval and commencement of construction.

30. The Town shall commence implementation, and shall continue implementation thereafter, of the revised Construction Site inspection and enforcement procedures, within ninety (90) Days following approval of the Town's program by EPA.

E. Post Construction Storm Water Controls

31. Within one hundred and eighty (180) Days of lodging of this Consent Decree, the Town shall require management of storm water runoff at post construction development and redevelopment projects through an ordinance or other regulatory mechanism as required by Part II(B)(5) of the Small MS4 General Permit.

VIII. REPORTING

32. Beginning thirty (30) days after the date of lodging of this Consent Decree, the Town shall report all future SSOs, whether to surface waters or buildings or property in the Town, to EPA and MassDEP. SSO events shall be reported via electronic mail to EPA and MassDEP within 24 hours (handler.neil@epa.gov; kevin.brandner@state.ma.us) and shall be tabulated and maintained in a central tracking database. The locations shall be maintained by Swampscott on a map of the Collection System. Submittal of the MassDEP's SSO Reporting Form will satisfy, in part, the 24-hour reporting requirement; however, the Town shall also provide for each SSO the additional information required below that is not included on the MassDEP's SSO/Bypass Reporting Form:

- a. The date and time that the event began and was discovered by, or reported to, the Town and the date the event was stopped, or if it is continuing, a schedule for its termination;
- b. The location, including nearest property address, of each such event;
- c. The source of notification (property owner, field crew, police, etc.);

d. The specific cause of the event, including but not limited to whether it was caused by debris, fats, oils, and grease, or root blockages; collapsed pipes; mechanical, electrical, or structural failures; hydraulic overloads; equipment failures; and/or vandalism;

e. Whether the cause of the event was within, or related to, the publicly-owned portion of the Collection System or if related to privately owned sewer laterals, sanitary sewer lines or other private facilities;

f. The estimated gallons of wastewater released and the method used to estimate the volume;

g. A clear statement of whether or not the release entered a stormwater catch basin or any other portion of the Town's MS4. If the release occurred to the ground or street, regardless of whether the discharge entered any portion of the MS4, the Town shall provide the location and the distance to the nearest down gradient stormwater catch basin and the name of the receiving water to which the catch basin discharges;

h. If the release did not enter a stormwater catch basin or any other portion of the Town's MS4, provide a clear statement of whether the release did or did not enter any surface water. If the release entered a surface water, the Town shall include the name of the surface water and a description of the location where the release entered the surface water;

i. The estimated gallons of wastewater discharged to the MS4 or surface water, and the method used to estimate the volume;

j. The measures taken and the measures that will be taken to stop the overflow and decontaminate the area affected by the overflow;

k. The measures taken to prevent future overflows at the same location; and

l. The date the overflow was reported to EPA and MassDEP.

33. Beginning on September 1, 2015, and on each March 1st and September 1st thereafter through termination of this Consent Decree, the Town shall submit to EPA, for review and comment, Compliance Reports for the previous six-month period (August 1 through January 31 and February 1 through July 31) ("Reporting Period"). Each Compliance Report shall include, at a minimum, the following items:

a. A chronological list of each of the following categories of SSO events that occurred during the Reporting Period: all releases with a reasonable potential to reach surface waters such as releases to streets or areas with storm drain catch basins; Building/Private Property Backups; and citizen reports of SSO events, including Building/Private Property Backups. Each of the lists shall include, but need not be limited to, the following information, as detailed in Section VII.D, in summary format:

i. the date and time when each event began and was discovered by, or reported to, the Town and the date when the event was stopped;

ii. the location by address;

iii. the final disposition of the SSO; and, if the release occurred to the ground or street, the location of the nearest downgradient MS4 catch basin and the name of the receiving water to which the catch basin discharges;

iv. if the release did not reach a catch basin or any other portion of the Town's MS4, a statement of whether the release did or did not reach any surface water. If the release reached a surface water, the Town shall include the name of the surface water and a description of the location where the release reached the surface water;

v. the source of notification;

vi. the cause(s) of the event;

