

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

UNITED STATES OF AMERICA,      )  
                                      )  
and the STATE OF GEORGIA,      )  
                                      )  
Plaintiffs,                      )  
                                      )  
                                      ) Civil Action No.  
v.                                 )  
                                      )      CONSENT DECREE  
                                      )  
DEKALB COUNTY, GEORGIA,      )  
                                      )  
Defendant.                      )  
\_\_\_\_\_ )

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WHEREAS, Plaintiffs, the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), and the State of Georgia, at the request of the Georgia Department of Natural Resources, Environmental Protection Division (“EPD”), have filed a Complaint in this action concurrently with this Consent Decree alleging that DeKalb County, Georgia (the “County”) has violated the Federal Water Pollution Control Act, also known as the Clean Water Act (“CWA”), 33 U.S.C. § 1251 *et seq.*, and the Georgia Water Quality Control Act, O.C.G.A. § 12-5-20 *et seq.* (“GWQCA”), and the regulations promulgated thereto.

WHEREAS, the State of Georgia joined as a plaintiff in this action under Section 309(e) of the CWA, 33 U.S.C. § 1319(e).

WHEREAS, the County is a political subdivision of the State of Georgia.

WHEREAS, EPD has been authorized by EPA to administer the National Pollutant Discharge Elimination System (“NPDES”) program in Georgia pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b).

WHEREAS the County is the holder of NPDES permits authorizing the discharge of pollutants to waters of the United States and the State from its Snapfinger Creek and Pole Bridge Creek Wastewater Treatment Facilities (“WWTFs”).

WHEREAS, the County owns and operates a wastewater collection and transmission system (“WCTS”) designed to collect and transmit wastewater primarily to its WWTFs and to the R.M. Clayton Water Reclamation Center owned by the City of Atlanta.

WHEREAS, the County estimates that 16% of its WCTS is greater than fifty (50) years old, 48% of its WCTS is twenty-five (25) to fifty (50) years old, and 36% of its WCTS is less than twenty-five (25) years old.

WHEREAS, the WCTS is a separate system from the County’s storm water conveyance system.

WHEREAS, the County experienced its highest number of reported Spills, totaling 256, from its WCTS, in 2006.

WHEREAS, the County has recognized that the leading cause of Spills from its WCTS is fats, oils and grease (“FOG”). As a result, the County developed and began implementing a FOG Management Program following adoption of its FOG ordinance in March, 2007.

WHEREAS, in March 2007, EPA Region 4 and EPD conducted an audit of the management, operations, and maintenance programs associated with the County’s WCTS.

WHEREAS, the County contends that it has made significant progress in implementing and improving capacity, management, operations and maintenance (“CMOM”) programs, assessing its WCTS for effectiveness, and reducing the number of reported Spills. The County contends that, among other things, it has:

(1) initiated in September 2007 a CMOM self-assessment as an important step in the process of instituting a comprehensive CMOM program; (2) implemented a Strategic Spill Response Plan to assure expedient and adequate response to Spills;

(3) implemented a training program that addresses operation and maintenance of the WCTS based on the California State University Office of Water Programs’ field study training program; (4) commenced the development of a computer-based hydraulic modeling program; (5) instituted a flow and rainfall monitoring program that it uses to facilitate Infiltration and Inflow (“I/I”) analyses and capacity assessment; (6) commenced implementing a sewer mapping program which will enable the County to readily identify and locate any component of the WCTS and facilitate development of the hydraulic model; (7) commenced manhole condition assessment and ranked manhole structural defects based on the Manhole Assessment and Certification Program ranking system generated by the National Association of Sewer Service Companies and rehabilitated, as needed, the

manholes determined to have the most significant defects; (8) evaluated a representative portion of its WCTS for Excessive I/I and found that the average “R” Value for all of the County meters analyzed was 1.7%; (9) instituted a lift station assessment program, which ensures that all lift stations are inspected at least once a week by qualified technicians and all Major Lift Stations are inspected daily, and that all of its lift stations are designed and constructed with sufficient redundancy in functionality; (10) provided EPA/EPD a list of lift station upgrades through 2009; and (11) instituted an ongoing WCTS assessment and rehabilitation program whereby condition assessment and rehabilitation is conducted to address structural and other defects allowing I/I and to provide adequate WCTS capacity.

WHEREAS, the County contends that as a result of many of the aforementioned efforts and activities to address Spills, the County’s Spills have decreased from a high of 256 reported Spills in 2006 to 135 reported Spills in 2009, reflecting a reduction in the number of reported Spills each year since 2006. Furthermore, while the County continues to implement its FOG Management Program and recognizes that it will take another two to fours years for the benefits of the FOG Management Program to be fully realized, the County contends that FOG-related Spills have decreased by approximately 58% from 2006 to 2009.

WHEREAS, the County recognizes that its WCTS would benefit from additional assessments and rehabilitation of Priority Areas and from assessments conducted system-wide on an ongoing basis.

WHEREAS, the County does not admit any liability to the United States or the State arising out of the transactions or occurrences alleged in the Complaint.

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation among the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

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

### **I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1335, and Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and over the Parties. This Court has supplemental jurisdiction over the State law claims asserted by the State of Georgia pursuant to

28 U.S.C. § 1367. Venue lies in this Northern District of Georgia, Atlanta Division, pursuant to 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391 (b) and 1395(a), because the County is located in this District, and the violations alleged in the Complaint are alleged to have occurred in, and the County conducts business in, this District. For purposes of this Consent Decree, or any action to enforce this Consent Decree, the County consents to the Court's jurisdiction over this Consent Decree and any such action and over the County and consents to venue in this District. Notice of commencement of this action has been given to the State of Georgia pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

## **II. APPLICABILITY**

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

3. No transfer of ownership or operation of the WCTS or any portion thereof, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve the County of its obligation to ensure that the terms of the Consent Decree are implemented. At least thirty (30) Days prior to such transfer,

the County shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to the United States and the State pursuant to Section XVI of this Consent Decree (Notices). Any attempt to transfer ownership or operation of the WCTS or any portion thereof without complying with this Paragraph constitutes a violation of this Consent Decree. Notwithstanding the foregoing, the County may transfer within any twelve (12) month period, an ownership interest, operation, management, or other control of portions of the WCTS serving up to one hundred (100) residential customer accounts, or the volumetric equivalent thereof, without this Paragraph applying.

4. The County shall provide written notice, either by hard copy or by electronic mail, that a copy of this Consent Decree is posted on the Department of Watershed Management website, to all elected officials and employees whose duties might reasonably include compliance with any provision of this Consent Decree. The County shall be responsible for ensuring that all employees involved in performing any work pursuant to this Consent Decree perform such work in a manner consistent with the requirements of this Consent Decree. The County shall provide written notice that a copy of this Consent

Decree is posted on the Department of Watershed Management website, to all successful bidders retained to perform work expressly required by this Consent Decree and shall be responsible for ensuring that any contractors hired to perform work pursuant to this Consent Decree comply with the terms of this Consent Decree.

5. In any action to enforce this Consent Decree, the County shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to comply with the provisions of this Consent Decree.

### **III. OBJECTIVES**

6. The express purpose of the Parties entering into this Consent Decree is for the County to use its best efforts to prepare and implement all plans, measures, reports, and construction, maintenance, and operational activities called for under this Consent Decree to achieve the goals of: (1) full compliance with the CWA, the GWQCA, and the regulations promulgated thereunder, and (2) the elimination of all SSOs.

### **IV. DEFINITIONS**

7. Terms used in this Consent Decree that are defined in the CWA, or in regulations promulgated pursuant to the CWA, shall have the

meanings assigned to them in the CWA or such regulations, unless otherwise provided in this Consent Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

“Building Backup” shall mean, for purposes of this Consent Decree, a wastewater backup into a building that is caused by blockages, malfunctions, or flow conditions in the WCTS; provided, however, that a wastewater backup into a building that is caused by a blockage or other malfunction of a Private Lateral, or other piping or conveyance system that the County does not own or operate, is not a Building Backup.

“Bypass” shall have the meaning set forth at 40 C.F.R. § 122.41(m).

“Certification” or “certify” when used in this Consent Decree shall require the County to comply with Paragraph 45 of this Consent Decree.

“Complaint” shall mean the complaint filed by the United States and the State in this action.

“Consent Decree” or “Decree” shall mean this Consent Decree, and all appendices attached hereto (listed in Section XXV);

“County” or “Defendant” shall mean DeKalb County, Georgia.

“Date of Entry” shall mean the date the Consent Decree is approved and signed by a United States District Court Judge.

“Date of Lodging” shall mean the date the Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the Northern District of Georgia, Atlanta Division.

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

“Effective Date” shall have the definition provided in Section XVII.

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

“EPD” shall mean the Georgia Department of Natural Resources, Environmental Protection Division.

“Excessive Infiltration/ Inflow” or “Excessive I/I” as defined by 40 C.F.R. § 35.2005(b)(16) shall mean the quantities of infiltration/inflow which can be economically eliminated from a sewer system as determined in a cost-effectiveness

analysis that compares the costs for correcting the infiltration/inflow conditions to the total costs for transportation and treatment of the infiltration/inflow.

“Force Main” shall mean all sanitary sewer lines that operate under pressure due to pumping of sanitary wastewater at a lift station except for those sanitary sewer lines that serve a private lift station or a single structure or building.

“Gravity Sewer Line” shall mean a pipe that receives, contains and conveys wastewater not normally under pressure, or head, but is intended to flow unassisted under the influence of gravity.

“I/I” shall mean Infiltration and Inflow.

“Infiltration” as defined by 40 C.F.R. § 35.2005(b)(20) shall mean water other than wastewater that enters a sanitary sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes.

“Inflow” as defined by 40 C.F.R. § 35.2005(b)(21) shall mean water other than wastewater that enters a sanitary sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers,

cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm water, surface runoff, street wash waters, or drainage.

“Major Gravity Sewer Line” shall mean Gravity Sewer Lines which are eighteen (18) inches or greater in diameter.

“Major Lift Station” shall mean a Lift Station that has at least one (1) pump with greater than ninety-nine (99) horse power and a force main diameter of six (6) inches or greater.

“NPDES Permits” shall mean the most recently issued National Pollutant Discharge Elimination System Permits issued to the County for the Pole Bridge Creek WWTF and the Snapfinger Creek WWTF.

“Overflow” shall mean, for purposes of this Consent Decree, a release of wastewater from the WCTS, or from a WWTF caused by problems in the WCTS, that does not reach waters of the United States or the State.

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

“Parties” shall mean the United States, the State, and the County.

“Private Lateral” shall mean that portion of a sanitary sewer conveyance pipe, including that portion in the public right of way, that extends from the

wastewater main to the single-family, multi-family, apartment or other dwelling unit or commercial or industrial structure to which wastewater service is or has been provided.

“Public Document Repository” shall include the County’s Watershed Management Administration Building located at 1580 Roadhaven Drive, Stone Mountain, Georgia 30083; the County’s website ([www.dekalbwatershed.com](http://www.dekalbwatershed.com)); or any other place agreed upon in writing by EPA/EPD. Documents sent to a Public Document Repository pursuant to this Consent Decree are intended to be available for public review and copying/printing. The County shall bear sole responsibility for depositing documents in the Public Document Repository.

“R’ Value” shall mean the fraction (sometimes reported as a percentage) of rainfall falling within a given sewershed area that enters a sanitary sewer collection system as rainfall dependent I/I.

“Sanitary Sewer Overflow” or “SSO” shall mean all Spills, Overflows, and Building Backups.

