

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

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| UNITED STATES OF AMERICA |) | |
| |) | |
| and |) | |
| |) | |
| STATE OF MAINE, |) | |
| |) | |
| Plaintiffs |) | Civil Action No. 1:15-cv-00350-NT |
| |) | |
| v. |) | |
| |) | |
| CITY OF BANGOR, MAINE, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

CONSENT DECREE

TABLE OF CONTENTS

| | |
|--|----|
| I. STATEMENT OF CLAIM | 4 |
| II. JURISDICTION AND VENUE..... | 5 |
| III. APPLICABILITY | 5 |
| IV. DEFINITIONS | 7 |
| V. OBJECTIVES | 13 |
| VI. REMEDIAL MEASURES | 13 |
| VII. REPORTS ON COMPLIANCE..... | 31 |
| VIII. APPROVAL OF SUBMISSIONS..... | 34 |
| IX. STIPULATED PENALTIES..... | 36 |
| X. FORCE MAJEURE | 41 |
| XI. DISPUTE RESOLUTION..... | 44 |
| XII. RIGHT OF ENTRY/INFORMATION COLLECTION AND RETENTION | 47 |
| XIII. FORM OF NOTICE..... | 50 |
| XIV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS..... | 53 |
| XV. COSTS | 55 |
| XVI. EFFECTIVE DATE..... | 55 |
| XVII. RETENTION OF JURISDICTION | 56 |
| XVIII. MODIFICATION | 56 |
| XIX. FUNDING | 57 |
| XX. SEVERABILITY | 57 |
| XXI. TERMINATION..... | 57 |
| XXII. FINAL JUDGMENT..... | 58 |
| XXIII. WAIVER OF SERVICE OF SUMMONS AND COMPLAINT..... | 58 |
| XXIV. PUBLIC COMMENT | 58 |
| XXV. SIGNATORIES..... | 59 |
| XXVI. INTEGRATION | 59 |

United States and the State of Maine v. City of Bangor Consent Decree
Page 3

WHEREAS, Plaintiffs, the United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“EPA”), and the State of Maine (“State”) filed a complaint simultaneously herewith, alleging that the City of Bangor, Maine (“City” or “Bangor”) has violated Section 301(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1311(a), 38 Maine Revised Statutes Annotated (“M.R.S.A.”) § 414(5), and terms and conditions of Maine Pollutant Discharge Elimination System (“MEPDES”) permit ME0100781, dated May 26, 2011 issued pursuant to Section 402 of the CWA (the “MEPDES Permit”);

WHEREAS, the Plaintiffs’ Complaint against the City alleges that the City violated and continues to violate Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and 38 M.R.S.A. § 414(5) by failing to comply fully with the CWA in its discharge of pollutants from its wastewater collection system and small municipal separate storm sewer system (“MS4”) without NPDES permit authorization and in noncompliance with the MEPDES Permit;

WHEREAS, Section 309(e) of the CWA, 33 U.S.C. § 1319(e), requires that, whenever the United States brings a civil enforcement action against a municipality under Section 309, the state in which the municipality is located shall be joined as a party;

WHEREAS, the City has completed projects and submitted plans and reports pursuant to (1) a Consent Decree agreed to by the United States, the State, and the City (collectively, the “Parties”) and entered by this Court on June 28, 1991 (Civil Action No. 88-0048-B) (the “1991 Consent Decree”); (2) May 28, 2010 and April 2, 2012 Information Requests issued by EPA under authority of Section 308 of the CWA, 33 U.S.C. § 1318 (Docket Nos. 010-308-029 and 12-308-28, respectively); and (3) the MEPDES Permit, including the following projects, plans

United States and the State of Maine v. City of Bangor Consent Decree
Page 4

and reports: Capacity, Management, Operation and Maintenance (“CMOM”) Program Self-Assessment and annual reports; a CMOM Corrective Action Plan; Combined Sewer Overflow (“CSO”) monitoring; hydraulic model updates; Stormwater Management Plan; Illicit Discharge Detection and Elimination (“IDDE”) Plan; list of short term Capital Improvement Projects (“CIPs”); and semi-annual update reports on CSO abatement activities, schedules, costs and the Nine Minimum Control Measures (“NMC”).

WHEREAS, entry of this Consent Decree by the Court will resolve the civil claims alleged in the Plaintiffs’ Complaint; and

WHEREAS, the Parties recognize, without admission of facts or law except as expressly stated herein, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter is fair, reasonable, and consistent with the goals of the CWA, and that entry of this Consent Decree without further litigation is an appropriate resolution of this action;

NOW, THEREFORE, with the consent of the Parties, 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 City pursuant to Section 309 of the CWA, 33 U.S.C. § 1319 and 38 M.R.S.A. § 414(5).

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. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction over the state law claims. 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 City 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 are binding upon the United States and the State, and upon the City, and the City's successors and assigns, or other entities or persons otherwise bound by law.

4. No transfer of any ownership interest in or any interest in the operation of the Collection System, whether in compliance with this Paragraph or otherwise, shall relieve the City of its obligation to ensure that the terms of this Consent Decree are implemented. Any transfer involving ownership or operation of the Collection System, or any portion thereof, to any other person or entity must be conditioned upon the transferee's agreement to undertake the obligations required by all provisions of this Consent Decree, as provided in a written agreement between the City and the proposed transferee, enforceable by the United States and/or the State as third-party beneficiaries of such agreement. At least thirty (30) Days prior to such transfer, the City shall provide a copy of this Consent Decree to the proposed transferee and shall

United States and the State of Maine v. City of Bangor Consent Decree
Page 6

simultaneously provide written notice of the prospective transfer, together with a copy of the above-referenced proposed written agreement, to EPA, the United States Department of Justice, Maine Department of Environmental Protection (“MEDEP”), and the Maine Attorney General in accordance with Section XIII (Form of Notice). The provisions of this Paragraph do not apply to the transfer by the City of a former Private Sewer Service Connection Lateral that has come to be owned by the City (by way of example, as a result of foreclosure) and which, upon transfer, meets the definition of Private Sewer Service Connection Lateral. Any noncompliance with this Paragraph constitutes a violation of this Consent Decree.

5. The City shall make a copy of this Consent Decree available (electronically, by paper copy, or via reference to the City’s website) to all officers and agents whose duties include compliance with any provisions of this Consent Decree. The City shall also make a copy of this Consent Decree available (electronically, by paper copy, or via reference to the City’s website) to all contractors and consultants retained to perform any obligation required by this Consent Decree on behalf of the City, and condition any such contract upon performance of the work in conformity with the terms of this Consent Decree. The City shall require that such contractors and consultants make a copy of this Consent Decree available (electronically, by paper copy, or via reference to the City’s website) 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 City for the purposes of this Consent Decree. In an action to enforce this Consent Decree, the City shall not assert as a defense against an action by EPA or the State the failure by any of the City’s officers, directors, employees, agents, servants,

United States and the State of Maine v. City of Bangor Consent Decree
Page 7

consultants, engineering firms, contractors, successors, and assigns to take actions necessary to comply with this Consent Decree. The City retains any rights it may have against such officers, directors, employees, agents, servants, consultants, engineering firms, contractors, successors, and assigns.

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. “Approval by EPA” shall mean the issuance of a written approval document from EPA, approving, or approving with conditions a submission in accordance with Section VIII (Approval of Submissions). EPA shall consult with MEDEP before issuance of a written approval document, which at a minimum shall meet all requirements of applicable state law and MEPDES permits.

b. “Approval by EPA and MEDEP” shall mean the issuance of one joint written approval document from both EPA and MEDEP approving, or approving with conditions, a submission in accordance with Section VIII (Approval of Submissions).

c. “Building/Private Property Backup” shall mean any release of wastewater from the City’s Collection System into buildings or onto private property, except a release that is the result of blockages, flow conditions, or malfunctions of a Private Sewer Service Connection

United States and the State of Maine v. City of Bangor Consent Decree
Page 8

Lateral or is the result of overland, surface flooding not emanating from the City's Collection System.

d. "Collection System" shall mean the pipelines, conduits, pumping stations, force mains, and all other structures, devices, appurtenances, and facilities owned or operated by the City which are used for collecting and conveying sanitary wastewaters (domestic, commercial and industrial wastewaters) or combined wastewaters (sanitary plus stormwater) but shall not include the MS4 or a Private Sewer Service Connection Lateral. Some sections of the Collection System are comprised of Separate Sanitary Sewers, while other sections are comprised of Combined Sewers.

e. "Combined Sewers" or "Combined Sewer" shall mean those portions of the Collection System that are designed to convey both sanitary wastewaters (domestic, commercial and industrial wastewaters) and stormwater through a single pipe to CSO outfalls and/or the Treatment Works.

f. "Combined Sewer Overflow" or "CSO" shall mean, for purposes of this Consent Decree, any overflow from any point in the Combined Sewer licensed by the MEPDES Permit which is in direct response to rainfall or snowmelt and is due to combined flows in excess of the interceptor or regulator capacity in some portion of the Collection System at or downstream of the CSO regulator.

g. "Complaint" shall mean the complaint filed by the United States and the State in this action.

h. "Consent Decree" or "Decree" shall mean this Consent Decree.