- vii. a determination of whether the event was caused by blockages or hydraulic limitations within the publicly-owned portion of the Collection System;
 - viii. the measures taken to stop the event;
 - ix. the estimated gallons of wastewater released, the estimated gallons of wastewater that reached a surface water, and the bases for those estimates;
 - x. the date the overflow was reported to EPA and MassDEP;
 - xi. the measures taken to prevent future overflows at the same location;
 - xii. the date of the last SSO that occurred at the event location; and
 - xiii. A GIS map or figure, consistent with the requirements of Paragraph 26, indicating the location of each illicit discharge and SSO event including Building/Private Property Backups;
- b. A spreadsheet detailing the percentage of each catchment area investigation completed during the last Reporting Period and cumulative to date based on the following:
- i. the number of stormwater manholes in the catchment areas that have been systematically investigated and addressed in accordance with the Town's revised IDDE Plan, as approved by EPA and MassDEP, during the previous Reporting Period and cumulative to date;

ii. the percentage of the catchment areas that have been systematically investigated and addressed in accordance with the Town's revised IDDE Plan, as approved by EPA and MassDEP, during the previous Reporting Period and cumulative to date. The percentage shall be based on the number of stormwater manholes addressed during each respective period divided by the total number of stormwater manholes in the Sub-catchment areas;

iii. the linear feet of storm drain piping in the catchment areas that have been systematically investigated and addressed in accordance with the Town's revised IDDE Plan, as approved by EPA and MassDEP, during the previous Reporting Period and cumulative to date;

c. the percentage of the catchment areas that have been systematically investigated and addressed in accordance with the Town's revised IDDE Plan, as approved by EPA and MassDEP, during the previous Reporting Period and cumulative to date. The percentage shall be based on the linear feet of storm drain addressed during each respective period divided by the total linear feet in the Sub-catchment areas;

d. An updated listing of all illicit discharges (separately listing illicit connections and sanitary sewer defects) verified through the end of the Reporting Period, including the following:

i. the date the illicit discharge was verified, the address or location of the illicit discharge, and the type of discharge (e.g., single-family residential, multi-family residential, commercial, industrial, exfiltration from sanitary sewer);

ii. the estimated flow from the illicit discharge;

iii. the actions taken by the Town to remove the illicit discharge;

- iv. the date the illicit discharge was removed;
 - v. the cost of removing the illicit discharge;
 - vi. the resulting volume removed from the MS4 under the IDDE Plan during the Reporting Period for each individual illicit discharge, cumulative for the Reporting Period, and cumulative for all illicit discharges to date;
 - vii. a listing of those illicit discharges verified but not removed within sixty (60) Days of verification, with an explanation of why each outfall was not removed within 60 Days of verification;
 - viii. the schedule for the removal of each illicit discharge that was not removed within sixty (60) Days of identification and an explanation as to why the schedule is as expeditious as possible;
 - ix. for each verified illicit discharge that is the responsibility of the property owner where the property owner has not removed the illicit discharge within ninety (90) Days of the date of verification, or within ninety (90) Days of lodging of this Consent Decree for existing verified illicit discharges, an explanation of the manner in which the Town's legal actions have escalated; and
 - x. for each schedule listed in the previous semi-annual report, specify whether the Town complied with its schedule for removal; and if not, the reasons for the delay.
- e. A map or figure indicating the location of each illicit discharge;
 - f. A chart showing the numbers of routine, complaint-response, and total construction inspections and the number of each type of enforcement action taken for violations;
 - g. An identification of all plans, reports, and other submissions required by this Consent Decree that the Town completed and submitted during the Reporting Period;

- h. Photocopies of any sampling results received during the Reporting Period;
- i. A description of the activities the Town plans to undertake during the six (6) months following the Reporting Period in order to achieve compliance with this Consent Decree; and
- j. An identification of any noncompliance with the requirements of this Consent Decree. If any noncompliance is reported, the notification shall include the following information:
 - i. a description of the noncompliance;
 - ii. a description of any actions taken or proposed by the Town to comply with any lapsed requirements;
 - iii. a description of any factors that tend to explain or mitigate the noncompliance; and
 - iv. the date by which the Town will perform the required action.

34. The reporting requirements set forth in this Section do not relieve the Town of its obligation to submit any other reports or information as required by federal, Commonwealth or local law, regulation, or permit. EPA reserves the right to review and require modifications to the above reporting requirements.