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

“Sewersheds” shall mean the subdivisions of the County’s WCTS containing sewers that are primarily hydraulically linked as identified on Appendix A, attached hereto and incorporated herein.

“Spill” shall mean, for purposes of this Consent Decree, a discharge of wastewater from the WCTS, or from a WWTF caused by problems in the WCTS, which reaches waters of the United States or the State, including a prohibited Bypass, but not including other discharges from a point source that is specified in the NPDES Permits.

“State” shall mean the State of Georgia.

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

“Wastewater Collection and Transmission System” or “WCTS” shall mean all wastewater collection and transmission systems, including all pipes, lift stations, Force Mains, Gravity Sewer Lines, manholes and other appurtenances thereto which are owned or operated by the County, except for those portions of a system or systems for which another entity is legally responsible for maintenance.

“Wastewater Treatment Facility” or “WWTF” shall mean devices or systems used in the storage, treatment, recycling, and reclamation of municipal sewage.

For purposes of this Consent Decree, this definition includes the following facilities owned, managed, operated, and maintained by the County: the Pole Bridge Creek WWTF and the Snapfinger Creek WWTF.

## **V. CIVIL PENALTY**

8. Within thirty (30) Days after the Date of Entry of this Consent Decree, the County shall pay a civil penalty in the amount of \$453,000 as follows: \$226,500 to the United States and \$226,500 to the State.

9. The County shall pay the civil penalty due to the United States by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with written instructions to be provided to the County, following entry of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney’s Office for the Northern District of Georgia, 600 U.S. Courthouse, 75 Spring Street, S.W., Atlanta, GA 30303-3309, (404) 581-6000. At the time of payment, the County shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States et al. v. DeKalb County, Georgia, and shall reference the civil action number as well as DOJ case number 90-5-1-1-09497, to the United States in accordance with Section

XVI of this Consent Decree (Notices); by email to  
[acctsreceivable.CINWD@epa.gov](mailto:acctsreceivable.CINWD@epa.gov); and by mail to:

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

In the event that full cash payment to the United States is not made within thirty (30) Days of the Date of Entry, the County shall pay to the United States interest on the balance due from the original due date to the date of payment, at the rate calculated pursuant to 28 U.S.C. § 1961.

10. The County shall pay the civil penalty due to the State by submitting a check payable to the State of Georgia and tendered to the Georgia Environmental Protection Division; Permitting, Compliance and Enforcement Program; 4220 International Parkway, Suite 101; Atlanta, Georgia 30354.

## **VI. REMEDIAL ACTIONS FOR THE COUNTY'S WASTEWATER COLLECTION AND TRANSMISSION SYSTEM**

### **A. REMEDIAL ACTION PROGRAM SUMMARY**

11. The remedial action for the County's WCTS consists of a comprehensive program including the development and implementation of programs to ensure effective Capacity, Management, Operations and Maintenance

(“CMOM”), including a Continuing Sewer Assessment and Rehabilitation Program.

12. The CMOM programs that the County will further develop and implement include the following: a Contingency and Emergency Response Plan (Section VI.B.(i)); a Fats, Oils, and Grease Management Program (Section VI.B.(ii)); a Sewer Mapping Program (Section VI.B.(iii)); a Maintenance Management System Program (Section VI.B.(iv)); a Collection and Transmission Systems Training Program (Section VI.B.(v)); a System-Wide Flow and Rainfall Monitoring Program (Section VI.B.(vi)), a System-Wide Hydraulic Model Program (Section VI.B.(vii)); a Financial Analysis Program (Section VI.B.(viii)); an Infrastructure Acquisitions Program (Section VI.B.(ix)); and a Continuing Sewer Assessment and Rehabilitation Program, including a Priority Areas Sewer Assessment and Rehabilitation Program and an Ongoing Sewer Assessment and Rehabilitation Program (Section VI.B.(x)).

13. Where appropriate in the Priority Areas Sewer Assessment and Rehabilitation Program and the Ongoing Sewer Assessment and Rehabilitation Program submittals, specific references must be cited for proposed procedures, techniques, and design criteria to be used in evaluating the County’s WCTS or

their bases explained. The Infiltration and Inflow evaluations (peak flow) and WCTS assessment should be compatible with EPA's Handbook: Sewer System Infrastructure Analysis and Rehabilitation, EPA/625/6-91/030, October 1991; Water Environment Federation's Manual of Practice FD-6, Existing Sewer Evaluation & Rehabilitation, 1994; or EPA's guidance: Computer Tools for Sanitary Sewer System Capacity Analysis and Planning, EPA/600/R-07/111, October 2007.

14. Nothing in this Section VI.A shall in any way modify or alter the requirements set forth elsewhere in this Consent Decree.

## **B. CAPACITY, MANAGEMENT, OPERATION, AND MAINTENANCE PROGRAMS**

### **(i). Contingency and Emergency Response Plan**

15. The County shall integrate its existing Strategic Spill Response Plan into a written Contingency and Emergency Response Plan ("CERP"). Any SSO shall be appropriately addressed in accordance with the CERP, recognizing that the level of response and notification under the CERP will vary depending on the nature and severity of the SSO. No later than six (6) months from the Date of Entry, the County shall submit to EPA/EPD, for review and comment, the CERP

that the County shall follow to expediently notify and protect the health and welfare of the potentially affected public and the environment. The CERP shall include but not be limited to:

- (a) Procedures to provide expedient notice to the public potentially affected by a SSO. The form and manner used to notify the public shall fit the specific situation, but shall be designed to reach the public reasonably likely to be affected by the SSO. Notification methods may include, but shall not be limited to, television, radio, newspapers, emails or other electronic communications, postings on the County's website, and signs posted at conspicuous public places.
- (b) Procedures to limit public access to and contact with areas affected by a SSO. The geographic extent and duration of a public access limitation shall be determined in consultation with the local health department with jurisdiction, where appropriate.
- (c) Procedures consistent with the State's Rules and Regulations for Water Quality Control and the NPDES Permits to provide timely notice to EPD, and other appropriate State and local agencies of the occurrence of SSOs. In addition, where appropriate and if otherwise required by law, the CERP shall include procedures to provide timely notice to appropriate Federal agencies of the

occurrence of SSOs. At a minimum, the County shall orally report to EPD any Spill within twenty-four (24) hours from the time the County becomes aware of such Spill and provide written notice to EPD of such Spill within five (5) days. The written notices of Spills shall include a description of the Spill and its cause(s); the location of the Spill, including the dates; the times the Spill was reported and stopped; the estimated volume released based on volume estimation methods delineated in the CERP; waters immediately affected or potentially affected; whether the Spill caused a fish kill; and, actions taken to repair or otherwise resolve the cause of the Spill. If the cause of a Spill is estimated to require more than sixty (60) Days to be repaired or otherwise resolved, the County shall also submit to EPD a plan within thirty (30) Days of the Spill outlining the County's plans to repair or resolve the cause of the Spill. A Building Backup is to be reported as a Spill if it reaches waters of the United States or the State.

(d) Procedures the County will employ to ensure that it is gathering the Overflow and Building Backup information required to be included in the Quarterly SSO Reports pursuant to Paragraph 56.

(e) A program to ensure the rapid dispatch of personnel and equipment to expediently respond to and cleanup all SSOs and for minimizing any further adverse impacts to human health or the environment from the SSO.

(f) A program to ensure the expeditious dispatch of personnel and equipment to repair or otherwise resolve the condition causing or contributing to any SSO.

(g) A program to ensure the preparedness, including responsiveness training, of the County's employees and/or contractors necessary for the effective implementation of the CERP in the event of a SSO. The program should include the County's efforts to coordinate with other agencies and neighboring jurisdictions as appropriate.

(h) A program to minimize, where feasible and appropriate, utilizing conventional wastewater bypass equipment and materials, the volume of untreated wastewater transmitted to the sewer pipe directly involved in a SSO.

(i) A monitoring, sampling, analysis, and reporting program, consistent with the State's Rules and Regulations for Water Quality Control and the NPDES Permits, to determine the level of fecal coliform bacteria, pH, temperature, and dissolved oxygen in the receiving water bodies immediately

following a Spill. EPD may request, and the County shall conduct, additional sampling and analysis as deemed necessary to evaluate the impact of a Spill.

(j) An investigative approach for field personnel to determine (1) the cause(s) of a SSO; (2) the extent of the problem through the inspection of the right-of-ways and manholes within a reasonable distance upgradient and downgradient for a minimum of one eighth (1/8) mile; and, (3) the likely recurrence of the problem at the location of a SSO through appropriate inspections to ensure repairs taken were effective.

(k) The methods and procedures the County shall use to assess and mitigate (including appropriate training) where feasible the potential likelihood of the cause of a SSO to occur elsewhere.

16. EPA/EPD may subsequently conduct periodic audits of the CERP implementation without prior notice to the County. EPA/EPD shall provide a written report to the County of the findings/results of any such audit.

**(ii). Fats, Oils, and Grease Management Program**

17. The County has developed and has been implementing a Fats, Oils and Grease (“FOG”) Management Program since its FOG ordinance was adopted in March, 2007. Notwithstanding any improvements already achieved

through the FOG Management Program, the County shall re-evaluate its FOG Management Program to determine if its effectiveness can be improved. No later than fifteen (15) months from the Date of Entry, the County shall submit to EPA/EPD, for review and comment, its FOG Management Program and the results of its re-evaluation and any proposal to expand or modify its existing FOG Management Program to control further the discharge of FOG into the County's WCTS. The existing and any proposed improvements to the FOG Management Program shall include, but not be limited to:

- (a) A description of the FOG Management Program, including but not limited to, the number of food service establishments and the County inspections protocols including the frequencies and priorities of inspections.
- (b) An adequate number of personnel and other resources to implement the FOG Management Program.
- (c) Written standard operating procedures, including procedures for identifying existing and new unpermitted facilities.
- (d) Performance measures which can be tracked and documented at least quarterly to improve Program management.

(e) Data attributes for the Mapping Program (Section VI.B.(iii)) to allow FOG Management Program data to be compared in the County's information management system against other pertinent data such as the occurrence of SSOs and permit violations.

(f) A training program tailored to increase communication efficiency between WCTS operations and maintenance personnel and FOG Management Program personnel.

(g) Any necessary amendment to the legal authority in the current sewer use ordinances to control the discharge of FOG into the County's WCTS. If the review indicates a need to amend the legal authority in order to control better the discharge of FOG into the County's WCTS, the proposal shall include the proposed revisions to the ordinance with a schedule for proposing the draft ordinances to the County's Board of Commissioners for adoption.

(h) An implementation schedule specifying dates for any proposed modifications to the FOG Management Program. Upon completion, the County shall certify to EPA/EPD that it has met the approved schedule.

18. EPA/EPD may subsequently conduct periodic audits of the FOG Management Program implementation without prior notice to the County.

EPA/EPD shall provide a written report to the County of the findings/results of any such audit.

**(iii). Sewer Mapping Program**

19. The County has embarked on a WCTS-wide Mapping Program to update its WCTS maps and to put in place a Geographic Information System (“GIS”) map of the County’s WCTS. No later than six (6) months from the Date of Entry, the County shall submit to EPA/EPD, for review and comment, its Sewer Mapping Program. The Sewer Mapping Program shall be submitted to EPA/EPD to ensure consistency with the following criteria:

- (a) A program for producing maps using GIS technology.
- (b) A program designed in such a manner so as to allow electronic integration with the County’s computer-based collection system model and computer-based operations and maintenance information management system.
- (c) A program for producing maps showing the location of all manholes, Gravity Sewer Lines, lift stations, Force Mains, valves, and WWTFs.
- (d) A program for producing maps capable of integrating electronically the locations of sewer service connections on lines that are televised.
- (e) A program for producing maps that include attribute data for the

County's WCTS including, but not limited to, size, material, estimated age or age range, slope, invert elevation, and rim elevation.