United States and the State of Maine v. City of Bangor Consent Decree
Page 9

i. “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.

j. “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 Maine via either electronic filing or physical filing.

k. “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 State holiday, the period shall run until the close of the next Business Day. A “Business Day” is any Day that is not a Saturday, Sunday, or a federal or State holiday.

l. “Defendant” shall mean the City of Bangor.

m. “Effective Date” shall have the definition provided in Section XVI (Effective Date).

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

o. “Excessive Inflow/Infiltration” or “Excessive I/I” shall mean the Infiltration/Inflow (“I/I”) that can be eliminated from Bangor’s Collection System as determined by a cost-effectiveness analysis that compares the costs of eliminating the I/I with the total costs of transportation and treatment of the I/I (including capital costs of increasing sewage facilities capacity and treatment and the resulting operating costs).

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,

United States and the State of Maine v. City of Bangor Consent Decree
Page 10

pipe joints, connections or manhole structures, excluding the manhole cover or other openings to the surface of the ground or surface water.

q. “Infiltration” shall mean the water that enters the Collection System and service connections from the ground through such means as, but not limited to, defective pipes, pipe joints, connections or manholes, excluding the manhole cover or other openings to the surface of the ground or surface water. Infiltration does not include, and is distinguished from, Inflow.

r. “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, cover or access openings, 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.

s. “Infiltration/Inflow” or “I/I” shall mean the total quantity of water from both Infiltration and Inflow without distinguishing the source.

t. “MEDEP” shall mean the Maine Department of Environmental Protection and any successor departments or agencies of the State.

u. “Municipal Separate Storm Sewer System” or “MS4” shall mean a system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, and storm drains), owned or operated by the City, that are

United States and the State of Maine v. City of Bangor Consent Decree
Page 11

designed to collect, convey, and discharge stormwater to receiving waters. The MS4 does not include the Collection System or Treatment Works.

v. “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral.

w. “Parties” shall mean the United States, the State of Maine, and the City of Bangor.

x. “Private Sewer Service Connection Lateral” shall mean a building lateral or other piping/conveyance system that is not owned or operationally controlled by the City and is used to convey waste water from a building to a portion of the Collection System.

y. “Rainfall-Induced Infiltration” shall mean Infiltration that enters the City’s Collection System and impacts the Collection System flow rates similar to Inflow. Like Inflow, Rainfall-Induced Infiltration occurs as a result of rainfall. Rainfall-Induced Infiltration is the result of rainfall percolating through the soils into defects in sewer systems which generally lie near the surface.

z. “Sanitary Sewer Overflow” or “SSO” shall mean, for purposes of this Consent Decree, any spill, release, or discharge of wastewater from any portion of the City’s Collection System, other than a CSO authorized by the MEPDES Permit. SSOs include, but are not limited to, discharges to waters of the United States from the City’s Collection System, as well as any release of wastewater from the City’s Collection System to public or private property that does not reach waters of the United States, including Building/Private Property Backups.

aa. “Section” shall mean a portion of this Consent Decree identified by an

United States and the State of Maine v. City of Bangor Consent Decree
Page 12

upper case Roman numeral.

bb. “Separate Sanitary Sewers” shall mean those portions of the Collection System that are not designed to collect, convey, and discharge stormwater.

cc. “Sewer Subsection” shall mean a major portion of the Collection System that drains to one, or a limited number of, sewer(s).

dd. “Small MS4 General Permit” or “General Permit” shall mean the *General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems*, first issued by State of Maine on June 3, 2003, and subsequently reissued on July 1, 2008 and July 1, 2013. The MS4 General Permit covers Small MS4s within the State of Maine. The 2013 MS4 Permit’s term is five years and expires on June 30, 2018.

ee. “State” shall mean the State of Maine.

ff. “Treatment Works” shall mean the publicly owned wastewater treatment plant that the City of Bangor owns and operates.

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

V. OBJECTIVES

7. It is the express purpose of the Parties in entering into this Consent Decree that the City shall take all measures necessary to fulfill the objectives of the CWA, and to achieve and maintain compliance with the (a) CWA and any regulations promulgated thereunder, (b) 38 M.R.S.A. Ch. 3, and applicable regulations thereunder, (c) the MEPDES Permit (as it may be reissued or amended from time to time), and (d) the Small MS4 General Permit, and EPA's CSO Control Policy, dated April 19, 1994 (59 Fed. Reg. 18688) (the "CSO Control Policy").

8. Engineering designs and analyses required to be performed pursuant to this Consent Decree shall be conducted using sound 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) "Existing Sewer Evaluation and Rehabilitation," Water Environment Federation Manual Of Practice FD-6, 2009; (d) the National Association of Sewer Service Companies "Manual of Practice"; and (e) the currently effective edition of "TR 16: Guides for the Design of Wastewater Treatment Works."

VI. REMEDIAL MEASURES

CMOM Program

9. The City shall implement its *CMOM Corrective Action Plan*, and any amendments or revisions thereto. The following specific elements of the CMOM Corrective Action Plan shall be implemented according to the following schedule:

- a. **Geographic Information System ("GIS") Deliverables.** Starting July

United States and the State of Maine v. City of Bangor Consent Decree
Page 14

1, 2015, and annually thereafter, the City shall submit GIS Deliverables to EPA and MEDEP. Each GIS Deliverable shall be provided in the form of a digital GIS dataset of the City's Collection System and MS4 infrastructure, with accompanying reference maps (as set forth in subparagraph 9.a(3)). The GIS dataset shall be submitted in ESRI geodatabase format or in such database format as may be used by the City in the ordinary course of business from time to time, as approved by EPA.

(1) The GIS Deliverables shall contain the following information and features to the extent known by the City as of the Date of Lodging of this Consent Decree, or subsequently discovered or constructed after the Date of Lodging of this Consent Decree:

- i. MS4 and CSO outfall locations;
- ii. The following components of the Collection System and the MS4 collection system infrastructure: pipes, manholes, and catch basins;
- iii. Pipe material, size, and age;
- iv. Sewer flow direction and flow type;
- v. Manhole rim and invert elevations;
- vi. Common/twin-invert manholes or structures, if any;
- vii. Delineations of Sewer Subsections and aerial delineations of major MS4 catchment areas;
- viii. Pump stations (public and private), siphons, and other key sewer appurtenances;

United States and the State of Maine v. City of Bangor Consent Decree
Page 15

- ix. Location(s) of SSOs that are known to have occurred during the prior calendar year;
- x. Pipe segment ratings for both structural and operation and maintenance (“O&M”) defects derived from National Association of Sewer Service Companies (“NASSCO”) Pipeline Assessment and Certification Program Condition Grading System (or until such time as the City provides notice to EPA of the use of another nationally-accepted industry standard and EPA does not disapprove of use of such standard within 60 days of receipt of such notice) for all pipe segments that have been inspected by Closed-Circuit Television (“CCTV”) during the prior calendar year; and
- xi. Water bodies and watercourses identified by name, select topographic features, and orthophotography;

(2) The GIS Deliverables shall contain the following as such information becomes available as a result of activities conducted by the City beginning on or after the Date of Lodging of this Consent Decree:

- i. Seasonal high water table elevation impacting sanitary and combined sewer alignments;
- ii. Sanitary sewer alignments served by known or suspected

United States and the State of Maine v. City of Bangor Consent Decree
Page 16

underdrain systems; and

- iii. Sewer alignments with common trench construction and major crossings representing high potential for cross-contamination due to water table influence.

(3) The GIS Deliverables shall contain reference maps at a city-wide scale, with insets as needed, showing each of the following features on a dedicated map:

- i. Location of completed investigations and assessments of Collection System infrastructure; however, EPA, after consultation with MEDEP, may require that the reference map be revised to include the location of planned investigations of the Collection System, provided that written notice of such requirement is received by the City within 60 days of EPA's receipt of the most recent Report on Compliance required pursuant to Paragraph 21 and includes a determination (and the basis therefor) that the most recent Report on Compliance does not adequately identify the location of such planned investigations;
- ii. Location of pre-cleaning and CCTV activities; however, EPA, after consultation with MEDEP, may require that the reference map be revised to include the location of routine cleaning, and completed Collection System maintenance

and repair activities, provided that written notice of such requirement is received by the City within 60 days of EPA's receipt of the most recent Report on Compliance required pursuant to Paragraph 21 and includes a determination (and the basis therefor) that the most recent Report on Compliance does not adequately identify the quantitative and geographical extent of Collection System infrastructure maintenance and repair activities;

- iii. Flow monitoring and water quality monitoring locations listing measured data parameters; and
- iv. Location of capital improvement projects completed during the previous calendar year pursuant to this Consent Decree.

