

**COMMENTS ON PROPOSED MODIFIED CONSENT DECREE IN
UNITED STATES AND THE STATE OF MARYLAND V. MAYOR AND CITY COUNCIL OF
BALTIMORE (CASE 1:02-CV-01524-JFM)
-- BUILDING BACKUPS**

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APPENDIX A



Enforcement Alert

Volume 8, Number 1

Office of Civil Enforcement

September 2006

EPA Enforcement: Preventing Backup of Municipal Sewage into Basements

Backups and Other Sewage Overflows: What Are They and Why Do They Occur?

Overflows from aging municipal sewer systems expose citizens to bacteria, viruses and other microorganisms that can cause serious illness. Raw or partially treated sewage may flow out of manholes onto streets, sidewalks and yards; it can also back up through pipes into businesses and homes. Tackling this environmental and human health risk is a top EPA enforcement priority.

There are two types of sewer systems. Either of them may overflow onto your property. *Sanitary sewer systems* transport sewage and industrial wastewater to sewage treatment plants. *Combined sewer systems* transport storm water in addition to sewage and industrial wastewater. Both sanitary sewer overflows and combined sewer overflows can be routine in some municipal systems, reflecting chronic problems.

Sewer systems can deteriorate with age, resulting in pipe or equipment failures, blockages and breaks in sewer mains. Pipes or water treatment plant capacity may be overwhelmed in severe weather or where there is inadequate planning for population growth. Overflows may also result from poor sewer system maintenance practices.

Nationwide, EPA is protecting public health through settlements that require municipalities to stop sewage overflows, overhaul their sewage systems and clean up contamination.

“Building backup” overflows can occur in either type of sewer system. Although the overflows usually emerge through toilets and drains in basements in private residences, they can happen in any type of facility, including businesses, schools, restaurants, nursing homes, retail stores and

other buildings. Yards may also be contaminated by backups.

Sewage backups can be a regular occurrence in some communities, causing a range of problems for residents. One municipal sewer authority received hundreds of reports of sewer overflows and backups each year. Residents described repeated incidents of backups of black, thick, smelly water, containing cigarette butts, toilet paper and human waste through basement toilets, shower drains, floor drains and laundry sinks. In many homes, the water rose to more than 12 inches and destroyed furniture, wallboard, carpets, antiques, electronic equipment and

(Continued on Page 2)



Sewage overflows often occur in public areas where citizens may come into contact with raw sewage. (Source: docupic.com)

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many other valuables. Cleanups were expensive and often required the removal of floors, wallboard and carpeting, as well as disinfection to remove mold, mildew and bacteria present in the saturated portions of the buildings.

Poor operation and maintenance of the sewer system in another city caused repeated incidents of basement and building backups of raw sewage over a ten-year period. Raw sewage typically entered the affected homes through overflowing toilets and floor drains in shower stalls, in some cases filling basements with dead rats, toilet paper and human waste.

When backups are the result of conditions in the municipal sewer system, the municipality is responsible for cleaning up and preventing future backups. However, if sewage backs up as a result of problems in the pipeline extending from a private residence or other building to the municipal system, it is usually the property owner, not the municipality, who is responsible for cleaning up and fixing the problem that caused the backup. The municipality can help determine the cause of a basement backup. If a homeowner suspects that a backup may be the result of conditions in the sewer system, the homeowner should contact the municipality to investigate the backup.

In addition to creating a health threat, sewage backups can have significant financial consequences from property destruction and interference with business operations. Many homeowner and renter insurance policies do not cover sewage backups. Special coverage may be needed, typically as a rider to a basic property owner or renter policy.



Sewage backing up into a toilet in a house.
(Source: U.S. EPA photo)

Health Effects of Sewage Backups

Sewage backups into homes and neighborhoods are of special concern to EPA due to the increased chance of human exposure. Raw sewage often contains a variety of microorganisms, viruses, bacteria and intestinal parasites that can cause serious illnesses, including cholera, dysentery, hepatitis, cryptosporidiosis and giardiasis. Sensitive populations -- children, the elderly and those with weakened immune systems -- can be at a higher risk of illness from exposure to sewage.

The most common effects of sewage-related illness are gastroenteritis, which is an infection of the gastrointestinal tract, skin rashes and infection of open cuts. Gastroenteritis affects the gastrointestinal tract, including the stomach and small and large intestines. Symptoms typically include abdominal cramps, watery diarrhea and vomiting, which can last from one to ten days, depending on the severity of the illness. Infected cuts and rashes can become swollen and red, with localized pain at the site of the rash or cut. Although symptoms can be treated, no curative medical treatment is available for some

sewage-related illnesses.