IX. APPROVAL OF SUBMISSIONS

35. After review of any plan, schedule, report, or other item that is required to be submitted for Approval by EPA pursuant to this Consent Decree, EPA shall in writing:
(a) approve, in whole or in part, the submission; (b) approve, in whole or in part, the submission with specified conditions; (c) disapprove, in whole or in part, the submission, directing that the

Town modify the submission; or (d) any combination of the above, and shall provide copies thereof to the other Parties.

36. In the event of Approval or Approval with conditions by EPA pursuant to Paragraph 35 (a) or (b), the plan, schedule, report, or other item, or portion thereof, as Approved or Approved with conditions by EPA, shall be enforceable under this Consent Decree, and the Town shall take all actions required to implement such plan, schedule, report, or other item, or portion thereof, in accordance with the Approval or Approval with conditions issued by EPA.

37. Upon receipt of a written notice of disapproval pursuant to Paragraph 35 (c), the Town shall, within thirty (30) Days or such other time as the Town and EPA agree in writing, correct the deficiencies and resubmit the plan, schedule, report, or other item, or portion thereof, for Approval. Any stipulated penalties applicable to the original submission shall accrue during the thirty (30) Day period or other specified period, but shall not be payable unless the resubmission is untimely and/or disapproved as provided in Paragraph 38.

38. Any resubmitted plan, schedule, report, or other item, or portion thereof, shall be subject to review and Approval by EPA, as provided under this Section. If the Town fails to resubmit a plan, schedule, report, or other item, or portion thereof after a disapproval, or if, upon resubmission, the plan, schedule, report, or other item, or portion thereof, is disapproved by EPA, the Town shall be deemed to have failed to submit such plan, schedule, report, or other item, or portion thereof, timely and adequately, unless the Town invokes the dispute resolution procedures set forth in Section XII (Dispute Resolution) and the Town's position is upheld.

39. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 35 (c), the Town shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a

submission shall not relieve the Town of any liability for stipulated penalties under Section X (Stipulated Penalties) for the deficient portions.

X. STIPULATED PENALTIES

40. The Town shall pay stipulated penalties to the United States for violations of, or noncompliance with, the requirements of this Consent Decree, as set forth below, unless excused under Section XI (Force Majeure). A violation or noncompliance includes failing to perform an obligation required by the terms of this Consent Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Consent Decree and within the specified time schedules or by the date(s) established by or approved under this Decree. If the United States makes a demand for stipulated penalties, the Town may invoke dispute resolution.

a. Late Payment of Civil Penalty. If the Town fails to pay the Civil Penalty required to be paid under Section VI (Civil Penalty) when due, the Town shall pay a stipulated penalty as follows:

Penalty Per Violation Per Day	Period of Noncompliance
\$ 750	1st through 10th Day
\$ 1,500	11th through 20th Day
\$ 2,500	21st Day and beyond.

b. Reporting & Notice Requirements. For every Day that the Town fails timely to submit a plan report required by Paragraph 33, the Town shall pay a stipulated penalty as follows:

Penalty Per Violation Per Day	Period of Noncompliance
\$ 500	1st through 10th Day
\$ 1,500	11th through 20th Day
\$ 2,500	21st Day and beyond.

c. Remedial Measures. For every Day that the Town fails to timely meet the requirements of Section VII (Remedial Measures) of this Consent Decree, including but not limited to, submitting an approvable plan, schedule, report, or other item, other than a report required by Section VIII (Reporting), or fails to implement remedial requirements in a plan, schedule, report, or other item Approved by EPA, the Town shall pay a stipulated penalty as follows:

Penalty Per Violation Per Day	Period of Noncompliance
\$ 750	1st through 10th Day
\$ 1,000	11th through 20th Day
\$ 2,500	21st Day and beyond

41. Stipulated penalties shall automatically begin to accrue on the Day after performance is due or on the Day a violation occurs and shall continue to accrue each Day until performance is satisfactorily completed or until the violation or noncompliance ceases. Stipulated penalties shall accrue simultaneously for separate violations of, or instances of noncompliance with, this Consent Decree.

42. Following the United States' determination that the Town has failed to comply with a requirement of this Consent Decree, the United States may give the Town written notification of the same and describe the noncompliance. The United States may send the Town a written demand for the payment of the stipulated penalties. However, the stipulated penalties shall accrue as provided in the preceding Paragraph regardless of whether the United States has notified the Town of a violation of, or noncompliance with, the requirements of this Consent Decree, or demanded payment of stipulated penalties.