(4) Each GIS Deliverable submitted pursuant to this Paragraph shall be updated annually as necessary to reflect any newly discovered information, corrections or modifications, and remedial measures performed by the City in compliance with this Consent Decree. Each such updated GIS Deliverable shall be submitted to EPA and MEDEP with the annual Reports on Compliance required pursuant to Paragraph 21.

b. **The Sewer System Asset Management Preventive Maintenance and Sewer Maintenance Improvement Plan ("MIP").** The City shall implement its MIP as amended or revised. The following specific elements of the MIP shall be implemented according to the following schedule:

United States and the State of Maine v. City of Bangor Consent Decree
Page 18

(1) Beginning on January 1, 2015, the City shall perform routine inspections, condition assessments, and pipeline ratings using CCTV assessments of at least 10% of the Collection System, including 10% of manholes each year. It is acknowledged that certain Sewer Subsections (or portions of such Sewer Subsections) may require more frequent inspections; therefore, where the City provides justification (which, by way of example, may include but not be limited to the discovery of recent plugs, protruding services, material in downstream manholes or other obstructions, and the recent installation of new sewer services), sections of pipe having multiple CCTV inspections may be counted toward the annual goal of assessing at least 10% of the Collection System. A CCTV assessment of all sections of the Collection System (excluding the following: force mains; siphons; sewers where wastewater flows do not allow for CCTV assessments insofar as possible using standard industry practices, and Collection System sections scheduled for replacement within the next five years) must be completed by no later than December 31, 2030. If by 2027, the City has completed approximately 80% of the CCTV assessment work, but predicts it will have difficulty meeting the December 31, 2030 deadline, it shall request a meeting with EPA and MEDEP to discuss the justifications underlying the potential delay, and to discuss a minor modification to the Consent Decree to either adjust the date of completion of 100% of the CCTV analysis, or, if the Parties all agree it is appropriate, to adjust the scope of the analysis to something less than 100%.

(2) The City shall prioritize CCTV assessment work within priority Sewer Subsections identified under the Sewer System Evaluation Survey (“SSES”) plans as submitted and approved pursuant to subparagraphs 9.c(1), (2), and (4) below. All

United States and the State of Maine v. City of Bangor Consent Decree
Page 19

CCTV assessments shall identify both structural and O&M defects and shall be conducted using nationally-accepted standards published by the NASSCO until such time as the City provides notice to EPA of the use of another nationally-accepted industry standard and EPA does not disapprove of use of such standard within 60 days of receipt of such notice.

(3) Based on the CCTV assessments, the City shall implement repairs, replacements or upgrades to its infrastructure. The City shall take immediate steps to correct any problems detected in the system that present an imminent threat of failure or discharge. All other repairs, replacements or upgrades shall be placed on a prioritized schedule relative to other rehabilitation, replacement or upgrade projects identified from SSES investigations in the Phase II CSO Long Term Control Plan (“LTCP”). All repairs, replacements, or upgrades identified as necessary by the CCTV assessments, even if completed by the time of reporting, shall be included as a separate list in the January 31st Reports on Compliance required by Paragraph 20 of this Consent Decree. This list shall also include a proposed implementation schedule for any necessary repairs, replacement or upgrade planned for the following year, to be incorporated in the LTCP (see Paragraphs 17-19).

(4) Beginning on January 1, 2015, the City shall implement a routine cleaning program of its entire Collection System, beginning with the prioritized areas as outlined in the MIP. The City shall perform routine cleaning of at least 10% of the Collection System each year until the City has internally cleaned 100% of the Collection System. A summary of the routine cleaning performed (including total percentage and linear feet of system cleaned) shall be included as a separate section of the January 31st Reports on Compliance required by

United States and the State of Maine v. City of Bangor Consent Decree
Page 20

Paragraph 20 of this Consent Decree. If the City is unable to complete cleaning of 10% of the Collection System in a given year, this section of the Report on Compliance must include a justification as to why the 10% was not achieved. By way of example, such justification would include but not be limited to problems such as lack of physical access, vegetative root intrusion and protruding laterals. The City shall include an estimate of the number of employee hours, or a comparable measure of level of effort, spent completing such unanticipated necessary mitigation. It is acknowledged that certain Sewer Subsections may require more frequent cleaning; therefore, repeated cleaning of certain Sewer Subsections may be counted toward the annual goal of cleaning at least 10% of the Collection System where the City provides justification in the Report on Compliance. By way of example, justification for counting repeat cleaning toward the annual goal includes but is not limited to the existence of conditions such as sags in pipes, pipes with flat slopes, ends of line, and areas with low flow.

(5) As a separate section of each January 31st Report on Compliance required by Paragraph 20 of this Consent Decree, the City shall submit a MIP update report as described in Section 10 of the MIP (Sewer System Preventive Maintenance Plan Updates).

c. **SSES** – The City shall implement a Sewer System Evaluation Survey (“SSES”) according to the following schedule:

(1) On December 31, 2014, the City submitted to EPA and MEDEP for Approval a final Phase 2 SSES Scope of Work (updating the draft submitted to EPA on September 30, 2012) for field investigations planned by the City to be completed by December 31, 2016 in the Dow and Airport Sewer Subsections (the “Phase 2 SOW”). The Phase 2 SOW

United States and the State of Maine v. City of Bangor Consent Decree
Page 21

was approved by EPA and MEDEP on March 24, 2015.

(2) The City shall conduct an SSES in accordance with the Phase 2 SOW and shall submit to EPA and MEDEP, as a section of the Report on Compliance due on January 31, 2017, a Phase 2 SSES Report (see subparagraph 9.c(6) below) that shall include a Phase 3 SSES SOW. The Phase 3 SSES SOW shall be for field investigations planned by the City through December 31, 2021 within the Sewer Subsections identified by a re-assessment of the Collection System based on CCTV results described in subparagraph 9.b(2) above, previous SSES work, CSO LTCP planning and implementation and other sources of information describing conditions within the Collection System. The Phase 3 SSES SOW shall include plans and implementation schedules for additional I/I investigations as necessary to identify public and private sources of I/I and, where practicable, quantify the combined total of both public and private sources of I/I. Plans and implementation schedules for the work to remove or remediate identified I/I will be addressed within the CSO LTCP referenced below.

(3) The Phase 3 SSES SOW shall be incorporated and enforceable under this Consent Decree upon its Approval by EPA, which shall be made in consultation with MEDEP.

(4) The City shall conduct an SSES in accordance with the approved or conditionally approved Phase 3 SSES SOW (subparagraph 9.c(2) above) and submit to EPA and MEDEP, as a section of the Report on Compliance due to be submitted on January 31, 2022 (see Paragraph 20 below), a Phase 3 SSES Report that shall include a Phase 4 SSES SOW that shall include plans and implementation schedules for additional I/I investigations as necessary to

United States and the State of Maine v. City of Bangor Consent Decree
Page 22

identify public and private sources of I/I and, where practicable, quantify the combined total of both public and private sources of I/I (plans and implementation schedules for the work to remove or remediate identified I/I will be addressed within the CSO LTCP referenced below).

(5) The Phase 4 SSES SOW shall be incorporated and enforceable under this Consent Decree upon its Approval by EPA, which shall be made in consultation with MEDEP.

(6) **Contents of SSES Report.** Each Report on Compliance required to be submitted pursuant to Paragraph 20, shall include an SSES Report. Each SSES Report shall be organized into separate sections by Sewer Subsection. Flows identified through SSES work shall be addressed in the LTCP. Each SSES Report shall also include, but not be limited to, the following information:

Infiltration/Inflow
All Known Sources

- i. A listing of all public and private sources of I/I identified during each SSES by Sewer Subsection;
- ii. For each Sewer Subsection of the Collection System identified in subparagraphs (1), (2) and (4) above, describe the scope of the City's SSES investigations (e.g., flow monitoring, CCTV assessments, dye testing);
- iii. Identification of each Sewer Subsection addressed in each SSES SOW that is tributary to or contributes to any SSO or

United States and the State of Maine v. City of Bangor Consent Decree
Page 23

CSO in which identified I/I is determined to exist;

iv. For each identified Sewer Subsection in subparagraphs (1), (3) and (5) above where private sources of Excessive I/I are identified, each SSES Report shall include the following information:

- (a) a listing of all private sources of Excessive I/I identified during each SSES;
- (b) actions planned or taken by the City to remove private sources of I/I from the Collection System for all sources listed in subparagraph i. above by enforcing the sewer use ordinance or otherwise;
- (c) the framework of a public education plan to promote the elimination of private sources of Excessive I/I, and a schedule for implementation of the plan;
- (d) an evaluation of whether any changes in the City's ordinances or by-laws are necessary to implement or facilitate the planned remedial measures, and a proposed schedule for implementing and enforcing any necessary City ordinances or by-laws; and
- (e) provisions for follow-up verification to be

conducted by the City through various means, such as building inspections, to ensure that identified private sources of I/I have been removed or reduced. Results of such verifications shall be included in the annual Reports on Compliance (required by Section VII).