Exposure to disease may persist for months after a sewage backup affects a building. Walls, floors and furniture can remain saturated, creating an environment for non-sewage-related organisms to grow, including *Clostridium tetani* (tetanus). Toxic fungi and molds can also thrive in moist environments. In many cases, removal of damaged material such as rugs, furniture and drywall is the only viable option, and in some cases, a building may become uninhabitable.

EPA's Enforcement Strategy to Address Sewage Overflows

Preventing sewer overflows is a national enforcement priority for EPA. As shown by recent settlements, EPA seeks comprehensive solutions to reduce the risks of exposure to raw sewage. The Agency has required municipalities to report sewer overflows to authorities and the public and to take action to avoid future occurrences. It has also required municipalities to clean up buildings contaminated by sewage backups.

Recent Settlements Addressing Sewage Backups

Washington (D.C.) Suburban Sanitary Commission

EPA, the State of Maryland, and five citizen groups took action to address sewer overflows and backups in Montgomery County and Prince George's County. The result was a settlement agreement with the Washington Suburban Sanitary Commission (WSSC) entered in federal court

(Continued on Page 3)



Resident walking through sewer overflow on a neighborhood street. Risks posed by exposure may not be obvious. (Source: U.S. EPA photo)

in December 2005. Under the settlement, WSSC has agreed to implement substantial corrective activities to ensure the proper management, operation and maintenance of its sewer system. WSSC will undertake activities valued at over \$300 million to eliminate sanitary sewer overflows, including any sewage backups onto public or private property and into homes. The actions under this settlement will reduce raw sewage discharges from the WSSC system by more than 26 million gallons per year and eliminate basement backups caused by inadequate capacity or poor operation and maintenance.

WSSC will also implement emergency response and cleanup programs to address all overflows, including sewage backups. WSSC's "Emergency Response Plan" will contain methods for reporting backups, timeframes for responses, measures that will be taken to clean up backups and to repair conditions causing backups, and a follow-up process to ensure the adequacy of cleanups.

Knoxville (Tenn.) Utilities Board

The sewer system operated by the Knoxville Utilities Board (KUB) was the subject of an action brought by

EPA, the State of Tennessee, and the Tennessee Clean Water Network (a local citizens group). The parties reached a settlement in February 2005 with KUB that requires KUB to ensure the proper management, operation and maintenance of its sewer system. The settlement is expected to eliminate approximately 3.5 million gallons of sewage overflows annually. KUB has agreed to undertake measures costing about \$530 million to carry out the settlement. KUB will report its sewer overflows (including building backups) to EPA, the State of Tennessee and the City of Knoxville, and provide public notice of such overflows at the Knoxville library and on the KUB website.



Washing machine floating in backup from municipal sewers. (Source: Sierra Club)

The KUB settlement incorporated significant human health protections. KUB will take specific measures -- such as increasing sewer capacity, improving operation and maintenance, and installing backflow prevention devices -- to prevent the release of sewage into buildings, yards, and other areas where people may come into contact with it. When releases do occur, KUB will clean up thoroughly and disinfect the affected property. Cleanup of sewage backups will include activities such as wet vacuuming, wiping floors and walls with cleaning solution and disinfectant, flushing out and disinfecting plumbing fixtures, carpet cleaning or replacement, and disinfection or removal of items potentially contaminated by a backup.

Hamilton County, Ohio

In a 2004 settlement with EPA, Hamilton County, Ohio, agreed to undertake comprehensive action, estimated to cost at least \$1.5 billion, on a court-enforceable schedule. The required activities include construction of major capital improvements that will control sanitary sewer overflows and eliminate over 6 billion gallons of raw sewage annually from the county's separate sanitary and combined systems. The county will install backflow-prevention devices and pumping systems and, in some cases, purchase contaminated property.

EPA guaranteed additional human health protections in the settlement by fashioning a "Water in Basement" (WIB) program specifically to address sewage backups. Under the WIB program, Hamilton County will staff a call-center 24 hours a day, seven days a week, to respond to sewage backup claims and to clean up the immediate effects of backups. The program also establishes proce-

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dures for residents to file a claim with Hamilton County for damage to real and personal property caused by sewage backups. To date, Hamilton County has received over 1,000 claims filed under the WIB program.

For more information, contact Kevin Bell, Office of Civil Enforcement, Water Enforcement Division, at (202) 564-4027; Email: bell.kevin@epa.gov.

Enforcement Alert

Enforcement Alert is published periodically by EPA's Office of Enforcement and Compliance Assurance, Office of Civil Enforcement, to inform the public and regulated community about environmental enforcement issues, trends and significant enforcement actions.