(f) A program for producing maps that delineate the spatial boundaries of all Sewersheds.

(g) A program for producing maps that can integrate electronically available maps that show the location of surface streets and street addresses, surface water bodies and political boundaries.

(h) A program capable of reproducing maps in a manner that will allow use by all WCTS operation and maintenance crew leaders in the field.

(i) A program that allows entry and mapping of work orders to identify and track problems geographically such as stoppages, service interruptions, and SSOs, and to assist in the planning and scheduling of maintenance.

(j) Written standard operating procedures for use of the Mapping Program, the acquisition and entry of updated mapping data for new assets or changes to existing assets, and updates to system software.

(k) A schedule for the completion of the electronic mapping of each Sewershed in the County's WCTS.

20. EPA/EPD may subsequently conduct periodic audits of the Sewer Mapping Program implementation without prior notice to the County. EPA/EPD shall provide a written report to the County of the findings/results of any such audit.

**(iv). Maintenance Management System Program**

21. The County has in place a Maintenance Management System Program (“MMS Program”). No later than twenty-four (24) months from the Date of Entry, the County shall re-evaluate and submit to EPA/EPD, for review and comment, its MMS Program. The goal of the MMS Program is to facilitate effective operation and maintenance activities associated with the WCTS. The MMS Program shall be submitted to EPA/EPD to ensure consistency with the following criteria:

- (a) Written physical inspection and testing procedures (i.e., television, visual, smoke, dyed water, and others).
- (b) Identification of the means and modes of communication between lift stations, field crews, and supervising staff.
- (c) Written WCTS operations, practices, and procedures.

(d) Technical specifications of each lift station in the WCTS, including critical response time (defined as the time interval between activation of the high wet well level alarm and the commencement of a SSO) under peak flow conditions.

(e) A description of a lift station monitoring system which shall continuously monitor, report, and transmit information for each pump station.

(f) Written preventive maintenance schedules, practices, and procedures as more particularly described in Paragraph 22 below.

(g) Written corrective maintenance practices and procedures.

(h) Schedules for the maintenance of easements.

(i) A description of resource commitments such as staffing, contractual support and equipment.

(j) An inventory management system that includes:

(1) lists of critical equipment and critical spare parts;

(2) an inventory of the critical spare parts and critical equipment stored at the County's facilities, and a list of where the remaining critical spare parts and critical equipment may be secured to allow repairs in a reasonable amount of time; and,

(3) written procedures for updating the critical spare parts and equipment inventories in the inventory management system.

(k) A common information system that the County uses to track implementation of the MMS Program, track maintenance activities (including lift station equipment histories), and track management, operation, and maintenance performance indicators.

(l) The key performance indicators (“KPIs”) the County will track to measure performance of the WCTS using the information system referenced in the above Paragraph. These KPIs shall:

(1) include, but not be limited to, materials costs, the linear footage of Gravity Sewer Line inspections, the linear footage of Gravity Sewer Lines cleaned, the number of manholes inspected, and the number of SSOs per mile of Gravity Sewer Line; and

(2) be tracked by the type of maintenance activity: corrective, preventive, and emergency.

(m) Written procedures for generation of maintenance work orders.

(n) Reports which list equipment problems and the status of work orders generated during the prior month.

22. Preventive maintenance activities as required in subparagraph 21.(f) above shall be scheduled appropriately and shall include, but not be limited to, written procedures for:

- (a) Periodic service and calibration of instrumentation such as flow meters, liquid level sensors, alarm systems, elapsed time meters, and remote monitoring equipment.
- (b) Predictive (including non-physical inspections) and/or physical inspection and service for all lift stations; and inspection and service for air release valves.
- (c) Inspection and cleaning of Gravity Sewer Lines and manholes.
- (d) Inspection of sewer and Force Main easements, including inspection of: creek crossings, stream bank encroachment toward Gravity Sewer Lines and Force Mains, and easement accessibility (including the need to control vegetative growth or encroachment of man-made structures or activities that could threaten the integrity of the affected Gravity Sewer Lines or Force Mains). Inspections shall include written reports, and where appropriate, representative photographs or videos of appurtenances being inspected (e.g., manholes, creek crossings, etc.). Inspectors shall promptly report any observed SSOs to their area

supervisors and shall record any evidence of SSOs which may have occurred since the last inspection. Any observed SSO shall be promptly reported in accordance with the CERP.

23. EPA/EPD may subsequently conduct periodic audits of the MMS Program implementation without prior notice to the County. EPA/EPD shall provide a written report to the County of the findings/results of any such audit.

**(v). Collection and Transmission Systems Training Program**

24. The County has in place a Collection and Transmission Systems Training Program. No later than nine (9) months from the Date of Entry, the County shall re-evaluate and submit to EPA/EPD, for review and comment, its Collection and Transmission Systems Training Program. The goal of the Collection and Transmission Systems Training Program is to develop a training program by evaluating the County's personnel, tasks, equipment, and facilities to facilitate effective operation and maintenance of the WCTS. The Collection and Transmission Systems Training Program shall be submitted to EPA/EPD to ensure consistency with the following criteria:

(a) General training to address the fundamental mission, goals, and policies of the County's Department of Watershed Management. General training

would include, for example, employee orientation and introduction to administrative practices and procedures that may be relevant to all employees in the Department of Watershed Management.

(b) A training program generally consistent with Operations and Maintenance of Wastewater Collection Systems, a Field Study Training Program, Volumes I and II, Sixth Edition, or a later edition, prepared by the Office of Water Programs at California State University.

(c) Wastewater collection system training to address the methods, procedures, and techniques required to perform the duties and tasks necessary for effective operation and maintenance of the County's collection system. Training required for employees may vary depending on their roles; however, available collection system training would include, for example, an explanation of the importance of effective collection system operation and maintenance, training in collection equipment operation, pipe installation/replacement, pipe cleaning, pipe inspection and testing, and reading as-built drawings.

(d) Wastewater transmission system training to address the methods, procedures, and techniques required to perform the duties and tasks necessary for the effective operation and maintenance of the County's transmission system.

Training required for employees may vary depending on their roles; however, available transmission system training would include, for example, an explanation of the importance of effective transmission system operation and maintenance, training in transmission equipment operation, lift station inspection, lift station maintenance, lift station underground repair and lift repair.

(e) Training necessary to cover measures to avert or eliminate identifiable safety hazards associated with the maintenance and repair of the WCTS. These measures may include safety procedures specific to the types of maintenance activities and repair projects undertaken, specifying the safety equipment for the tasks being performed, and where appropriate, providing confined space entry, vehicle control procedures, and lock-out/tag-out procedures.

(f) A description of the appropriate frequency that trainings, including refresher training, will be required and conducted.

(g) A description of the common data management system to be used for tracking personnel participation in, and completion of, the initial general training, collection system training, transmission system training, safety hazard training and/or any corresponding refresher training.

25. EPA/EPD may subsequently conduct periodic audits of Collection and Transmission Systems Training Program implementation without prior notice to the County. EPA/EPD shall provide a written report to the County of the findings/results of any such audit.

**(vi). System-Wide Flow and Rainfall Monitoring Program**

26. The County currently has a flow and rainfall monitoring program in place. No later than twelve (12) months from the Date of Entry, the County shall re-evaluate and submit to EPA/EPD, for review and comment, its Flow and Rainfall Monitoring Program that the County will use to estimate the volume of I/I entering the various segments/Sewersheds in the County's WCTS, as an indicator of WCTS performance, to assess capacity availability in various sewer segments, and to prioritize sanitary sewers for rehabilitation, repair and/or replacement. The County shall use the flow and rainfall monitoring data to develop a dynamic hydraulic model, as set forth below. The Flow and Rainfall Monitoring Program shall be submitted to the EPA/EPD to ensure consistency with the following criteria:

- (a) Established criteria that the County uses to identify locations of permanent and temporary flow and rainfall monitoring equipment.

- (b) A map showing the locations of permanent and temporary flow monitoring and rainfall monitoring sites established in the County's WCTS.
- (c) A description of the computer-based data management system that the County uses to organize, analyze, and report flow and rainfall data collected from the County's WCTS.
- (d) A description of the quality assurance and quality control program the County follows to ensure the accuracy and reliability of flow and rainfall data collected from the County's WCTS.

27. EPA/EPD may subsequently conduct periodic audits of the Flow and Rainfall Monitoring Program implementation without prior notice to the County. EPA/EPD shall provide a written report to the County of the findings/results of any such audit.

**(vii). System-Wide Hydraulic Model**

28. The County is in the process of developing a computer-based dynamic hydraulic model (the "Model") for the County's WCTS utilizing modeling software such as InfoWorks CS that will provide a hydraulic modeling tool with a stable engine capable of processing the information needed to establish existing WCTS hydraulic conditions as well as information needed to plan for

future WCTS capacity needs. InfoWorks CS includes Infoworks WS for water modeling and InfoNet for asset management. No later than twelve (12) months from the Date of Entry, the County shall submit to EPA/EPD, for review and comment, the County's WCTS-Wide Hydraulic Modeling Program. The Program shall be submitted to EPA/EPD to ensure that the Model is consistent with the following criteria:

- (a) The Model is developed using a combination of GIS databases, record drawings, WCTS maps, flow data, and WCTS inspection records.
- (b) The Model is developed as separate models representing each Sewershed in the County's WCTS in accordance with specified development schedules for each Sewershed. The Model for all Sewersheds shall be integrated into one hydraulic Model for the entire WCTS by no later than six (6) years after the Date of Entry. The order in which the Sewershed-specific models will be developed will be based on a variety of criteria including, but not limited to, the availability of WCTS location data as determined through the Sewer Mapping Program; the relative potential of various Sewersheds improvements to advance the objectives of this Consent Decree as determined through the Priority Areas Sewer Assessment and Rehabilitation Program and the Ongoing Sewer Assessment and

Rehabilitation Program; the relative need to address the capacity of the WCTS within various Sewersheds as determined through the Flow and Rainfall Monitoring Program; information obtained through the County's ongoing WCTS management, operations and maintenance programs such as the Maintenance Management System; and sound engineering judgment.

(c) The Model is capable of predicting the volume of wastewater in Force Mains and the Major Gravity Sewer Lines, including predicting the peak flows during wet weather and dry weather conditions.

(d) The Model is capable of assisting in determining the likelihood and location of capacity-related SSOs from the County's WCTS.

(e) The Model is capable of predicting the hydraulic pressure (psig) and flow capacity of wastewater at any point in Force Mains throughout the County's WCTS.

(f) The Model is capable of predicting the flow capacity of each lift station (for Major Lift Stations, the County may elect to perform manual calculations in lieu of using the Model to evaluate lift station capacity), including predicting the peak flows during wet weather and dry weather conditions.