Exfiltration

- v. Beginning on the Date of Lodging, the City shall include, as a separate section of each annual SSES Report, a listing of the portions of the Collection System, if any, from which Exfiltration to the City's MS4 or surface waters is known or suspected to occur. The City shall consider Exfiltration, but may do so after considering and ruling out other potential sources of contamination impacting the City's MS4 or surface waters. If the City has listed any portions of the Collection System, the City shall describe the methodology for determining the scope of this list and the exclusion or inclusion of specific sewer sections, which shall be based upon the City's evaluation of information developed under each SSES regarding groundwater elevations, Collection System deficiencies, and the

United States and the State of Maine v. City of Bangor Consent Decree
Page 25

sampling and investigations programs of the Illicit Discharge Detection and Elimination Plan pursuant to Paragraph 10;

- vi. An assessment of whether the remedial measures proposed to eliminate sources of I/I in each of the evaluated Sewer Subsections are expected to remedy known or suspected Exfiltration; and
- vii. For those sections of the Collection System where Exfiltration is the apparent cause of violations of water quality standards in surface waters within or adjacent to the City, the City shall propose remedial measures. Such measures are to be scheduled for implementation in the LTCP.

Municipal Separate Storm Sewer System (“MS4”)

10. The City shall implement its revised 2013-2018 IDDE Plan of June 26, 2014, as approved by EPA and MEDEP on December 17, 2014, in accordance with the requirements set forth therein and the schedule in the City’s 2013-2018 Stormwater Management Plan of June 26, 2014.

Combined Sewer Overflow Controls

11. By November 25, 2015, the City shall complete the sewer replacement project in the Airport Sewer Subsection at Mitchell Street, Langley Street, Bolling Drive, and related cross country sewer lines (“New Capehart Sewer Replacement”). The date of completion of the New Capehart Sewer Replacement Project shall be the date the constructed utilities are placed into operation, and does not necessarily include completion of peripheral tasks for the project, such as street repair, clean-up or other similar activities.

12. By January 31, 2016, the City shall submit to EPA and MEDEP for review and approval plans with a completion date of no later than December 31, 2016, for the Court Street Sewer Separation Project in the Kenduskeag West Sewer Subsection. The City shall complete the Court Street Sewer Separation Project by December 31, 2016. The date of completion of the Court Street Sewer Separation project shall be the date the constructed utilities are placed into operation, and does not necessarily include completion of peripheral tasks for the project, such as street repair, clean-up or other similar activities.

13. The New Capehart Sewer Replacement project described in Paragraph 11 above has been approved by EPA, in consultation with MEDEP, and therefore is incorporated and enforceable under this Consent Decree. The Court Street Sewer Separation Project described in Paragraph 12 above shall be incorporated and enforceable under this Consent Decree upon its Approval by EPA, which shall be made in consultation with MEDEP.

United States and the State of Maine v. City of Bangor Consent Decree
Page 27

14. For the projects listed in Paragraphs 11 and 12 above, the City shall provide EPA and MEDEP with notification of each project's completion in the Reports on Compliance submitted by the City pursuant to Paragraph 20 below.

15. By March 1 of each year (or on such date as may be required by the City's MEPDES Permit), the City shall submit to EPA a copy of the Annual CSO Progress Report the City is required to submit to MEDEP pursuant to the City's MEPDES Permit, containing monitoring results quantifying discharges from each of its CSO outfalls and the precipitation and cumulative precipitation levels during CSO discharge events.

16. Starting on January 31, 2016, and continuing annually thereafter, the City shall provide as part of the Reports on Compliance pursuant to Paragraph 20 of this Consent Decree, an itemized list of weir adjustments or other regulator changes that the City has implemented during the prior calendar year. The list must include a description of the changes that were made, the location of the regulator and the date that the changes were made. The listing shall be organized chronologically, and sorted by CSO regulator, highlighting those regulators that are part of the CSO outfall structure.

Phase II CSO Long Term Control Plan (LTCP)

17. By January 31, 2017, the City shall submit to EPA and MEDEP for Approval a revised final Phase II CSO LTCP that includes an overall plan for CSO control consistent with the requirements of the CSO Control Policy and prepared in accordance with EPA September 1995 Combined Sewer Overflows: Guidance for Long Term Control Plan (EPA 835-B 95-002) to ensure that the City's CSO discharges comply with the City's MEPDES

United States and the State of Maine v. City of Bangor Consent Decree
Page 28

Permit (as it may be reissued or amended from time to time), the CWA and 38 M.R.S.A. Ch. 3, including regulations promulgated under each, and the CSO Control Policy, by December 31, 2031. The LTCP must include a comprehensive, representative monitoring program that measures the pollutant concentration of CSO discharges and assesses the impacts of CSOs in the receiving water. The monitoring program should include necessary CSO effluent and in-stream ambient monitoring and, where appropriate, other monitoring protocols such as biological assessment, toxicity testing and sediment sampling to define the baseline effluent and ambient water quality against which the effectiveness of the CSO controls are measured in the post-construction compliance monitoring plan. The CSO LTCP shall be further expanded on and refined in 5 year periods as follows:

a. By January 31, 2017, the City shall submit to EPA and MEDEP for Approval, along with the Phase II CSO LTCP, a detailed five-year Scope of Work (“SOW”) for all control projects that are planned for the period February 1, 2017 through December 31, 2021. This five-year schedule will be referred to as Part A of the Phase II CSO LTCP.

b. By June 30, 2021, the City shall submit to EPA and MEDEP for Approval a detailed five-year SOW for all control projects that are planned for the period January 1, 2022 through December 31, 2026. This five-year schedule will be referred to as Part B of the Phase II CSO LTCP; and

c. By June 30, 2026, the City shall submit to EPA and MEDEP for Approval a detailed five-year SOW for all control projects that are planned for the period January 1, 2027

United States and the State of Maine v. City of Bangor Consent Decree
Page 29

through December 31, 2031. This five-year period will be referred to as Part C of the Phase II CSO LTCP.

18. Each Part of the Phase II CSO LTCP shall include the following items:

a. Conceptual plans, including estimates of the volume of reduced flows from each respective project, and costs;

b. As necessary, an updated financial capability assessment;

c. An update to the hydraulic model (“Model”) of the Collection System consistent with current engineering practice to support the development of the Phase II LTCP and other requirements of this Consent Decree.

d. Each Part of the Phase II CSO LTCP shall identify, screen, develop, and evaluate alternatives which shall provide for measures necessary to (1) eliminate SSOs within or hydraulically influenced by the Combined Sewers, and (2) eliminate the impacts of CSOs (consistent with the CSO Control Policy). Such identification, screening, development and evaluation of alternatives shall be based on the previously completed Collection System assessments and work, and work on the Treatment Works and the Collection System rehabilitation and remedial measures planned for the next five years, and shall ensure that all CSO discharges from the Collection System comply with the City’s MEPDES Permit (as it may be reissued or amended from time to time), the CWA and 38 M.R.S.A. Ch. 3, including regulations promulgated under each, and the CSO Control Policy consistent with the schedule in Paragraph 17.

United States and the State of Maine v. City of Bangor Consent Decree
Page 30

In addition, each Part of the LTCP must include the results of a cost-effectiveness analysis of the removal of identified sources of I/I through the SSES required in Paragraph 9.c above, including a discussion of which public sources of I/I are more cost-effective to remediate than to transport and treat.

e. If the City incorporates Green Infrastructure (“GI”) measures into its evaluation of alternatives, a GI Study shall be completed that includes, but is not limited to, an evaluation of site selection, identification and resolution of institutional issues and obstacles, public outreach, design and construction plans, monitoring and evaluation techniques and costs. The City must also include reliable computer modeling and other evidence sufficient to demonstrate that (1) the proposed GI measures will result in a reduction of wet weather flows into the Collection System; (2) during future wet weather events the City will continue to achieve such flow reductions; and (3) as a result of the flow reductions achieved by the GI measures, the Phase II CSO LTCP will achieve the same or better performance, in terms of gallons controlled and the number of CSO activations in a typical year, as the other alternatives evaluated.