43. The Town shall pay stipulated penalties as specified in this Section by delivering the payment to the United States within thirty (30) Days of the date of a demand for payment of

stipulated penalties by the United States. The Town shall pay on half of the total stipulated penalty amount due to the United States in the manner set forth in and with the confirmation notices required by Paragraph 10 and transmittal letters shall state that the payment is for stipulated penalties and shall state for which violation(s) or noncompliance the penalties are being paid. In the event the Town fails to pay stipulated penalties according to the terms of this Consent Decree, such penalty (or portion thereof) shall be subject to interest at the statutory judgment rate set forth at 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 from seeking any remedy otherwise provided by law for failure of the Town to pay any stipulated penalties.

44. Stipulated penalties shall continue to accrue as provided in Paragraph 41, during any dispute resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or a decision of the EPA that is not appealed to the Court, the Town shall pay accrued penalties, together with interest, to the United States within thirty (30) Days of the agreement or the receipt of the United States' decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, the Town shall pay all accrued penalties, together with interest, within sixty (60) Days of receiving the Court's decision or order, to the extent the United States prevail, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, and the United States prevails in whole or in part, the Town shall pay all accrued penalties, together with interest, within fifteen (15) Days of receiving the final appellate court decision, to the extent that the United States prevails.

45. The stipulated penalties set forth above shall be in addition to any other remedies, sanctions, or penalties which may be available by reason of the Town's failure to comply with the requirements of this Consent Decree. The United States expressly reserves any and all legal and equitable remedies, including contempt sanctions, which may be available to enforce the provisions of this Consent Decree. The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Decree.

XI. FORCE MAJEURE

46. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes entirely beyond the control of the Town, of any entity controlled by the Town, or of Town's engineers, consultants, and contractors, that delays or prevents the timely performance of any obligation under this Consent Decree notwithstanding the Town's best efforts to fulfill the obligation.

47. The requirement that the Town exercise "best efforts" 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 feasible. "Force Majeure" does not include the Town's financial inability to perform any obligation under this Consent Decree. Stipulated Penalties shall not be due for the number of Days of noncompliance caused by a Force Majeure event as defined in this Section, provided that the Town complies with the terms of this Section.

48. If any event occurs that may delay or prevent the performance of any obligation under this Consent Decree, whether or not caused by a Force Majeure event, the Town shall notify the United States via email within three (3) working Days after the Town first knew or should have known that the event might cause a delay. Within five (5) additional working Days

thereafter, the Town shall submit for review and Approval by EPA, at the addresses specified in Section XIV (Form of Notice), a written explanation of the cause(s) of any actual or expected delay or noncompliance, the anticipated duration of any delay, the measure(s) taken and to be taken by the Town to prevent or minimize the delay, a proposed schedule for the implementation of such measures, and a statement as to whether, in the opinion of the Town, such event may cause or contribute to an endangerment to public health, welfare, or the environment.

Notwithstanding the foregoing, the Town shall notify EPA orally within twenty-four (24) hours of becoming aware of any event that presents an imminent threat to the public health or welfare or the environment and provide written notice to United States within seventy-two (72) hours of discovery of such event. Failure to provide timely and complete notice in accordance with this Paragraph shall constitute a waiver of any claim of Force Majeure with respect to the event in question. Notifications required by this Paragraph shall be provided consistent with the contact information provided in Section XIV (Form of Notice). Nothing in this Consent Decree should be taken to change or amend existing reporting requirements established by MassDEP for SSO events and facility upsets.

49. If EPA agrees that a delay or anticipated delay is attributable to Force Majeure, the time for performance of the obligations under this Consent Decree that are affected by the Force Majeure event shall be extended by EPA for a period of time as EPA determines is necessary to complete these obligations. EPA will notify the Town in writing of the length of the extension, if any, for completion of the obligations affected by the Force Majeure event.