(g) The Model is capable of predicting the flow regime of those portions of the WCTS receiving flows from proposed developments. The Model will assist the County in assuring the availability of WCTS and WWTF capacity prior to permitting new development. Once the Model is fully developed for each Sewershed, the County shall authorize new sewer service connections or increases in flow from existing sewer service connections in that Sewershed only after certifying that the receiving portions of the WCTS have adequate collection and transmission capacity and the applicable WWTF has adequate treatment capacity to accept flows from such new sewer service connections and/or increases in flows from existing service connections. The Program shall set forth specific definitions and parameters for how the County will determine the adequacy of collection, transmission and treatment capacity. In developing estimates and projections for certifying adequate capacity, the County shall use flow meter data, the Model, and sound engineering judgment. All certifications of adequate collection, transmission and treatment capacity shall be made by a professional engineer registered in the State of Georgia and shall be approved by a responsible party of the County as defined by 40 C.F.R. § 122.22(b). The County shall maintain all such certifications and all data on which such certifications are based.

(h) The Model will include procedures and protocols for the performance of sensitivity analyses (i.e., how the Model responds to changes in input parameters and variables); for calibrating the Model to account for values representative of the County's WCTS using actual system data (e.g., flow data); and to verify the Model's performance using actual system data (e.g., flow data).

29. EPA/EPD may subsequently conduct periodic audits of the WCTS-Wide Hydraulic Modeling Program and Model implementation without prior notice to the County. EPA/EPD shall provide a written report to the County of the findings/results of any such audit.

**(viii). Financial Analysis Program**

30. The County currently has in place a Financial Analysis Program. No later than eight (8) months from the Date of Entry, the County shall re-evaluate and submit to EPA/EPD, for review and comment, its Financial Analysis Program to ensure that the Program establishes and tracks the sufficiency of funds for operations and maintenance, capital projects financing, and debt service coverage associated with the WCTS. The Financial Analysis Program shall be consistent with the following criteria:

(a) A program that regularly analyzes and projects future utility management, operations, and maintenance costs needed to effectively manage, operate, and maintain the WCTS. The cost analyses should include, at a minimum: capital infrastructure improvements; labor, equipment, and materials; financial impacts of outsourcing certain activities; and the financial impacts imposed by organizational departments or agencies outside the utility.

(b) A program that analyzes, projects, plans, and finances capital improvement needs established through engineering studies; WCTS condition assessments; historical WCTS management, operations, and maintenance cost data; and sound sewer infrastructure asset management programs. Capital improvement financing should be planned using a five (5) year planning horizon with annual updates.

(c) A program that establishes the annual utility budget and customer rates periodically. The program should assure that the budget and funding provided by customer rates will meet the cost and financing needs for the management, operation, and maintenance of the WCTS as identified pursuant to the procedures set forth in subparagraphs 30.(a) and (b) above.

(d) A program that directly tracks and reports operation and maintenance costs by the type of activity (corrective, preventative, and emergency) and capital improvement costs.

31. EPA/EPD may subsequently conduct periodic audits of the Financial Analysis Program implementation for compliance with this Consent Decree without prior notice to the County. EPA/EPD shall provide a written report to the County of the findings/results of any such audit.

**(ix). Infrastructure Acquisitions Program**

32. The County currently has in place a program to address prospective additions to the County's WCTS (the Infrastructure Acquisitions Program) focused on the evaluation of infrastructure prior to acquisition. No later than eight (8) months from the Date of Entry, the County shall re-evaluate and submit to EPA/EPD, for review and comment, its Infrastructure Acquisitions Program to ensure consistency with the following criteria:

(a) A program to ensure all prospective infrastructure acquisitions are inspected and evaluated for compliance with the County's standard design and construction criteria before being acquired by the County from a secondary party.

(b) Written standard procedures for conducting the evaluation of prospective infrastructure acquisitions against the County's standard design and construction criteria, and approving or denying the prospective acquisitions.

(c) Written standard procedures for estimating the cost/time requirements to bring prospective additions into compliance with the County's standard design and construction criteria.

(d) Specification of, and written standard procedures for performing, the physical tests the County shall require as part of its evaluations.

33. EPA/EPD may subsequently conduct periodic audits of Infrastructure Acquisitions Program implementation without prior notice to the County. EPA/EPD shall provide a written report to the County of the findings/results of any such audit.

**(x). Continuing Sewer Assessment and Rehabilitation Program.**

34. The County has provided to EPA/EPD information regarding its efforts to more effectively address SSOs especially after experiencing its highest recorded level of SSOs in 2006. Such information included the County's expansion and formalization since 2006 of its WCTS assessment and rehabilitation programs, including: sewer mapping; manhole condition assessment; flow and

rainfall monitoring; closed circuit television inspection; SSO response and mitigation; Spill data tracking and analysis; WCTS analysis (including age of pipes and other aspects of the WCTS); regulation and management of fats, oils, and grease; hydraulic modeling; infrastructure design and construction standards; training programs; WCTS maintenance data management systems; wastewater flow analysis; and infrastructure rehabilitation. Such information included that the County has to date mapped twenty (20) of its thirty (35) Sewersheds; assessed the condition of more than half of its manholes (and in the process found that more than 94% of the manholes had no structural defects and only a small number of the remaining 6% needed significant rehabilitation); rehabilitated manholes where appropriate; televised and cleaned two hundred-seventy (270) miles of sewer pipe (approximately 10% of the WCTS); formally evaluated Spill data and mapped Spills by cause for 2006 through 2009; gained a better understanding of wastewater flows (Base Wastewater Flow, Groundwater Infiltration, Rainfall Dependent I/I, etc.) through the WCTS, identifying areas that could benefit from reduction of Excessive I/I; and undertaken a number of rehabilitation projects.

Based on this information and completed assessments, the County has developed an initial list of “Priority Areas,” hereinafter referred to as the “Initial Priority

Areas,” within the WCTS for further assessment and rehabilitation. These Initial Priority Areas are identified in Appendix B, attached hereto and incorporated herein. The Initial Priority Areas consists of areas determined by the County as having sewers that are estimated to be older than fifty (50) years; areas with calculated “R” Values greater than three (3); and areas determined by the County, through its ongoing sewer system maintenance program, as needing additional assessment and/or prioritized rehabilitation. The Initial Priority Areas constitute approximately 463 miles of sewers (18% of the WCTS). The County has determined that during the time period of January 1, 2007 through December 31, 2009, the Initial Priority Areas experienced approximately 34% of all non-FOG related Spills for that period.

35. Priority Areas Sewer Assessment and Rehabilitation Program (“PASARP”). No later than one (1) year from the Date of Entry, the County shall submit to EPA/EPD, for review and comment, a Priority Areas Sewer Assessment and Rehabilitation Program (“PASARP”). The PASARP shall:

(a) Include the list and map of the Initial Priority Areas within the WCTS identified in Appendix B and provide schedules for completing any

remaining sewer assessments in these areas and for identifying, prioritizing, and completing rehabilitation projects within these Priority Areas.

(b) Identify Additional Priority Areas within the WCTS for further assessment and rehabilitation.

(c) Provide explanation of how the County identified, delineated, and prioritized the Additional Priority Areas within the County's WCTS based on the criteria in subparagraph 35.(d) below.

(d) The County shall identify, delineate, and prioritize Additional Priority Areas within the County's WCTS based on the following criteria:

- (1) Relative age of WCTS infrastructure;
- (2) Estimated rainfall dependent I/I ("RDI/I") into the system;
- (3) Proactive and reactive maintenance records data, including results from lift station inspections identified in subparagraph 22.(b);
- (4) SSOs records;
- (5) Known structural defects, including known manhole defects;
- (6) Relative risk that SSOs are likely to reach surface waters;

(7) Relative risk that SSOs are likely to present public health and welfare concerns based on proximity and access to population centers and water bodies;

(8) Information obtained from maintenance personnel knowledgeable of the conditions of the WCTS based on actual experience and historic investigations;

(9) Standard industry practices as documented in industry manuals, engineering textbooks, EPA publications (including EPA's Handbook: Sewer System Infrastructure Analysis and Rehabilitation, EPA/625/6-91/030, October 1991 and Water Environment Federation's Manual of Practice FD-6, Existing Sewer Evaluation & Rehabilitation, 1994 as revised) and lessons learned by the County and other sewer utilities; and

(10) Best professional judgment.

(e) Include specifications, guidelines and procedures for using the following evaluative assessment tools and programs (such procedures shall include Private Lateral investigations to identify sources of I/I within the Initial and Additional Priority Areas):

(1) Dyed Water Flooding. The Dyed Water Flooding component of the PASARP shall establish standard procedures for conducting dyed water testing, as appropriate, to locate sources of I/I within the Initial and Additional Priority Areas.

(2) Corrosion Defect Identification. The Corrosion Defect Identification component of the PASARP shall establish standard procedures for inspecting and identifying sewer infrastructure, as appropriate, within the Initial and Additional Priority Areas that is either corroded or at risk of corrosion. The Corrosion Defect Identification component shall include a system for prioritizing repair of corrosion defects, corrosion identification forms, and procedures for a corrosion defect analysis.

(3) Manhole Condition Assessment. The Manhole Condition Assessment component of the PASARP shall establish standard procedures for the condition assessment of manholes, as appropriate, within the Initial and Additional Priority Areas that have not already been assessed. The Manhole Condition Assessment component shall include manhole inspection forms and procedures for a manhole defect analysis.

(4) Flow Monitoring. In conjunction with the System-Wide Flow and Rainfall Monitoring Program set forth in Section VI.B.(vi). above, the Flow Monitoring component of the PASARP shall establish standard procedures for flow monitoring during dry and wet weather, as appropriate, to support engineering analyses related to capacity and peak flows within the Initial and Additional Priority Areas. Dry weather monitoring shall be carried out so as to allow the characterization of base flows and I/I rates within the Priority Areas. Wet weather monitoring shall be conducted periodically during rain events of sufficient duration and intensity that cause Excessive I/I. The Flow Monitoring component shall identify areas susceptible to I/I within the Initial and Additional Priority Areas. The Flow Monitoring Program shall establish a process for determining the number and locations of permanent and temporary flow meters; a program for sewer cleaning associated with flow monitoring; and a procedure for adequate rainfall measurement.

(5) Closed Circuit Television (“CCTV”) Inspection. The CCTV inspection component of the PASARP shall establish standard procedures for CCTV inspection, as appropriate, within the Initial and Additional Priority Areas to support sewer assessment and rehabilitation activities, and shall include

procedures for CCTV inspection and a process for the retention and retrieval of CCTV inspection data.

(6) Gravity Sewer Line and Force Main Defect Analysis. The Gravity Sewer Line and Force Main defect analysis component of the PASARP shall establish standard procedures for analysis of Gravity Sewer Line and Force Main defects, as appropriate, within the Initial and Additional Priority Areas. The Gravity Sewer Line and Force Main Defect Analysis component shall establish standard defect codes; defect identification procedures and guidelines; and a standardized process for cataloging Gravity Sewer Line and Force Main defects.

(7) Smoke Testing. The Smoke Testing component of the PASARP shall establish standard procedures for smoke testing, as appropriate, of the Gravity Sewer Lines within the Initial and Additional Priority Areas to identify sources of I/I, including cross connections and other unauthorized connections. Such procedures shall include Private Lateral investigations to identify sources of I/I. The Smoke Testing component shall include smoke testing forms and procedures for smoke testing defect analysis.

(f) Include the criteria the County will use to identify and prioritize rehabilitation measures it will undertake within the Initial and Additional Priority

Areas to address Excessive I/I and other conditions causing, or that are likely to cause, SSOs. Such criteria shall, at a minimum, include SSO frequencies, SSO volumes, cost effectiveness analysis, hydraulic modeling analysis, and relative potential impact to human health and the environment as determined based on the likelihood that potential future SSOs would impact proximate population centers (such as schools, parks) and water bodies.