19. Upon Approval by EPA, which shall be made in consultation with MEDEP, the Phase II CSO LTCP and each Part of the Phase II CSO LTCP shall be incorporated into and become enforceable under this Consent Decree. The City shall implement the Phase II CSO LTCP and each Part of the Phase II CSO LTCP in accordance with the approved schedule.

VII. REPORTS ON COMPLIANCE

20. Beginning on January 31, 2016, and on each January 31st thereafter until termination of this Consent Decree, the City shall submit to EPA and MEDEP for review a Report on Compliance for the previous calendar year (January 1st through December 31st). In addition the Parties will meet at least once mid-year to review the City's compliance with the terms of the Consent Decree. Provided that by May 15th in any given calendar year, the City has been provided 45 days' notice of such mid-year meeting, the City shall provide to EPA and MEDEP a written update summarizing its compliance with the Consent Decree since the previous report on compliance no later than 14 days prior to such mid-year meeting. EPA reserves the right to require the City to commence submitting Reports on Compliance more frequently, not to exceed quarterly reporting, if deemed necessary.

21. The reporting requirement in this Paragraph replaces the CMOM Implementation Annual Reporting required by the EPA Information Request (Docket #10-308-029), and the 1991 Consent Decree CSO Reporting requirement. If EPA, after consultation with MEDEP, notifies the City of any deficiencies in the Report on Compliance, the City shall address the noted deficiencies to EPA's satisfaction and submit a revised Report on Compliance within a reasonable time frame as specified by EPA. Each Report on Compliance shall include, at a minimum, the following items:

United States and the State of Maine v. City of Bangor Consent Decree
Page 32

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:

(1) The date and time(s) when each event was discovered/reported and was stopped;

(2) The location by address;

(3) The final disposition of the SSO, e.g., whether it discharged to the ground, street, MS4, or surface water, including: the name of the water body, street, or intersecting streets nearest the SSO; and, if the release occurred to the ground or street, the ID or name of the nearest downgradient MS4 catch basin and the name of the receiving water of the MS4;

(4) The source of notification (e.g., property owner, general public, field crew, police);

(5) The cause(s) of the event (e.g., vandalism, sediments, roots, grease, mechanical, electrical and structural failures, capacity issues);

(6) A determination of whether the event was caused by blockages or hydraulic limitations within the publicly-owned portion of the Collection System;

(7) The measures taken to stop the event;

United States and the State of Maine v. City of Bangor Consent Decree
Page 33

(8) The estimated gallons of wastewater released, the estimated gallons of wastewater that reached a surface water, and the bases for those estimates; and

(9) The date of the most recent SSO, if any, that previously occurred at the event location.

b. A GIS map or figure, consistent with the requirements of subparagraph 9.a., indicating the location of each SSO event identified on or after the Date of Lodging of this Consent Decree including Building/Private Property Backups, and, in addition, each illicit connection reported in the annual report submitted pursuant to the 2013 MS4 Permit;

c. CSO flow monitoring data consistent with the requirements of Paragraph 15.

d. SSES Reports consistent with the requirements of subparagraph 9.c(6);

e. MIP Reports consistent with requirements of subparagraph 9.b(5);

f. A description of the activities undertaken during the Reporting Period directed at achieving compliance with this Consent Decree by reducing SSO and CSO volumes and events including requirements of subparagraph 9.c(6) (SSES Reports) and Paragraphs 11 (New Capehart Sewer Replacement project), 12 (Court Street Sewer Separation Project), and 18 (CSO LTCP Parts including modeling);

g. An identification of all plans, reports, and other submissions required by this Consent Decree that the City completed and submitted during the Reporting Period;

h. A description of the activities the City plans to undertake in the following Reporting Period in order to achieve compliance with this Consent Decree; and

United States and the State of Maine v. City of Bangor Consent Decree
Page 34

i. An identification of any noncompliance with the requirements of this Consent Decree. If any noncompliance is reported, the notification shall include the following information:

- (1) A description of the noncompliance;
- (2) A description of any actions taken or proposed by the City to comply with any lapsed requirements;
- (3) A description of any factors that tend to explain or mitigate the noncompliance; and
- (4) The date by which the City will perform the required action.

22. Starting on July 1, 2015, the City shall provide EPA and MEDEP with monthly raw data sets simultaneously with its submission of flow monitoring reports (following Quality Assurance/Quality Control review) no later than 10 days after the City's receipt of each flow monitoring report.

23. The reporting requirements set forth in this Section do not relieve the City of its obligation to submit any other report or information as required by federal, state or local law or regulation. The City shall provide copies of all 2013 MS4 Permit reports, notifications, and other submissions to EPA. EPA reserves the right to review and, after consultation with MEDEP, require modifications to the above reporting requirements.

VIII. APPROVAL OF SUBMISSIONS

24. After review of any plan, schedule, report, or other item that is required to be submitted for Approval by EPA or Approval by EPA and MEDEP pursuant to this Consent

United States and the State of Maine v. City of Bangor Consent Decree
Page 35

Decree, EPA, and as appropriate, EPA and MEDEP, shall in writing: (a) approve, in whole or in part, the submission; (b) approve, in whole or in part, the submission upon specified conditions; (c) disapprove, in whole or in part, the submission, directing that the City modify the submission; or (d) any combination of the above.

25. In the event of approval or approval upon conditions by EPA, or where applicable, EPA and MEDEP, pursuant to Paragraph 24, the plan, schedule, report, or other item, or portion thereof, as approved or approved with conditions by EPA, or where applicable, EPA and MEDEP, shall be enforceable under this Consent Decree, and the City 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 by EPA, or where applicable, EPA and MEDEP.

26. Upon receipt of a written notice of disapproval pursuant to Paragraph 24, the City shall, within thirty (30) Days or such other time as the City, EPA, and where applicable MEDEP, 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 is further disapproved.

27. Any resubmitted plan, schedule, report, or other item, or portion thereof, shall be subject to review and Approval by EPA or Approval by EPA and MEDEP, as provided under this Section. If the City 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

United States and the State of Maine v. City of Bangor Consent Decree
Page 36

portion thereof, is disapproved by EPA, or where applicable, EPA and MEDEP, the City shall be deemed to have failed to submit such plan, schedule, report, or other item, or portion thereof, timely and adequately, unless the City invokes the dispute resolution procedures set forth in Section XI (Dispute Resolution) and the City's position is upheld.

28. Notwithstanding the receipt of a notice of disapproval pursuant to subparagraph 24(c), the City shall proceed, at the direction of EPA, and where applicable EPA and MEDEP, 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 City of any liability for stipulated penalties under Section IX (Stipulated Penalties) for the deficient portions, except as provided in Paragraph 27.

IX. STIPULATED PENALTIES

29. The City shall pay stipulated penalties to the United States and the State for violations or noncompliance with the requirements of this Consent Decree, as set forth below, unless excused under Section X (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 Consent 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 Consent Decree:

a. Reporting Requirements. For every Day that the City fails to timely submit a report required by Paragraph 20 of this Consent Decree or fails to provide the

United States and the State of Maine v. City of Bangor Consent Decree
Page 37

certification required by Paragraph 59, the City shall pay a stipulated penalty as follows:

| <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|--------------------------------------|--------------------------------|
| \$ 500 | 1st through 10th Day |
| \$ 750 | 11th through 20th Day |
| \$ 1,000 | 21st Day and beyond. |

b. Unpermitted Discharges. For each Day that an SSO that reaches waters of the United States or the State occurs, the City shall pay a stipulated penalty of \$5,000.

Notwithstanding the foregoing, the City shall not be liable for such a stipulated penalty if all of the following conditions are met: (i) the City stopped the SSO as soon as reasonably practicable; (ii) the City is in compliance with the schedules and other requirements set forth pursuant to Section VI (Remedial Measures) of this Consent Decree; and (iii) the City has complied with all reporting requirements related to SSO discharges, including but not limited to those set forth in subparagraph 21.a of this Consent Decree.

c. Remedial Measures. For every Day that the City fails to timely meet the requirements of Section VI (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 Paragraph 20, or fails to implement remedial requirements in a plan, schedule, report, or other item Approved by EPA or Approved by EPA and MEDEP, the City shall pay a stipulated penalty as follows:

| <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|--------------------------------------|--------------------------------|
| \$ 750 | 1st through 10th Day |
| \$ 1,000 | 11th through 20th Day |
| \$ 2,500 | 21st Day and beyond. |

United States and the State of Maine v. City of Bangor Consent Decree
Page 38

30. Stipulated penalties shall automatically 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 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.