50. If EPA does not agree the delay or anticipated delay is attributable to Force Majeure, or on the number of Days of noncompliance caused by such event, EPA will notify the Town in writing of the decision. The Town may then elect to initiate the dispute resolution

process set forth in Section XII (Dispute Resolution). If the Town does not initiate the dispute resolution process set forth in Section XII (Dispute Resolution) within ten (10) Days of receiving EPA's written notice under this Paragraph, then the Town shall be deemed to have waived any Force Majeure claims or any rights to initiate dispute resolution with regard to such claims. In any dispute resolution proceeding, the Town 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 the Town complied with the requirements of Paragraph 48, above. If the Town carries this burden, the delay at issue shall be deemed not to be a violation by the Town of the affected obligation(s) of this Consent Decree.

51. Delay in performance of any obligation under this Consent Decree shall not automatically justify or excuse delay in complying with any subsequent obligation or requirement of this Decree.

52. Failure of the Town to obtain any Commonwealth or federal grants or loans shall not be considered a Force Majeure event under this Consent Decree.

XII. DISPUTE RESOLUTION

53. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures set forth in this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. The Town's failure to seek resolution of a dispute under this Section shall preclude the Town from raising any such undisputed issue as a defense to an action by the United States to enforce any obligation of the Town arising under this Consent Decree. The procedures set forth in this Section shall not apply

to actions by the United States to enforce obligations that the Town has not disputed in accordance with this Section.

54. 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 the Town sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute, and shall be accompanied by a Statement of Position that 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 Town. The period of informal negotiations shall not exceed thirty (30) Days from the date the dispute arises, unless that period is modified by written agreement between the Parties. EPA shall maintain an administrative record of the dispute, which shall contain all statements of the Parties, including supporting documentation, submitted pursuant to this Section.

55. In the event that the Town elects to invoke dispute resolution according to this Section, the Town shall do so by giving the United States written notice of the existence of the dispute within twenty (20) Days after receipt of a notice of disapproval, approval with conditions or modification, a Force Majeure determination by EPA, or a written demand for payment of stipulated penalties. If the Town fails to give such notice, it shall be deemed to have waived any right to invoke dispute resolution regarding such dispute, and the position advanced by the United States shall be considered binding.

56. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States or the United States shall be considered binding unless, within thirty (30) Days after the conclusion of the informal negotiation period, the Town seeks judicial review of the dispute by filing with the Court, and serving on the United States in accordance

with Section XIV (Form of Notice), a motion requesting judicial resolution of the dispute. Any such motion shall contain a written statement of the Town'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.

57. The United States shall respond to the Town's motion within the time period allowed by the Federal Rules of Civil Procedure and the Local Rules of this Court. The Town may file a reply memorandum, to the extent permitted by the Federal Rules of Civil Procedure and the Local Rules.

58. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, any dispute brought under this Section pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules, or any other items requiring approval by EPA 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, the Town shall have the burden of demonstrating, based upon the administrative record, that the United States' 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 this Section, the Town shall bear the burden of demonstrating that its position complies with this Consent Decree, furthers the objectives of this Consent Decree more positively than the position advanced by the United States, and that the Town is entitled to relief under applicable principles of law.

59. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of the Town 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 44. If the Town does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section X (Stipulated Penalties).

XIII. RIGHT OF ENTRY/INFORMATION COLLECTION AND RETENTION

60. EPA and its contractors, consultants, and attorneys shall have authority to enter any property and/or facility owned or controlled by the Town, at all reasonable times, upon proper identification, for the purposes of: (a) monitoring the progress of activity required by this Consent Decree; (b) verifying any data or information submitted to EPA under this Consent Decree; (c) assessing the Town's compliance with this Consent Decree; (d) obtaining samples and, upon request, splits of any samples taken by the Town or its representatives, contractors, or consultants; and (e) obtaining documentary evidence, including photographs and similar data. Upon request, EPA shall provide the Town splits of any samples taken by EPA.

61. Until five years after the termination of this Consent Decree, the Town shall retain all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) generated by the Town, and all data collected and all reports generated by the Town's contractors (including data and reports in electronic form), that relate in any manner to the Town'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, the Town shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

62. At the conclusion of the information-retention period provided in the preceding Paragraph, the Town shall notify the United States at least ninety (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, the Town shall deliver any such documents, records, or other information to EPA. The Town 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 the Town asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by the Town. However, no documents, records, data, reports or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

63. 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 pursuant to applicable federal or Commonwealth laws, regulations, or permits, nor does it limit or affect any duty or obligation of the Town to maintain documents, records, or other information imposed by applicable federal or Commonwealth laws, regulations, or permits.