(g) Include procedures for tracking and inventorying completed rehabilitation measures, including identification of the rehabilitation techniques used and the key performance indicators (“KPIs”) the County will use to measure the effectiveness of completed rehabilitation measures to reduce SSOs and address capacity limitations in the Initial and Additional Priority Areas.

(h) Identify currently scheduled rehabilitation measures within the Initial and Additional Priority Areas.

(i) Provide for the identification, delineation, assessment and rehabilitation of all Initial and Additional Priority Areas no later than eight and one-half (8 1/2) years from the Date of Entry. In addition to the County’s rights under Paragraph 46 and/or Section XI (Force Majeure), this deadline may be

extended with approval of EPA/EPD, for good cause, in accordance with Section XIX (Modification).

36. EPA/EPD may subsequently conduct periodic audits of the PASARP implementation without prior notice to the County. EPA/EPD shall provide a written report to the County of the findings/results of any such audit.

37. PASARP Report. No later than six (6) months after the County's complete implementation of the PASARP, the County shall submit a PASARP Report to EPA/EPD for review and comment. The PASARP Report shall set forth a summary of the results of the implementation of the PASARP, including a thorough analysis of historical and current flow and rainfall monitoring data, inspection data, all other assessment data collected during implementation of the PASARP, and a description of the specific rehabilitation measures implemented by the County pursuant to the PASARP.

38. Ongoing Sewer Assessment and Rehabilitation Program (“OSARP”). The County shall consolidate and formalize key aspects of its Ongoing Sewer Assessment and Rehabilitation Program (“OSARP”) that will ensure continuous assessment and rehabilitation of the County’s WCTS. No later than two (2) years from the Date of Entry, the County shall submit its OSARP to

EPA/EPD, for review and comment, to ensure consistency with the following criteria:

- (a) Procedures for proactively identifying, delineating and prioritizing areas or sewer segments within the WCTS for condition assessment, starting with areas outside the Initial and Additional Priority Areas and taking into consideration the nature and extent of customer complaints; flow and rainfall monitoring data; location, cause and volume of SSOs; any rehabilitation measures ongoing pursuant to the CERP, the FOG Management Program and/or the MMS Program (including results from lift station inspections identified in subparagraph 22.(b)); field crew work orders; any preliminary sewer assessments; and other relevant information.
- (b) Specifications and guidelines for using the evaluative WCTS condition assessment tools and programs as set forth in subparagraph 35.(e) above.
- (c) Procedures and specifications for establishing the types of rehabilitation techniques (cured-in-place liner, point repair, manhole rehabilitation, pipe and/or manhole replacement, etc.) the County will use, as appropriate, following WCTS condition assessment.
- (d) Procedures for identifying, prioritizing and implementing rehabilitation projects under the OSARP to address Excessive I/I and other

conditions causing, or that are likely to cause, SSOs taking into consideration, at a minimum, SSO frequencies, SSO volumes, cost effectiveness analysis, hydraulic modeling analyses, and relative potential impact to human health and the environment as determined based on the likelihood that potential future SSOs would impact proximate population centers (such as schools, parks) and water bodies.

(e) A process for inventorying all completed WCTS rehabilitation projects under the OSARP.

(f) Written procedures for coordinating rehabilitation work performed under the OSARP into the MMS Program.

(g) Procedures for tracking and inventorying completed rehabilitation measures, including identification of the rehabilitation techniques used and the key performance indicators (“KPIs”) the County will use to measure the effectiveness of completed rehabilitation measures to reduce SSOs and address capacity limitations in the WCTS.

39. EPA/EPD may subsequently conduct periodic audits of the OSARP implementation without prior notice to the County. EPA/EPD shall provide a written report to the County of the findings/results of any such audit.

## **VII. REVIEW OF SUBMISSIONS/CERTIFICATION OF SUBMISSIONS**

40. After review of any plan, report, or other item that is required to be submitted pursuant to this Consent Decree, EPA/EPD shall in writing: (a) approve the entire submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the entire submission. If EPA/EPD conditionally approve, approve only in part or disapprove entirely a submission pursuant to subparagraphs (b)-(d) above, EPA/EPD shall provide a written explanation of how the submission is inconsistent with the applicable criteria set forth in the relevant Sections of this Consent Decree.

41. If the submission is approved in its entirety, the County shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part, pursuant to subparagraph 40.(b) or (c), the County shall, upon written direction from EPA/EPD, take all actions required by the approved plan, report, or other item that EPA/EPD determines are technically severable from any disapproved portions,

subject to the County's right to invoke Dispute Resolution under Section XII of this Consent Decree (Dispute Resolution). Except as provided in Section IX (Reporting Requirements) following EPA/EPD approval of any submission or portion thereof, such submission or portion thereof so approved will be incorporated into and become enforceable under this Consent Decree and shall be implemented by the County according to any approved schedule.

42. If the submission is disapproved in whole or in part pursuant to subparagraph 40.(c) or (d) and the County does not exercise its right to invoke Dispute Resolution under Section XII (Dispute Resolution), the County shall, within sixty (60) Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the submission, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, the County shall proceed in accordance with the preceding Paragraph.

43. If a resubmission, or portion thereof, is disapproved in whole or in part, EPA/EPD may again require the County to correct any deficiencies, in accordance with the preceding Paragraphs, or EPA/EPD may correct any deficiencies, subject to the County's right to invoke Dispute Resolution. Upon

EPA/EPD's correction of any deficiencies, such resubmission, or portion thereof, will be incorporated into and become enforceable under this Consent Decree and shall be implemented by the County subject to the County's right to invoke Dispute Resolution.

44. The County shall place all final EPA/EPD approved plans, reports or other submissions required by Section VI (Remedial Actions for County's Wastewater Collection and Transmission System), Section VIII (Supplemental Environmental Project) and Section IX (Reporting Requirements) in the Public Document Repository.

45. In all notices, documents or reports submitted to the United States and State pursuant to this Consent Decree, the County shall, by a senior management official of the County, sign and certify such notices, documents and reports as follows:

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 such 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 pursuant to CWA Section 309(c)(4).

46. When a task or responsibility is given to “EPA/EPD” in this Consent Decree, the term means “EPA and EPD” unless EPA and EPD jointly elect (in their unreviewable discretion) to assign a particular task or responsibility to one of them. To make that election, EPA/EPD shall notify the County in writing of the task or responsibility that EPA or EPD is assigned. Nothing in this Paragraph shall prevent EPA or EPD from disputing a decision by the other. EPA/EPD agree to use best efforts to expeditiously review and comment on submissions. If EPA/EPD issue written comments and decisions on any submission more than sixty (60) Days after receipt of such submission, any subsequent deadline or milestone that is dependent upon such comments or decisions shall be extended. The length of the extension shall be determined by calculating the number of Days between EPA/EPD’s receipt of the submission and the date of EPA/EPD’s written response, less sixty (60) Days. Within thirty (30) Days of the date that the County knows or should know of a deadline or milestone that the County believes is extended under this paragraph, the County shall inform EPA and EPD, in writing, of its belief and the amount of time the County believes the deadlines or milestones are extended. If EPA/EPD disagree with the County’s

determination that a deadline is dependent upon such comments or decisions, EPA/EPD shall inform the County in writing. The County may invoke Dispute Resolution pursuant to Section XII (Dispute Resolution) regarding EPA/EPD's conclusion regarding whether a deadline is dependent upon such comments or decisions.

### **VIII. SUPPLEMENTAL ENVIRONMENTAL PROJECT**

47. The County shall satisfactorily implement and complete a Supplemental Environmental Project ("SEP") in accordance with all provisions of this Section VIII and Appendix C of this Consent Decree. The SEP shall be completed in accordance with the schedule set forth in Appendix C. The total expenditure for the SEP shall be not less than \$600,000.

48. The SEP shall involve Stream Cleanup Projects as more particularly described in Appendix C. The County may use contractors or consultants in planning and implementing the SEP.

49. With regard to the SEP, the County certifies the truth and accuracy of each of the following:

(a) That, as of the date of executing this Consent Decree, the County is not required to perform or develop the SEP by any federal, state, or local law or

regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum.

(b) That the SEP is not a project that the County was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Decree.

(c) That the County has not received and will not receive credit for the SEP in any other enforcement action.

(d) That the County will not receive any reimbursement for any portion of the SEP from any other person.

50. SEP Completion Report. Within sixty (60) Days after the date set for completion of the SEP, the County shall submit a SEP Completion Report to EPA/EPD, for review and comment. The SEP Completion Report shall contain the following information:

- (a) A detailed description of the SEP as implemented.
- (b) A description of any problems encountered in completing the SEP and the solutions thereto.
- (c) An itemized list of all eligible SEP costs expended.

(d) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Decree.

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

51. EPA may, in its sole discretion, require information in addition to that described in the preceding Paragraph, in order to evaluate the County's completion report.

52. After receiving the SEP Completion Report, EPA/EPD shall notify the County whether the County has satisfactorily completed the SEP. If the County has not completed the SEP in accordance with this Consent Decree, stipulated penalties may be assessed under Section X of this Consent Decree.

53. Disputes concerning the satisfactory performance of the SEP and the amount of eligible SEP costs may be resolved under Section XII of this Consent Decree (Dispute Resolution).

54. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 45.

55. Any written public statement made by the County that publicizes the SEP under this Consent Decree shall include the following language: “This project was undertaken in connection with the settlement of an enforcement action, United States et al. v. DeKalb County, Georgia, taken on behalf of the U.S. Environmental Protection Agency and the Georgia Environmental Protection Division under the Clean Water Act and the Georgia Water Quality Control Act.” Any oral statement made by the County publicizing the SEP under this Consent Decree in a public gathering shall acknowledge that the project was undertaken in connection with settlement of the CWA case. “Publicize” means the dissemination of information intended to attract public notice, interest or notoriety. If the County fails to comply with the requirements of this Paragraph, the County shall issue a correction in the same or as similar medium as possible to the original statement.

## **IX. REPORTING REQUIREMENTS**

56. Quarterly SSO Reports. Beginning thirty (30) Days after the first full three (3) month period following the Date of Entry, and thirty (30) Days after each subsequent three (3) month period thereafter until termination of the Consent Decree, the County shall submit a Quarterly SSO Report to EPA/EPD for review and comment to ensure consistency with reporting requirements of this

Paragraph. Each Quarterly SSO Report shall include the date, location, source, time reported, time stopped, estimated volume, receiving water (if any), cause, and actions taken to repair or otherwise resolve the cause of all SSOs occurring in the applicable three (3) month period in a tabulated electronic format.

57. Semi-Annual Reports. Beginning thirty (30) Days after the first full six (6) month period following the Date of Entry, and thirty (30) Days after each subsequent six (6) month period until termination of the Consent Decree, the County shall submit a Semi-Annual Report to EPA/EPD for review and comment to ensure consistency with reporting requirements of this Paragraph. Two (2) years from the Date of Entry of this Consent Decree and each subsequent year until termination, the Parties agree to consider whether to discontinue the Semi-Annual Reports. If the Parties agree to discontinue the Semi-Annual Reports, then the information required in subparagraphs 57.(a) and (b) shall be included in each Annual Report submitted pursuant to Paragraph 58 and shall cover the applicable twelve (12) month periods rather than six (6) months. Each Semi-Annual Report shall include, at a minimum:

- (a) A summary description of projects and significant activities completed and deadlines achieved during the previous applicable six (6) month

period pursuant to the requirements of this Consent Decree, in Gantt chart or similar format, including a summary of any missed deadline required by this Consent Decree and, if applicable, the reasons for missing such deadline. If any missed deadline cannot be fully explained at the time the report is due, the County shall include a statement to that effect in the report. The County shall investigate to determine the cause of the missed deadline and then shall submit an amendment to the report, including a full explanation of the cause of the missed deadline, within thirty (30) Days after submission of the Semi-Annual Report.