31. Following the United States' determination, which shall be made in consultation with the State, that the City has failed to comply with a requirement of this Consent Decree, the United States and/or the State may give the City written notification of the same and describe the noncompliance. The United States and/or the State may send the City 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 or State has notified the City of a violation of or noncompliance with the requirements of this Consent Decree, or demanded payment of stipulated penalties.

32. The City shall pay stipulated penalties as specified in this Section by delivering the payments to the United States and the State within thirty (30) Days of the date of a demand for payment of stipulated penalties. The City shall pay fifty (50) percent of the total stipulated penalty amount due to the United States and fifty (50) percent of the total stipulated penalty amount due to the State, in accordance with the instructions set forth in Paragraphs 33 and 34 below.

33. The City shall make payment of stipulated penalties to the United States by

United States and the State of Maine v. City of Bangor Consent Decree
Page 39

FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with written instructions to be provided to Defendant, following entry of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney’s Office for the District of Maine, 202 Harlow Street, Room 111, Bangor, ME 04401; (207) 945-0373. The costs of such electronic funds transfer shall be the responsibility of the City. At the time of payment, the City 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 Stipulated Penalties owed pursuant to the Consent Decree in *United States and the State of Maine v. City of Bangor, Maine*, and shall reference the civil action number and DOJ case number 90-5-1-1-2883/1, to the EPA and the United States Department of Justice as specified in Paragraph 58, by email to acctsreceivable.CINWD@epa.gov, and by mail to:

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

34. The City shall make payment to the State by check, made payable to “Treasurer, State of Maine,” which shall be forwarded to MEDEP, with a copy to the Maine Attorney General’s Office, using the contact information and addresses set forth in Section XIII (Form of Notice), Paragraph 58. A request for an alternative form of payment to the State must be submitted in writing to and approved by MEDEP in advance of payment.

United States and the State of Maine v. City of Bangor Consent Decree
Page 40

35. In the event the City 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 or State from seeking any remedy otherwise provided by law for failure of the City to pay any stipulated penalties.

36. Stipulated penalties shall continue to accrue as provided in Paragraph 30, 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 United States or State that is not appealed to the Court, the City shall pay accrued penalties determined to be owed, together with interest, to the United States and State within thirty (30) Days of the Effective Date of the agreement or the receipt of the United States' or State's decision or order.

b. If the dispute is appealed to the Court and the United States or State prevails in whole or in part, the City shall pay all accrued penalties determined to be owed, together with interest, within sixty (60) 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, the City shall pay all accrued penalties determined to be owed, together with interest, within fifteen (15) Business Days of receiving the final appellate court decision.

37. 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 City's failure to comply with the requirements of this Consent Decree. The United States and State expressly reserve any and all legal and equitable remedies, including contempt sanctions, which may be available to enforce the provisions of this Consent Decree. The City expressly reserves any and all legal and equitable remedies and defenses that may be available to it in such an enforcement action. The United States and State may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

X. FORCE MAJEURE

38. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes entirely beyond the control of the City or of any entity controlled by the City, including its engineers, consultants, contractors and subcontractors, that delays or prevents the timely performance of any obligation under this Consent Decree notwithstanding the City's best efforts to fulfill the obligation. The requirement that the City 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. "Force Majeure" does not include the City's financial inability to perform any obligation under this Consent Decree. Examples of events which may constitute Force Majeure events include natural disasters, national, state or regional emergencies, and delays in obtaining any required approvals under this Consent Decree or permits, despite the City's complete and timely submission of requests for approval and applications for required permits

United States and the State of Maine v. City of Bangor Consent Decree
Page 42

and any related supplemental information that may be requested. Examples of events that are not Force Majeure events include, but are not limited to, the failure of the City or the City's contractors or representatives to make complete and timely application for any required approval or permit. Stipulated penalties shall not be due for the number of Days of violation or noncompliance caused by a Force Majeure event as defined in this Section, provided that the City complies with the terms of this Section.

39. If any event occurs which may delay or prevent the performance of any obligation under this Consent Decree, whether or not caused by a Force Majeure event, the City shall notify EPA and MEDEP within three (3) Business Days after the City first knew or should have known that the event might cause a delay. Within seven (7) Business Days after such notification, the City shall provide in writing to EPA and MEDEP an explanation and description of (1) the reasons for the delay, (2) the anticipated duration of the delay, (3) all actions taken or to be taken to prevent or minimize the delay, (4) a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay, and (5) the City's rationale for attributing such delay to a force majeure event if it intends to assert such a claim. The City shall also provide in writing to EPA and MEDEP a statement as to whether, in the opinion of the City, such event may cause or contribute to an endangerment to public health welfare or the environment. Notwithstanding the foregoing, the City shall notify EPA and MEDEP 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 EPA and MEDEP within seventy-two (72) hours of discovery of such event. The City shall be deemed to

United States and the State of Maine v. City of Bangor Consent Decree
Page 43

know of any circumstances of which the City, any entity controlled by the City, or the City's contractors knew or should have known. 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.

40. If EPA agrees, after consultation with MEDEP, 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 may be necessary to allow performance of such obligations. EPA will notify the City in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure event.

41. If EPA, after consultation with MEDEP, 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 City in writing of its decision. The City may then elect to initiate the dispute resolution process set forth in Section XI (Dispute Resolution). In any dispute resolution proceeding, the City 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 City complied with the requirements of Paragraphs 38 and 39, above. If the City carries this burden, the delay at issue shall be deemed not to be a violation by the City of the affected obligation(s) of this Consent Decree.

United States and the State of Maine v. City of Bangor Consent Decree
Page 44

42. 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 Consent Decree.

43. Failure of the City to obtain any state or federal grants or loans shall not be considered a Force Majeure event under this Consent Decree.

XI. DISPUTE RESOLUTION

44. 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 City's failure to seek resolution of a dispute under this Section shall preclude the City from raising any such undisputed issue as a defense to an action by the United States or State to enforce any obligation of the City arising under this Decree. The procedures set forth in this Section shall not apply to actions by the United States or the State to enforce obligations that the City has not disputed in accordance with this Section. In the event the City elects to invoke dispute resolution in accordance with this section, and as permitted by this Consent Decree, with respect to a disapproval, approval, approval with conditions, a force majeure determination, a written demand for payment of stipulated penalties, or any other determination made or action taken by EPA pursuant to this consent decree, the City shall do so by giving EPA a written notice of dispute within twenty (20) Business Days after receipt in writing of such determination or action. If the City fails to give such notice of dispute, it shall be deemed to have waived any right to invoke dispute resolution regarding such dispute, and the position advanced by EPA shall be

United States and the State of Maine v. City of Bangor Consent Decree
Page 45

considered binding. The City's invocation of Informal or Formal Dispute Resolution procedures under this Section does not toll or otherwise affect any deadlines established by or pursuant to this Consent Decree.

45. 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 City sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. 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 United States and the City. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the Plaintiff(s) shall be considered binding unless, within thirty (30) Days after the conclusion of the informal negotiation period, the City invokes formal dispute resolution procedures set forth below.

46. Formal Dispute Resolution. The City shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States and State 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 the City's position and any supporting documentation relied upon by the City.

United States and the State of Maine v. City of Bangor Consent Decree
Page 46

47. The Plaintiffs shall serve their Statement of Position within 45 Days of receipt of the City'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 United States and State. The Plaintiffs' Statement of Position shall be binding on the City, unless the City files a motion for judicial review of the dispute in accordance with the following Paragraph.

48. The City may seek judicial review of the dispute by filing with the Court and serving on the United States and State, in accordance with Section XIII of this Consent Decree (Form of Notice), a motion requesting judicial resolution of the dispute. The motion must be filed within fifteen (15) Business Days of receipt of the Plaintiffs' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of the City'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.

49. The Plaintiff(s) shall respond to the City's motion within the time period allowed by the local rules of this Court. The City may file a reply memorandum, to the extent permitted by the local rules.

Standard of Review

50. 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

United States and the State of Maine v. City of Bangor Consent Decree
Page 47

items requiring Approval by EPA or Approval by EPA and MEDEP 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 City shall have the burden of demonstrating, based upon the administrative record, that the Plaintiff(s)' position is arbitrary and capricious or otherwise not in accordance with law.

51. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under this Section, the City shall bear the burden of demonstrating that its position complies with and fulfills the terms, conditions, requirements and objectives of this Consent Decree, and that the City is entitled to relief under applicable principles of law. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of the City 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 36. If the City does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section IX (Stipulated Penalties).