XIV. FORM OF NOTICE

64. Reports and plans required to be submitted by the Town shall be submitted to Neil Handler, with a copy of the transmittal letter only to Michael Wagner, the United States

Attorney's Office for the District of Massachusetts and the U.S. Department of Justice, Environmental and Natural Resources Division. The Town shall provide complete copies to both Neil Handler and Michael Wagner of all other submissions required to be made by the Town to EPA pursuant to this Consent Decree. Any Party may, by written notice to the other Parties, change its designated notice recipient, address, or means of notice (including the substitution of electronic notice via email instead of notice via mail). Notifications, submissions, or communications submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by written agreement of the Parties.

As to the Department of Justice

Chief, Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
P.O. Box 7611 - Ben Franklin Station
Washington, DC 20044
DJ # 90-5-1-1-10166

As to the United States Attorney

United States Attorney
District of Massachusetts
One Courthouse Way
John Joseph Moakley Courthouse
Boston, Massachusetts 02210
Attention: Susan M. Poswistilo

As to the EPA

Neil Handler
Senior Enforcement Coordinator
Water Technical Unit
U.S. Environmental Protection Agency, Region 1
5 Post Office Square – Suite 100
Mail Code OES04-4
Boston, MA 02109-3912
handler.neil@epa.gov

Michael Wagner
Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
5 Post Office Square – Suite 100
Mail Code OES04-1
Boston, MA 02109-3912
wagner.michael@epa.gov

As to the Town of Swampscott

Town Administrator
Swampscott Town Hall
22 Monument Avenue
Swampscott, MA 01907

Director of Public Works
Swampscott Town Hall
22 Monument Avenue
Swampscott, MA 01907

65. The Town shall submit all notifications, submissions, and communications required by this Consent Decree to EPA via electronic mail no later than the due date(s) specified in this Consent Decree, in addition to providing a hard copy in accordance with the terms of this Paragraph. The Town shall provide complete copies to both Neil Handler and Michael Wagner of all other submissions and notices required to be made by the Town to EPA pursuant to this Decree; except that with respect to copies of reports, schedules, plans, and other items required to be submitted to Michael Wagner pursuant to Sections VII (Remedial Measures) and VIII (Reporting), only copies of the transmittal letters need be provided. If a submission or notice cannot be provided via electronic mail due to its size, an electronic copy shall be provided by CD-ROM or other similar digital format.

66. All written notices, reports, or any other submissions required of the Town by this Consent Decree shall contain the following certification by a duly authorized representative of the Town:

“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 fine and imprisonment for knowing violations.”

XV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

67. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the Date of lodging.

68. This Consent Decree is neither a permit nor a modification of any existing permit under any federal, Commonwealth, or local law or regulation. The Town is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws and regulations, and permits, and the Town'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 does not, by consent to the entry of this Consent Decree, warrant or aver in any manner that the Town's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CWA or the Massachusetts Act or with any other provisions of federal, Commonwealth, or local laws, regulations, or permits. This Consent Decree shall not be construed to constitute approval by EPA of any equipment or technology installed by the Town under the terms of this Consent Decree.

69. This Consent Decree does not limit any rights or remedies available to the United States for any violation by the Town of the CWA or associated regulations or permit conditions other than those claims alleged in the Complaint through the Date of lodging. This Consent Decree does not limit any rights or remedies available to the United States for any criminal violations. The United States expressly reserves all rights and remedies, legal and equitable, available for all violations of the CWA or other applicable law, except with respect to violations that have been specifically resolved pursuant to Paragraph 67, and reserve all rights and remedies, legal and equitable, available to enforce the provisions of this Consent Decree, including the provisions of any work plan or schedule Approved by EPA under this Decree. Nothing herein shall be construed to limit the power of the United States to undertake any action against any person, in response to conditions which may present an imminent and substantial endangerment to the public's health or welfare, or the environment.

70. In any subsequent administrative or judicial proceeding initiated by one or more of the United States for injunctive relief, civil penalties, or other appropriate relief relating to the Town's violations of federal, the Town 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 one or more of the United States 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 67.

71. This Consent Decree does not resolve any claims for contingent liability under Section 309(e) of the Clean Water Act, 33 U.S.C. § 1319(e). The United States specifically reserves any such claims against the Commonwealth.