(b) A summary of projects and significant activities anticipated to be performed, and deadlines anticipated to be achieved, in the successive applicable six (6) month period to comply with the requirements of this Consent Decree, in Gantt chart or similar format. The Parties agree that schedules, dates, or deadlines reported pursuant to this subparagraph 57.(b) are not intended to be and shall not become enforceable obligations under this Consent Decree, unless any such schedule, date or deadline is otherwise specifically enforceable pursuant to this Consent Decree.

58. Annual Reports. Beginning sixty (60) Days after the first full twelve (12) month period following the Date of Entry, and sixty (60) Days after

each subsequent twelve (12) month period until termination of this Consent Decree, the County shall submit an Annual Report to EPA/EPD for review and comment to ensure consistency with reporting requirements of this Paragraph.

Each Annual Report shall cover the most recent applicable twelve (12) month period and shall include, at a minimum:

- (a) A narrative summary of progress made, including key accomplishments and significant activities, under the CMOM Programs implemented or modified pursuant to this Consent Decree for the most recent twelve (12) month period.
- (b) A trends analysis of the number, volume, average duration, and cause of the County's SSOs for the previous twenty-four (24) month period.

59. All reports shall be submitted to the persons designated in Section XVI of this Consent Decree (Notices) for EPA and EPD and shall be certified pursuant to Paragraph 45 of this Consent Decree.

60. Compliance with this Section does not relieve the County of any other reporting obligations required by the Clean Water Act, the GWQCA, or implementing regulations, or by any other Federal, State, or local law, regulation, permit, or other requirement, including the NPDES Permits.

61. Notification to EPA or EPD pursuant to this Section shall not by itself or otherwise satisfy the notification requirements set forth in Section XI (Force Majeure).

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

## **X. STIPULATED PENALTIES**

63. The County shall be liable for stipulated penalties to the United States and the State for violations of this Consent Decree as specified below, unless excused under Section XI (Force Majeure). A violation includes failing to perform an obligation required by the terms of this Consent Decree consistent with the applicable criteria set forth in the relevant Sections of this Consent Decree and within the specified time schedules established by or approved under this Consent Decree.

64. If the County fails to pay the civil penalty required to be paid to the United States or the State under Section V of this Consent Decree (Civil Penalty) when due, the County shall pay a stipulated penalty of \$1,000 per day for each day that the payment is late.

65. The following stipulated penalties shall accrue for each violation identified below:

(a) For each failure to timely submit any of the submissions required in Section VI (Remedial Actions for the County's Wastewater Collection and Transmission System) or Appendix C of this Consent Decree, a stipulated penalty for each day the County remains out of compliance for failure to timely submit any such submissions may be assessed as follows:

<u>Period Beyond Submittal Date</u>	<u>Penalty Per Violation Per Day</u>
1-30 days	\$500
more than 30 days	\$1,000

(b) For each day the County fails to timely complete the implementation of the PASARP in accordance with the deadline set forth in Paragraph 35.(i) of Section VI this Consent Decree, a stipulated penalty may be assessed as follows:

<u>Period Beyond Completion Date</u>	<u>Penalty Per Day</u>
1 - 30 days	\$1,000
31 - 60 days	\$1,500

61 - 120 days	\$2,000
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more than 120 days	\$3,000
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(c) For each Spill of 10,000 gallons or less, a stipulated penalty of \$500 may be assessed.

(d) For each Spill of more than 10,000 gallons, a stipulated penalty may be assessed as follows:

<u>If Spill Occurs</u>	<u>Penalty Per Spill</u>
Within 2 years of Date of Entry	\$500
Between 2 years and 5 years from Date of Entry	\$1,000
More than 5 years from Date of Entry	\$2,000

(d) For each failure to timely submit a Quarterly SSO Report, a Semi-Annual Report, an Annual Report, or the SEP Completion Report as required in Sections VIII and IX of this Consent Decree, a stipulated penalty for each day the County remains out of compliance for failure to timely submit any of the above reports may be assessed as follows:

<u>Period Beyond Submittal Date</u>	<u>Penalty Per Violation Per Day</u>
1-30 days	\$500

more than 30 days	\$1,000
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(e) After receiving the SEP Completion Report, in the event EPA/EPD notifies the County that the County has failed to satisfactorily complete the SEP in accordance with the terms of this Consent Decree as described in Section VIII and Appendix C (including the allowable expenditures for the SEP), a stipulated penalty of \$375,000 may be assessed if the County does not cure the deficiencies identified in EPA/EPD's notice within ninety (90) Days after receiving such notice. Notwithstanding the foregoing, if EPA/EPD determines that the County has made good faith efforts to satisfactorily complete the SEP and has certified, with supporting documentation, that at least ninety (90) percent of the required amount of money has been spent on the SEP, the County shall not be liable for any stipulated penalty.

66. Stipulated penalties under this Section shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree. Notwithstanding the foregoing, in the event that the County seeks judicial review of a dispute in

accordance with Paragraph 82 of this Consent Decree, the accrual of stipulated penalties for the violation(s) in question shall be stayed if the Court has not rendered a decision on the dispute within ninety (90) Days after the Court has received the County's motion requesting judicial resolution of the dispute, the United States/State's response, and any County reply; provided, however, if the Court finds that the United States/State has prevailed in the dispute in whole or in part and the County appeals the Court's decision, stipulated penalties shall again accrue for those violations with respect to which the United States/State has prevailed.

67. The County shall pay any stipulated penalty within thirty (30) Days of receiving the written demand. The United States, or the State, or both, may seek stipulated penalties under this Section by sending a joint written demand to the County, or by either sovereign sending a written demand to the County, with a copy simultaneously sent to the other Plaintiff. The other Plaintiff has twenty (20) Days from receiving the demand to elect to join in on the demand. Either sovereign may waive stipulated penalties or reduce the amount of stipulated penalties it demands, in the unreviewable exercise of its discretion and in accordance with this Paragraph. Where both sovereigns demand stipulated

penalties for the same violation of this Consent Decree, the County shall pay fifty (50) percent to the United States and fifty (50) percent to the State. Where only one sovereign demands stipulated penalties for a violation, and the other sovereign does not join in the demand within twenty (20) Days of receiving the demand, the County shall pay the full stipulated penalties due for the violation to the sovereign making the demand. Where both sovereigns demand stipulated penalties for a violation, but only one sovereign subsequently elects to waive or reduce stipulated penalties for that violation, the County shall pay the full stipulated penalties due for the violation to the sovereign making the full demand less any amount paid to the other sovereign.

68. Stipulated penalties shall continue to accrue as provided in Paragraph 66 during any Dispute Resolution, but need not be paid until the following:

(a) If the dispute is resolved by agreement or by a decision of EPA or EPD that is not appealed to the Court pursuant to Paragraph 82 of this Consent Decree, the County shall pay accrued penalties determined to be owing, together with interest, to the United States and/or the State within thirty (30) Days of the effective date of the agreement or within thirty (30) Days of when the United

States/State's Statement of Position becomes binding as set forth in Paragraph 81 of this Consent Decree.

(b) If the dispute is appealed to the Court pursuant to Paragraph 82 of this Consent Decree and the United States and/or the State prevails in whole or in part, the County shall pay all accrued penalties determined by the Court to be owing, together with interest, within sixty (60) Days of receiving the Court's decision or order, except as provided in subparagraph 68.(c) below.

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

69. The County shall pay stipulated penalties owing to the United States and the State in the manner set forth in Paragraphs 9 and 10, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

70. If the County fails to pay stipulated penalties according to the terms of this Consent Decree, the County shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United

States or the State from seeking any remedy otherwise provided by law for the County's failure to pay any stipulated penalties.

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

## **XI. FORCE MAJEURE**

72. "Force majeure," for purposes of this Consent Decree, is defined as any event beyond the control of the County, or any County contractor or similar entity controlled by the County, which delays or prevents the performance of any obligation under this Consent Decree despite the County's best efforts to fulfill the obligation. The requirement that the County exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate reasonably foreseeable force majeure events and best efforts to address the effects of any such

force majeure event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include the County's financial inability to perform any obligation under this Consent Decree.

73. Where any compliance obligation under this Consent Decree requires the County to obtain a Federal, State, or local permit or approval, the County should submit timely and complete applications and take all other actions required by law to obtain all such permits or approvals. The County may seek relief under the provisions of this Section XI of this Consent Decree (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation to the extent that the County has submitted timely and complete applications and has taken all other actions required by law to obtain all such permits or approvals.

74. If a force majeure event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, the County shall provide notice orally or by electronic or facsimile transmission to EPA/EPD, within 72 hours of when the County first knew that the event would cause a delay.

Within fourteen (14) Days thereafter (subject to amendment when or if additional information becomes available), the County shall provide in writing to EPA and EPD an explanation and description of the reasons for the delay; the anticipated duration of the delay; all significant actions taken or planned to be taken to prevent or minimize the delay; an estimated schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; and the County's rationale for attributing such delay to a force majeure event if it intends to assert such a claim. The County shall include with any notice available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above notice requirements may preclude the County from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. The County shall be deemed to know of any circumstance of which the County, or any County contractor or similar entity controlled by the County, knew or should have known.

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

extended by EPA/EPD for such time as is necessary to complete those obligations.

An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA/EPD will notify the County in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

76. If EPA /EPD does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA/EPD will notify the County in writing of its decision.

77. If the County elects to invoke Dispute Resolution pursuant to Section XII (Dispute Resolution), it shall do so no later than thirty (30) Days after receipt of EPA/EPD's written decision. In any such proceeding, the County 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 in accordance with Paragraph 72 above, and that the County complied with the requirements of Paragraph 74 above. If the County carries this burden, the delay at issue shall be deemed not to be a

violation by the County of the affected obligation of this Consent Decree identified to EPA/EPD and the Court.

## **XII. DISPUTE RESOLUTION**

78. Unless otherwise expressly provided for in this Consent Decree, the Dispute Resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree.

79. 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 County sends the United States and the State 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. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States and the State shall be considered binding unless, within forty-five (45) Days after the conclusion of the informal negotiation period, the County invokes formal Dispute Resolution procedures as set forth below.

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

81. The United States and the State shall serve their Statement of Position within sixty (60) Days of receipt of the County's Statement of Position. The 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 the State. If within five (5) Days of receiving the United States/State's Statement of Position, the County requests to confer, the United States and the State agree to confer (in person and/or by telephone) with the County, but such a conference shall be concluded no later than twenty-one (21) Days after the issuance of the United States/State's Statement of Position. Within fourteen (14) Days after the conclusion of the conference, the United States and the State will either reaffirm their Statement of Position or issue an amended Statement of Position. If the United States and the State fail to either

reaffirm or amend their Statement of Position within this fourteen (14) Day period, their Statement of Position shall be deemed reaffirmed. The United States/State's Statement of Position shall be binding on the County, unless the County files a motion for judicial review of the dispute in accordance with the following Paragraph.