XII. RIGHT OF ENTRY/INFORMATION COLLECTION AND RETENTION

52. EPA and MEDEP and their contractors, consultants, and attorneys shall have authority to enter any property and/or facility owned and/or controlled by the City, at all reasonable times, upon presentation of proper identification, for the purposes of: (a) monitoring

United States and the State of Maine v. City of Bangor Consent Decree
Page 48

the progress of activity required by this Consent Decree; (b) verifying any data or information submitted to EPA or MEDEP under this Consent Decree; (c) assessing the City's compliance with this Consent Decree; (d) obtaining samples and, upon request, splits of any samples taken by the City or its representatives, contractors, or consultants; and (e) obtaining non-privileged documentary evidence, including photographs and similar data. Nothing in this Paragraph shall require the City to provide documents to EPA or MEDEP that the City is not permitted to disclose pursuant to any statute.

53. Upon request, the City shall provide to EPA and MEDEP or their authorized representatives splits of any samples taken by the City. Upon request, EPA or MEDEP shall provide the City splits of any samples taken by EPA or MEDEP. This requirement is in addition to, and does not limit, the authority of EPA pursuant to the CWA or any other provision of federal law or regulation or the authority of MEDEP pursuant to applicable state law.

54. Until five years after the termination of this Consent Decree, the City shall retain, and 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) generated by the City, and all data collected and all reports generated by the City's contractors (including data and reports in electronic form), that relate in any manner to the City'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, the City shall provide copies of any non-privileged documents, records, or

United States and the State of Maine v. City of Bangor Consent Decree
Page 49

other information required to be maintained under this Paragraph. If the City withholds any documents, records, or other information required to be maintained under this Paragraph on the basis of attorney-client privilege or any other privilege recognized by federal or State law, the City shall provide a privilege log to EPA and the State containing the information described in subparagraphs 55(1) – (6).

55. At the conclusion of the information-retention period provided in the preceding Paragraph, the City shall notify the United States and the State at least ninety (90) Days prior to the destruction of any non-privileged documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or the State, the City shall deliver any such documents, records, or other information to EPA or MEDEP. The City may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal or state law. If the City asserts such a privilege, it shall provide the following information to EPA and MEDEP: (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 the City. However, no documents, records, data, reports or other information required by this Consent Decree shall be withheld on grounds of privilege.

United States and the State of Maine v. City of Bangor Consent Decree
Page 50

56. The City 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 the City seeks to protect as CBI, the City shall follow the procedures set forth in 40 C.F.R. Part 2.

57. 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 the City to maintain documents, records, or other information imposed by applicable federal or State laws, regulations, or permits.

XIII. FORM OF NOTICE

58. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing to the following respective addressees. Any Party may, by written notice to the other Parties, change its designated notice recipient or address. Notices 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

United States and the State of Maine v. City of Bangor Consent Decree
Page 51

DJ # 90-5-1-1-2883/1

As to the EPA

Alex Rosenberg
Enforcement Officer
Water Technical Unit
U.S. Environmental Protection Agency, Region 1
5 Post Office Square – Suite 100
Mail Code OES04-4
Boston, MA 02109-3912
Rosenberg.alex@epa.gov

Tonia Bandrowicz
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
Bandrowicz.toni@epa.gov

The City shall provide all submissions and notices required to be submitted 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, with the exception of digital GIS datasets, as described in subparagraph 9.a, which are to be submitted electronically only, notwithstanding anything to the contrary herein. The City shall provide complete copies to both Alex Rosenberg and Tonia Bandrowicz of all submissions and notices required to be made by the City to EPA pursuant to this Consent Decree; except that with respect to copies of reports, schedules, plans, and other items required to be submitted to Tonia Bandrowicz pursuant to Sections VI (Remedial Measures), only copies of the transmittal letters need be provided.

United States and the State of Maine v. City of Bangor Consent Decree
Page 52

As to the MEDEP

Director, Bureau of Water Quality
Maine Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017

As to the Maine Attorney General's Office

Scott W. Boak, Assistant Attorney General
Natural Resources Division
6 State House Station
August, Maine 04333-0006
Scott.boak@maine.gov

As to the City of Bangor, Maine

Catherine M. Conlow
City Manager
73 Harlow Street
Bangor, ME 04401

with a copy (which shall not constitute notice) to:

Sharon G. Newman
Preti Flaherty
One City Center
Box 9546
Portland, ME 04122-9546

59. All written notices, reports or any other submissions required of the City by this Consent Decree, with the exception of digital GIS datasets, as described in subparagraph 9.a, which are to be submitted electronically only, notwithstanding anything to the contrary herein, shall contain the following certification by a duly authorized representative of the City:

“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.”

XIV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

60. This Consent Decree resolves the civil claims of the United States and the State for the violations alleged in the Complaint filed in this action through the Date of Lodging.

61. This Consent Decree is neither a permit nor a modification of any existing permit under any federal, state, or local law or regulation. The City is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws and regulations, and permits, and the City’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 the City’s compliance with any aspect of this Consent Decree will result in compliance with provisions of the CWA or with any other provisions of federal, State, or local laws, regulations or permits. This Consent Decree shall not be construed to constitute EPA or MEDEP approval of any equipment or technology installed by the City under the terms of this Consent Decree.

62. This Consent Decree does not limit any rights or remedies available to the United States or the State for any violation by the City of the CWA and 38 M.R.S.A. Ch. 3, and associated regulations or permit conditions other than those claims alleged in the Complaints

United States and the State of Maine v. City of Bangor Consent Decree
Page 54

through the Date of Lodging. This Consent Decree does not limit any rights or remedies available to the United States or the State for any criminal violations. The United States and the State expressly reserve all rights and remedies, legal and equitable, available to each of them for all violations of the CWA and 38 M.R.S.A. Ch. 3, or other applicable law where such violations are not alleged in the Complaint, and the United States reserve all rights and remedies, legal and equitable, available to enforce the provisions of this Consent Decree. Nothing herein shall be construed to limit the power of the United States or the State, consistent with their respective authorities, 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. The City reserves all defenses to any such claims and allegations.

63. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, civil penalties, or other appropriate relief relating to the City's Treatment Works, Collection System, or MS4, or the City's violations of federal or state law the City 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 60 of this Section.

64. This Consent Decree does not resolve any claims against the State for contingent liability under Section 309(e) of the Clean Water Act, 33 U.S.C. § 1319(e). The

United States and the State of Maine v. City of Bangor Consent Decree
Page 55

United States specifically reserves any such claims against the State, and the State specifically reserves all defenses to any such claims.

65. This Consent Decree does not limit or affect the rights of the City, 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 the City, except as otherwise provided by law.

66. 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.

XV. COSTS

67. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to enforce this Consent Decree, or to collect any portion of any stipulated penalties due but not paid by the City. In no event shall the United States or the State be responsible for any expenses, costs or attorney's fees incurred by the City.

XVI. EFFECTIVE DATE

68. 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 City 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 all agreement, obligations or

other requirements under this Consent Decree shall terminate, including the preceding requirement to perform duties scheduled to occur before the Effective Date.

XVII. RETENTION OF JURISDICTION

69. 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 XI (Dispute Resolution) and XVIII (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XVIII. MODIFICATION

70. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties, except that EPA, and as applicable MEDEP, may approve submissions upon specified conditions, provided that such conditions are not material modifications of and do not alter the obligations of this Consent Decree. Any material modification to the terms of this Consent Decree shall be effective only upon approval of the Court. Modifications to the schedules specified in this Consent Decree that do not otherwise alter the obligations of the Consent Decree may be made by written agreement among the City, EPA, and MEDEP and shall become effective upon agreement of the City, EPA and MEDEP. The City's request for a modification of the Consent Decree may be based on, among other things, (1) an integrated plan (per EPA's Integrated Municipal Stormwater and Wastewater Planning Approach Framework, issued on June 5, 2012); (2) a current Financial Capability Assessment (per EPA's Financial Capability Assessment Framework, issued on November 24, 2014); or (3) any updates to either framework. Any disputes concerning

modification of this Consent Decree shall be resolved pursuant to Section XI (Dispute Resolution), provided, however, that, instead of the burden of proof provided in Section XI, 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).

XIX. FUNDING

71. Performance of the terms of this Consent Decree by the City is not conditioned on the receipt of any federal or state grant funds or loans. In addition, performance is not excused by the lack of federal or state grant funds or loans.

XX. SEVERABILITY

72. 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.