72. This Consent Decree does not limit or affect the rights of the Town or the United States 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 the Town, except as otherwise provided by law.

73. 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

74. Each Party shall bear its own expenses, costs, and attorney's fees in this action. The Defendants shall be responsible for all expenses, costs and attorney's fees incurred by the United States in collecting any penalties due and payable under Sections VI (Civil Penalty) and X (Stipulated Penalties) of this Consent Decree.

XVII. EFFECTIVE DATE

75. 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 the Town 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 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.

XVIII. RETENTION OF JURISDICTION

76. The Court shall retain jurisdiction to modify and enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Consent Decree and to assess any stipulated penalties that may have accrued because of the Town's failure to comply with any of its obligations under this Decree.

XIX. MODIFICATION

77. The terms of this Consent Decree, including modifications to any schedule specified in the Consent Decree, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to the Consent Decree, it shall be effective only upon approval by the Court. Any disputes concerning modification of this Consent Decree shall be resolved pursuant to Section XII (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 50, 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).

XX. FUNDING

78. Performance of the terms of this Consent Decree by the Town is not conditioned on the receipt of any federal or Commonwealth grant funds or loans, or other financing. In addition, performance is not excused by the lack of federal or Commonwealth grant funds or loans.

XXI. SEVERABILITY

79. The provisions of this Consent Decree shall be severable, and should any provision be declared by a court of competent jurisdiction to be unenforceable, the remaining provisions shall remain in full force and effect.

XXII. TERMINATION

80. After the Town completes all of the requirements of Section VII (Remedial Measures) and Section VIII (Reporting), complies with all other requirements of the Consent Decree, has paid in full the Civil Penalty, and all accrued interest thereon, and all stipulated penalties, and all accrued interest thereon, as required by Sections VI (Civil Penalty) and X (Stipulated Penalties) of this Consent Decree, and has paid in full the costs of litigation, and all accrued interest thereon, as required by Paragraph 74 of this Consent Decree, the Town may serve upon the United States a Request for Termination, stating that the Town has satisfied those requirements, together with all applicable supporting documentation.

81. Following receipt by the United States of the Town's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that they may have as to whether the Town has satisfied the requirements for termination of this Consent Decree. If after consultation the Parties agree that this Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

82. If the United States does not agree that the Decree may be terminated, the Town may invoke dispute resolution under Section XII (Dispute Resolution). However, the Town shall not seek dispute resolution of any dispute regarding termination until sixty (60) Days after service of its Request for Termination.

XXIII. FINAL JUDGMENT

83. Entry of this Consent Decree constitutes Final Judgment under Rule 54 of the Federal Rules of Civil Procedure.

XXIV. WAIVER OF SERVICE

84. The Town hereby agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in 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.

XXV. PUBLIC COMMENT

85. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments received disclose facts or considerations that indicate that this Consent Decree is inappropriate, improper, or inadequate. The Town consents to the 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 this Decree, unless the United States has notified the Town in writing that it no longer supports entry of this Decree.

XXVI. SIGNATORIES

86. Each undersigned representative 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.

XXVII. INTEGRATION

87. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

88. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than submissions that are subsequently submitted and Approved by EPA pursuant to this 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.

Dated this _____ day of _____, 2015.

United States District Judge
District of Massachusetts

FOR PLAINTIFF, UNITED STATES OF AMERICA:

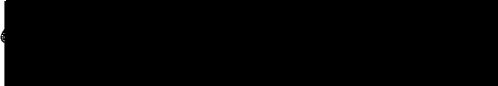
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FOR DEFENDANT, TOWN OF SWAMPSCOTT:



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Swampscott Town Hall
22 Monument Avenue
Swampscott, MA 01907

FOR THE ENVIRONMENTAL PROTECTION AGENCY:



SUSAN STÜDIEN

Director

Office of Environmental Stewardship

United States Environmental Protection Agency, Region 1

5 Post Office Square, Suite 100

Boston, MA 02109-3912

08/03/2015
DATE

For the ENVIRONMENTAL PROTECTION AGENCY:

[Redacted Signature]

8/12/15

MARK POLLINS
Division 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. 20460

Date

[Redacted Signature]

8/6/15

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Date