82. The County may seek judicial review of the dispute by filing with the Court and serving on the United States and the State, in accordance with Section XVI of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. If the County did not request to confer with the United States and the State pursuant to preceding Paragraph, the County's motion must be filed within thirty (30) Days of receipt of the United States/State's Statement of Position pursuant to the preceding Paragraph. If the County requested to confer with the United States and the State pursuant to the preceding Paragraph, the County's motion must be filed within thirty (30) Days after the expiration of the fourteen (14) Day period following the conference during which the United States and State either reaffirms or amends their Statement of Position. The motion shall contain a written statement of the County'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.

83. The United States and State shall respond to the County's motion within the time period allowed by the Local Rules of this Court. The County may file a reply memorandum, to the extent permitted by the Local Rules.

84. Except as otherwise provided in this Consent Decree, in any dispute brought before this Court that was invoked under Paragraph 80, the County shall bear the burden of proof, and each Party reserves the right to argue what the appropriate standard of proof and standard of review should be under applicable principles of law.

85. The invocation of Dispute Resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of the County 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 68. If the County does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section X (Stipulated Penalties).

### **XIII. INFORMATION COLLECTION AND RETENTION**

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

- (a) Monitor the progress of activities required under this Consent Decree.
- (b) Verify any data or information submitted to the United States or the State in accordance with the terms of this Consent Decree.
- (c) Obtain samples and, upon request, splits of any samples taken by the County or its representatives, contractors, or consultants.
- (d) Obtain documentary evidence, including photographs and similar data (except to the extent such documentary evidence is privileged under the attorney-client privilege or any other privilege recognized by federal law, provided, however, no documents required to be created or generated by this Consent Decree shall be withheld on grounds of privilege).
- (e) Assess the County's compliance with this Consent Decree.

87. Upon request by EPA/EPD, the County shall provide EPA/EPD, or their authorized representatives, splits of any samples taken by the County. Upon request by the County, EPA and EPD shall provide the County splits of any samples taken by EPA or EPD.

88. Until three (3) years after the termination of this Consent Decree, the County shall retain (and shall instruct its contractors and agents to preserve and/or provide to the County for retention) all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to the County's performance of its obligations under this Consent Decree. Drafts of final documents or plans, and non-substantive correspondence and emails do not need to be retained. 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 County shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

89. At least ninety (90) Days prior to the conclusion of the information-retention period provided in the preceding Paragraph, the County shall notify the United States and the State of the upcoming conclusion of the information-retention period. Upon request by the United States or the State within ninety (90) Days after receiving the County's notice, the County shall deliver any documents, records, or other information to EPA or EPD. However, the County may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If the County asserts such a privilege, it shall provide the following:

(a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by the County. However, no documents, records, or other information required to be created or generated by this Consent Decree shall be withheld on grounds of privilege.

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

91. 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 County to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

#### **XIV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

92. 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.

93. The United States and the State reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 92. This Consent Decree shall not be construed to limit the rights of the United States or the State to obtain penalties or injunctive relief under the CWA or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph

92. The United States and the State further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the County's WCTS and/or WWTFs, whether related to the violations addressed in this Consent Decree or otherwise.

94. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, civil penalties, other appropriate relief relating to the County's WCTS and/or WWTFs or the County's alleged violations, the County 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 92 of this Section.

95. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The County is responsible for achieving and maintaining compliance with all applicable federal,

state, and local laws, regulations, and permits; and the County'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 County's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CWA, 33 U.S.C. § 1251 *et seq.*, or with any other provisions of federal, state, or local laws, regulations, or permits.

96. This Consent Decree does not limit or affect the rights of the County or of the United States or the State against any third parties, not a party to this Consent Decree, nor does it limit the rights of third parties, not a party to this Consent Decree, against the County, except as otherwise provided by law.

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

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

## **XV. COSTS**

99. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and the State shall be entitled to collect the costs (including attorneys' fees) incurred in any collection action necessary to collect any portion of the civil penalty due but not timely paid, or any stipulated penalties due but not timely paid by the County as required pursuant to Paragraph 67 where County does not invoke Dispute Resolution pursuant to Section XII, or as required pursuant to Paragraph 68 where County does invoke Dispute Resolution pursuant to Section XII.

## **XVI. NOTICES**

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

### **To the United States:**

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Box 7611 Ben Franklin Station  
Washington, D.C. 20044-7611  
Re: DOJ No. 90-5-1-1-09497

and

Chief, Clean Water Protection Branch  
Water Protection Division  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303

To EPA:

Chief, Clean Water Protection Branch  
Water Protection Division  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303

To the State:

Department of Law  
State of Georgia  
40 Capitol Square, S. W.  
Atlanta, Georgia 30334

and

Georgia Environmental Protection Division  
Permitting, Compliance and Enforcement Program  
4220 International Parkway, Suite 101  
Atlanta, Georgia 30354

To EPD:

Georgia Environmental Protection Division  
Permitting, Compliance and Enforcement Program

4220 International Parkway, Suite 101  
Atlanta, Georgia 30354

To the County:

Chief Executive Officer  
DeKalb County Government  
330 W. Ponce de Leon, 6th Floor  
Decatur, Georgia 30030

Director, DeKalb County Department of Watershed Management  
1580 Roadhaven Drive  
Stone Mountain, Georgia 30083

Troutman Sanders LLP  
Attn: E. Fitzgerald Veira  
600 Peachtree Street, N.E., Suite 5200  
Atlanta, Georgia 30308

County Attorney  
Dekalb County Law Department  
1300 Commerce Drive  
Decatur, Georgia 30030

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

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

**XVII. EFFECTIVE DATE**

103. 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.

### **XVIII. RETENTION OF JURISDICTION**

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

### **XIX. MODIFICATION**

105. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where a modification constitutes a material change to this Consent Decree, it shall be effective only upon approval by the Court. Non-material changes to this Consent Decree (including appendices) may be made by written agreement of the Parties without court approval, and the Parties may by mutual agreement determine whether a modification is non-material.

106. Any disputes concerning modification of this Consent Decree shall be resolved pursuant to Section XII of this Consent Decree (Dispute

Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 84, 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).

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

## **XX. TERMINATION**

108. This Consent Decree may be terminated when the County has satisfactorily completed performance of its compliance and SEP obligations required by Section VI and VIII of this Consent Decree, provided that the County has fulfilled all other material obligations of this Consent Decree, including payment of the civil penalty under Section V of this Consent Decree and any outstanding stipulated penalties under Section X. The County may serve upon the United States and the State a Request for Termination, certifying that the County has satisfied those requirements, together with all necessary supporting documentation.

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

110. If the United States and the State do not agree that this Consent Decree may be terminated, the County may invoke Dispute Resolution under Section XII of this Consent Decree. However, the County shall not seek formal Dispute Resolution, under Paragraph 80 of Section XII, of any dispute regarding termination until ninety (90) Days after service of its Request for Termination or the date of the United States/State's response to the County's Request for Termination, whichever comes sooner.

## **XXI. PUBLIC PARTICIPATION**

111. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its

consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. The County consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Consent Decree, unless the United States has notified the County in writing that it no longer supports entry of the Consent Decree.

## **XXII. SIGNATORIES/SERVICE**

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

113. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. The County agrees to accept service of process by certified 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.

### **XXIII. INTEGRATION**

114. This Consent Decree constitutes the final, complete, and exclusive agreement 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. Other than deliverables that are subsequently submitted and approved 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.

### **XXIV. FINAL JUDGMENT**

115. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, the State, and the County. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Federal Rules of Civil Procedure 54 and 58.

## **XXV. APPENDICES**

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

“Appendix A” is a map of County’s Sewersheds;  
“Appendix B” is a map of the Initial Priority Areas; and  
“Appendix C” is a description of the Supplemental Environmental  
Project.

Dated and entered this \_\_ day of \_\_\_\_\_, 20\_\_.

---

UNITED STATES DISTRICT JUDGE  
Northern District of Georgia

WE HEREBY CONSENT to the entry of this Consent Decree, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

**FOR PLAINTIFF UNITED STATES OF AMERICA:**

---

IGNACIA S. MORENO  
Assistant Attorney General  
U.S. Department of Justice  
Environment and Natural Resources  
Division

---

VALERIE K. MANN  
District of Columbia Bar Number 440744  
Trial Attorney  
U.S. Department of Justice  
Environment and Natural Resources  
Division  
Environmental Enforcement Section  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044-7611  
Telephone: 202-616-8756  
Facsimile: 202-514-2583  
Email:

WE HEREBY CONSENT to the entry of this Consent Decree, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

**FOR PLAINTIFF UNITED STATES OF AMERICA (Continued):**

Respectfully submitted,

SALLY QUILLIAN YATES  
UNITED STATES ATTORNEY

---

DANIEL A. CALDWELL  
ASSISTANT U.S. ATTORNEY  
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600 Richard B. Russell Bldg.  
75 Spring Street SW  
Atlanta, GA 30303  
Telephone: 404-581-6224  
Facsimi  
E-mail:

WE HEREBY CONSENT to the entry of this Consent Decree, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

**FOR PLAINTIFF UNITED STATES OF AMERICA (Continued):**

---

MARY J. WILKES  
Regional Counsel  
United States Environmental Protection Agency  
Region 4

---

WILLIAM B. BUSH, JR.  
Georgia Bar Number 098880  
Associate Regional Counsel  
United States Environmental Protection Agency  
Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303  
Telephone: (404) 562-9538  
Facsim  
Email:

WE HEREBY CONSENT to the entry of this Consent Decree, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

**FOR PLAINTIFF UNITED STATES OF AMERICA (Continued):**

---

ADAM M. KUSHNER  
Office Director  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency

---

MARK POLLINS  
Division Director  
Water Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency

---

BENJAMIN BAHK  
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**FOR PLAINTIFF STATE OF GEORGIA:**

THURBERT E. BAKER  
Attorney General

ISAAC BYRD  
Deputy Attorney General

---

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Senior Assistant Attorney General

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**FOR DEFENDANT DEKALB COUNTY, GEORGIA:**

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THE HONORABLE W. BURRELL ELLIS, JR.  
Chief Executive Officer  
DeKalb County Government

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FRANCIS KUNG'U, PhD, P.E.  
Director  
DeKalb County Department of Watershed  
Management