XXI. TERMINATION

73. After the City completes all of the requirements of Section VI (Remedial Measures) and Section VII (Reports on Compliance), complies with all other requirements of the Consent Decree, has paid in full any accrued stipulated penalties (and any accrued interest thereon) as required by Section IX (Stipulated Penalties) of this Consent Decree, and the City is in substantial compliance with the terms of the MEPDES Permit (as it may be reissued or amended from time to time) for one year, the City may serve upon the United States and the State a Request for Termination, stating that the City has satisfied those requirements, together with all applicable supporting documentation.

United States and the State of Maine v. City of Bangor Consent Decree
Page 58

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

75. If the United States, after consultation with the State, does not agree that the Consent Decree may be terminated, the City may invoke dispute resolution under Section XI (Dispute Resolution). However, the City shall not initiate dispute resolution of any dispute regarding termination until sixty (60) Days after service of its Request for Termination.

XXII. FINAL JUDGMENT

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

XXIII. WAIVER OF SERVICE OF SUMMONS AND COMPLAINT

77. The City 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.

XXIV. PUBLIC COMMENT

78. 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 and the State of Maine v. City of Bangor Consent Decree
Page 59

United States reserves the right to withdraw or withhold its consent if comments received disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper or inadequate. In addition, in the event of the State's withdrawal from this Consent Decree, the United States reserves the right to withdraw from this Consent Decree. The State reserves the right to withdraw or withhold its consent if comments received disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper or inadequate. In addition, in the event of the United States' withdrawal from this Consent Decree, the State reserves its right to withdraw from this Consent Decree. The City 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 and the State have notified the City in writing that they both withdraw their consent and no longer support entry of this Decree or the Court declines to enter this Consent Decree.

XXV. SIGNATORIES

79. Each undersigned representative of the City, the State, EPA, 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.

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

XXVI. INTEGRATION

81. This Consent Decree constitutes the final, complete, and exclusive agreement

United States and the State of Maine v. City of Bangor Consent Decree
Page 60

and understanding among the Parties with respect to the settlement embodied in the Consent Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein, including the 1991 Consent Decree and the May 28, 2010 and April 2, 2012 Information Requests issued by EPA under authority of Section 308 of the CWA, 33 U.S.C. § 1318 (Docket Nos. 010-308-029 and 12-308-28, respectively). For avoidance of doubt, the intent of the preceding sentence is to terminate the 1991 Consent Decree, 2010 and 2012 Information Requests and all obligations thereunder. Other than submissions that are subsequently submitted and Approved by EPA pursuant to this Consent Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Decree or the settlement it represents, nor shall it be used in construing the terms of this Consent Decree.

Judgment is hereby entered in accordance with the foregoing Consent Decree this 13th day of November 2015.

/s/ Nancy Torresen
UNITED STATES CHIEF DISTRICT JUDGE
District of Maine

United States and the State of Maine v. City of Bangor Consent Decree
Page 61

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the State of Maine v. City of Bangor* Consent Decree

For Plaintiff UNITED STATES OF AMERICA

/s/ John C. Cruden
JOHN C. CRUDEN
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

08/14/2105
Date

/s/ Laura J. Rowley
LAURA J. ROWLEY
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044-7611
(202) 616-8763

08/14/2015
Date

United States and the State of Maine v. City of Bangor Consent Decree
Page 62

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the State of Maine v. City of Bangor* Consent Decree

For Plaintiff UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

/s/ Mark Pollins

MARK POLLINS, 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, DC 20460

08/21/2015

Date

United States and the State of Maine v. City of Bangor Consent Decree
Page 63

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the State of Maine v. City of Bangor* Consent Decree

For Plaintiff UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

/s/ Susan Studlien
SUSAN STUDLIEN
Director, Office of Environmental Stewardship
United States Environmental Protection Agency,
Region 1
5 Post Office Square – Suite 100
Boston, Massachusetts 02109-3912

08/03/2015
Date

/s/ Tonia Bandrowicz
TONIA BANDROWICZ
Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
5 Post Office Square – Suite 100
Boston, Massachusetts 02109-3912

07/29/2015
Date

United States and the State of Maine v. City of Bangor Consent Decree
Page 64

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the State of Maine v. City of Bangor* Consent Decree

For Plaintiff STATE OF MAINE

/s/ Patricia W. Aho
PATRICIA W. AHO, Commissioner
Maine Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0006

08/11/2015
Date

/s/ Scott W. Boak
SCOTT W. BOAK, Assistant Attorney General
Office of the Maine Attorney General
6 State House Station
Augusta, Maine 04333-0006

08/11/2015
Date

United States and the State of Maine v. City of Bangor Consent Decree
Page 65

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the State of Maine v. City of Bangor* Consent Decree

For Defendant CITY OF BANGOR

/s/ Catherine M. Conlow
CATHERINE M. CONLOW
City Manager
73 Harlow Street
Bangor, ME 04401

08/11/2015
Date

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA)
)
 and)
)
 STATE OF MAINE,)
)
 Plaintiffs) Civil Action No. 1:15-cv-00350-NT
)
 v.)
)
 CITY OF BANGOR, MAINE,)
)
 Defendant.)
 _____)

FIRST MODIFICATION OF CONSENT DECREE

WHEREAS, on November 13, 2015, the Court entered a Consent Decree (“Consent Decree” or “Decree”) in this action among the United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“EPA”), the State of Maine (“State”) on behalf of the Maine Department of Environmental Protection (“MEDEP”) and the City of Bangor (“City”), collectively, the “Parties.” Under the Consent Decree, the City will perform certain short and long term injunctive relief projects in connection with its wastewater collection system and municipal separate storm sewer system.

WHEREAS, the Parties have agreed that a modification to the Consent Decree is appropriate and is in the interest of timely and effective implementation of the Consent Decree. This modification changes the date that updated GIS deliverables shall be submitted to EPA and MEDEP on an annual basis. Currently under Paragraph 9.a(4) of the Consent Decree, updated GIS Deliverables shall be submitted to EPA and MEDEP with the annual Reports on Compliance required pursuant to Paragraph 21. The annual Reports on Compliance required pursuant to Paragraph 21 are due each year on January 31. This modification will change Paragraph 9.a(4) to require the updated GIS Deliverables be submitted to EPA and MEDEP each year on July 1, along with other related information required under Paragraph 9.a.

WHEREAS, the foregoing modification is a non-material modification of the Consent Decree. Specifically, it is a modification to a schedule specified in the Consent Decree that does not otherwise alter the obligations of the Consent Decree. As such, pursuant to Paragraph 70 of the Decree, it will be effective upon written agreement of the City, EPA and MEDEP.


WHEREAS, written notice of this non-material modification has been provided to the United States Department of Justice and the Maine Office of the Attorney General. These parties have no objection to this non-material modification.

NOW, THEREFORE, the Consent Decree is hereby modified as follows:

The last sentence of Paragraph 9.a(4) on page 17 of the Consent Decree is hereby modified by the Parties to read as follows: “Each such updated GIS Deliverable shall be submitted to EPA and MEDEP with the annual GIS Deliverables required pursuant to this subparagraph 9.a.”

THE UNDERSIGNED PARTY enters into this First Modification of Consent Decree in the matter of *United States and the State of Maine v. City of Bangor*

For UNITED STATES ENVIRONMENTAL PROTECTION AGENCY




MARK POLLINS, 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, DC 20460



Date

THE UNDERSIGNED PARTY enters into this First Modification of Consent Decree in the matter of *United States and the State of Maine v. City of Bangor*

For UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



SUSAN STUHLIEN
Director, Office of Environmental Stewardship
United States Environmental Protection Agency,
Region 1
5 Post Office Square – Suite 100
Boston, Massachusetts 02109-3912

12/17/2015
Date

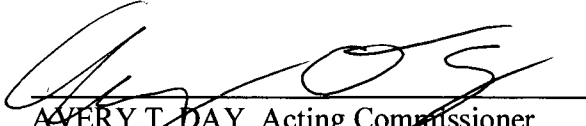


TONIA BANDROWICZ
Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
5 Post Office Square – Suite 100
Boston, Massachusetts 02109-3912

12-14-15
Date

THE UNDERSIGNED PARTY enters into this First Modification of Consent Decree in the matter of *United States and the State of Maine v. City of Bangor*

For STATE OF MAINE

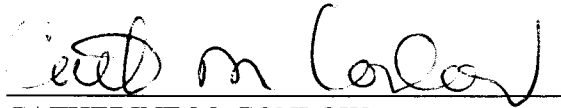


AVERY T. DAY, Acting Commissioner
Maine Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0006

12/14/15
Date

THE UNDERSIGNED PARTY enters into this First Modification of Consent Decree in the matter of *United States and the State of Maine v. City of Bangor*

For CITY OF BANGOR



CATHERINE M. CONLOW
City Manager
73 Harlow Street
Bangor, ME 04401

12-15-15
Date