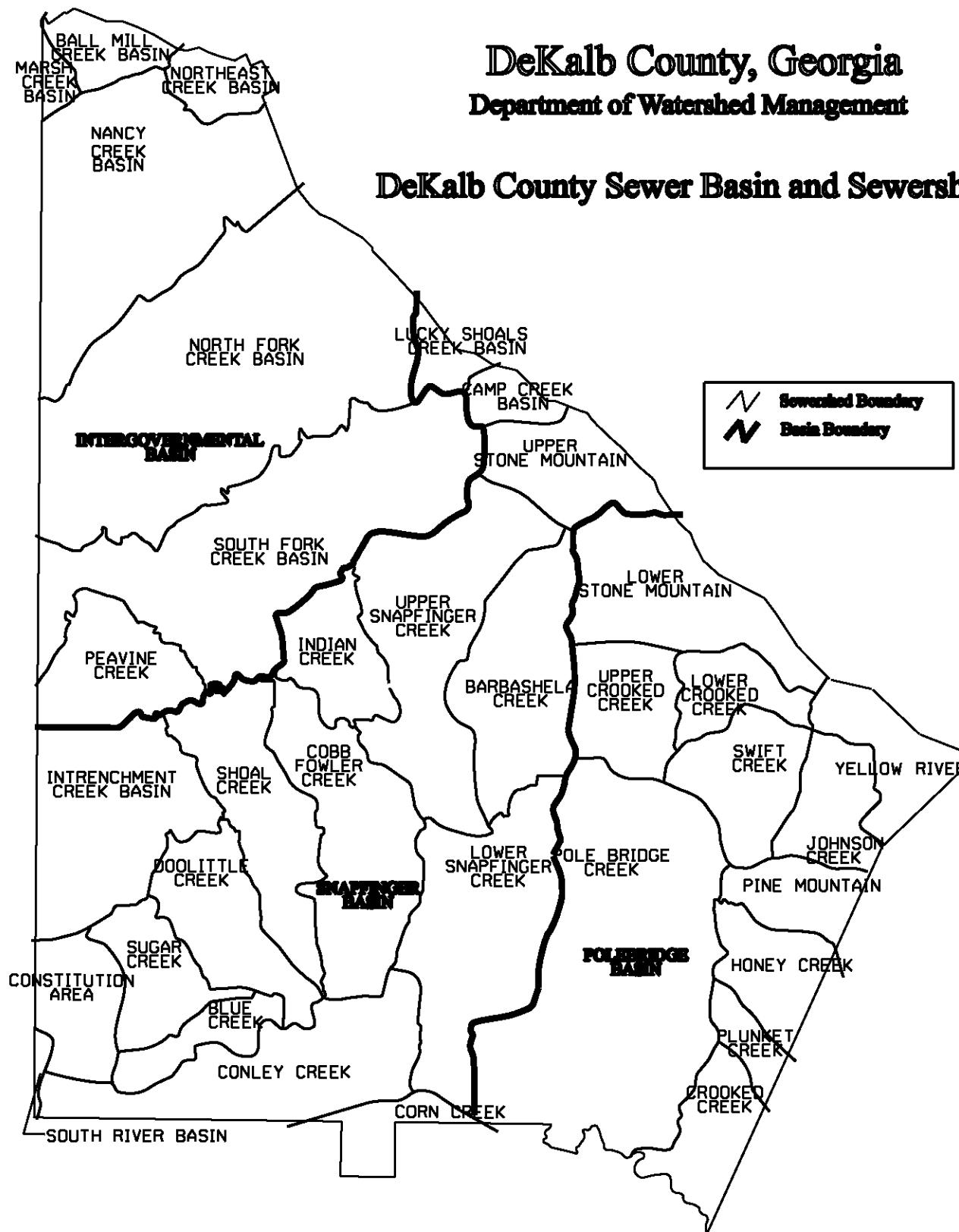
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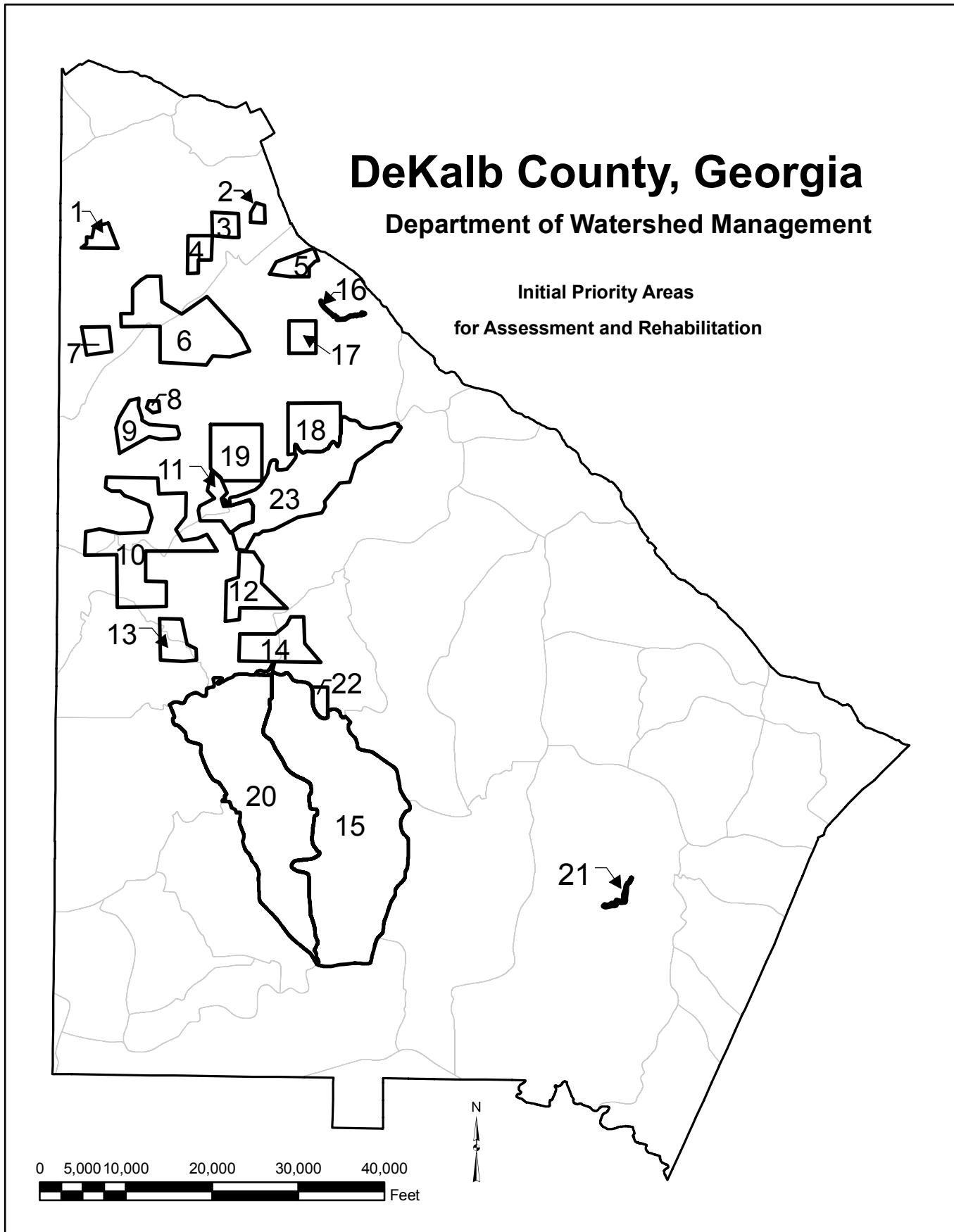
## Appendix A

### DeKalb County, Georgia Department of Watershed Management

#### DeKalb County Sewer Basin and Sewershed Boundaries



Appendix B



# Initial Priority Areas for Assessment and Rehabilitation

Area #	Area Description	Length of Sewer (ft)	Basins Affected
1	Ashford Dunwoody-Nancy Creek	16,399	Nancy Creek
2	Winters Chapel at Homeland Drive	7,387	Nancy Creek
3	Carver Circle	12,401	Nancy Creek
4	North Peachtree-North Shallowford	20,104	Nancy Creek
5	Oakcliff Road	23,232	Northfork Peachtree Creek
6	City of Chamblee	144,915	Northfork and Nancy Creek
7	Windsor Parkway	22,557	Nancy Creek
8	Skyland Road	3,712	Northfork Peachtree Creek
9	Drew Valley Road subdivisions	52,231	Northfork Peachtree Creek
10	Lavista Rd-Clairmont Rd-Houston Mill Rd	176,260	Peavine, Southfork, and Northfork Creek
11	Lavista-Oak Grove area	39,197	Northfork and Southfork Creek
12	North DeKalb Mall area	57,669	Southfork Peachtree Creek
13	Scott Blvd-Clairmont Road	37,969	Southfork and Peavine Creek
14	Old Rockbridge Road-Avondale	66,595	Southfork and Indian Creek
15	Cobb Fowler Basin	733,145	Cobb Fowler Basin
16	Embry Circle Pipe Bursting	6,713	Northfork Peachtree Creek
17	Embry Circle Relining	15,916	Northfork Peachtree Creek
18	Henderson Mill Road	83,783	Northfork and Southfork Creek
19	Briarcliff Road	90,215	Northfork Peachtree Creek
20	Shoal Creek Basin	608,920	Shoal Creek
21	Lithonia Industrial Parkway	22,773	Polebridge Creek
22	Covington Hwy at Kensington Rd.	12,203	Indian Creek
23	Area contributing to TSFORK 5	188,775	Southfork Peachtree Creek
	Total Length of Sewer	2,443.071 ft (462.7 miles)	

## **APPENDIX C**

### **Supplemental Environmental Project**

The County agrees to implement a Supplemental Environmental Project (“SEP”) as part of this Consent Decree. The SEP shall involve Stream Cleanup Projects along the following Designated Streams affected by Spills: the South River, South Fork Peachtree Creek, and Snapfinger Creek. The purpose of the Stream Cleanup Projects is to provide one-time cleanup of trash and debris as described in the County’s Stream Cleanup Plan, from the banks of the Designated Stream segments and their stream beds to improve the overall quality and sustainability of the Designated Streams by enhancing the condition of the ecosystem affected by Spills and to provide for a public involvement component.

#### **1. General Obligations**

a. The County agrees to conduct one-time cleanup of selected segments along the Designated Streams and their stream beds. Within twelve (12) months of the Date of Entry, the County shall submit to EPA/EPD, for review and comment, a Stream Cleanup Plan. The Stream Cleanup Plan shall include the following: map(s) and descriptions of stream segments to be cleaned up including lengths and GIS coordinates; the criteria used to select the stream segments (such criteria

should include, but not be limited to, the relative amounts of trash/debris compared to other areas, visibility, accessibility, proximity to low income or minority communities, ecological value, potential to advance public awareness, etc.); method used to involve affected communities during the selection of stream segments, with an emphasis on low income or minority communities adjacent to the Designated Streams; schedule for cleanup; data to be collected during cleanup activities; and the County's proposed approach for informing the general public regarding cleanup activities. The proposal to inform the public about the Stream Cleanup Projects shall contain descriptions of how the Stream Cleanup Program will be publicized (e.g. in printed form, web site, radio and television), what portion of the public will be targeted for participation in the Stream Cleanup Program (with special emphasis on communities adjacent to the streams), and how public awareness will be raised.

b. The County shall retain personnel, secure necessary federal, state and local permits, and begin to perform one-time cleanup of the selected stream segments along the Designated Stream segments and stream beds on or before twelve (12) months after EPA/EPD approval of the Stream Cleanup Plan.

c. For purposes of this Consent Decree, the Stream Cleanup Projects shall consist of removing debris such as trash, household appliances, tires, and shopping carts, where appropriate, from banks of the Designated Streams and their stream beds. The County shall dispose of and/or recycle all removed debris consistent with applicable federal, state and local requirements.

d. The County shall certify to EPA/EPD the completion of the cleanup of each Designated Stream segment and its stream bed within sixty (60) days of completion.

## **2. Funding Obligations and Completion Date**

a. The County shall at a minimum fund the Stream Cleanup Projects in the amount of \$600,000.00. The County may utilize its own employees and equipment to perform the Stream Cleanup Projects with proper credits given against the total funding obligation for work performed by the County's own employees or the County's equipment, provided, however, that the clean up activity work is not something that otherwise would have been performed by the County's employees. Any such credit for work performed by the County's own employees and equipment must be supported by time and expense records which are subject to review by EPA/EPD. In addition, expenses associated with the

public involvement component of the Projects shall not be eligible for credit against the total SEP funding obligation.

b. The County shall satisfactorily complete the Stream Cleanup Projects no later than twenty-four (24) months after EPA/EPA approval of the Stream Cleanup Plan.