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Sewage Backups: What to Do

- If you observe an area that you suspect is affected by a sewage backup, avoid coming into contact with the area. Keep family members and pets away from it.
- If it is necessary to approach an area contaminated by sewage, first turn off the electricity. Wear protective clothing such as rubber boots and gloves when entering the affected area. Be alert for hazards such as broken gas lines, flooded electrical circuits, and submerged furnaces or electrical appliances.
- Take pictures inside your basement and other areas affected by a sewage backup for damage and insurance claims.
- Many cities have a 24-hour sewer maintenance or customer hotline to report water in basements and backups from drains and plumbing fixtures located below ground.
- Other contacts in case of a sewage backup include your state environmental authority and the U.S. EPA Regional office for your state.
- EPA maintains a webpage where citizens may report environmental violations, including sewage overflows: <http://www.epa.gov/compliance/complaints/index.html>



United States
Environmental Protection Agency
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Disclaimer: This document attempts to clarify in plain language some EPA provisions. Nothing in this Enforcement Alert revises or replaces any regulatory provision in the cited part, any other part of the Code of Federal Regulations, the Federal Register, or the Clean Water Act, as amended. For more information go to: www.epa.gov/compliance



Report a Violation!

Protecting the environment is everyone's responsibility. Help EPA fight pollution by reporting potential environmental violations.

www.epa.gov/compliance

APPENDIX B

From: [Sylvia Lam](#)
To: ben.grumbles@maryland.gov; Garvin.shawn@Epa.gov
Cc: Steven.johnson1@maryland.gov; Price-Fay.michelle@Epa.gov; Howell.joyce@Epa.gov
Subject: Letter regarding Baltimore City's Sewage Overflow Consent Decree and Proposed Modification
Date: Monday, November 23, 2015 10:06:23 AM
Attachments: [2015.11.20 FINAL Letter to EPA and MDE.pdf](#)
[2015.11.20 FINAL Attachments to EPA and MDE Letter.pdf](#)

Dear Regional Administrator Garvin and Secretary Grumbles,

Please find attached a letter from the Environmental Integrity Project on behalf of Baltimore City's Grove Park Improvement Association, West Arlington Improvement Association, and Glen Community Improvement Association urging the United States Environmental Protection Agency (EPA) and Maryland Department of the Environment (MDE) not to extend the final deadline for Baltimore City's Sanitary Sewer Overflow Consent Decree beyond January 1, 2020.

This letter addresses the damage, suffering, and health risks that the City's lack of progress is inflicting on predominantly underrepresented households in the Grove Park, West Arlington, and Glen communities as a result of continued and unremediated sewage overflows into residences. In addition, the City has discharged over 336 million gallons of raw sewage mixed with stormwater over the last five years into the Inner Harbor, creating health risks for both Baltimore residents and tourists who recreationally use its waters.

Thank you for your time and consideration.

Best,

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November 20, 2015

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Re: Baltimore City's Sewage Overflow Consent Decree and Proposed Modification

Dear Regional Administrator Garvin and Secretary Grumbles:

By January 1, 2016, the City of Baltimore is required to meet the terms of a consent decree entered into with the United States Environmental Protection Agency (EPA) and the Maryland Department of the Environment (MDE) to address the City's untreated sewage discharges from its sewage collection system (Consent Decree). We write on behalf of Baltimore's Grove Park, West Arlington, and Glen communities to urge EPA and MDE not to extend the final Consent Decree deadline beyond January 1, 2020.

This letter addresses the serious public health impact that the City's lack of progress is having on predominantly underrepresented households in the Grove Park, West Arlington, and Glen communities as a result of continued and unremediated raw sewage overflows into residences. In addition, the City has discharged over 336 million gallons of raw sewage mixed with stormwater over the past five years into the Inner Harbor, an attraction providing over \$2 billion in overall tourism and business economic activity to the City.¹ Most of these overflows have not been reported to the public, as required, or MDE's Reported Sewage Overflow Database. Thus, in addition to requesting a tight compliance deadline, we urge EPA and MDE to

¹ Waterfront Partnership of Baltimore, Baltimore's Inner Harbor: Economic Impact, Importance, and Opportunities for Investment (Oct. 31, 2013), <http://baltimorewaterfront.com/wp-content/uploads/2015/06/Economic-Impact-Study.pdf>.

take a stricter position regarding the City's public notification violations and require greater transparency.

Given that both EPA and MDE seek to promote environmental justice among all people (regardless of their race, color, national origin or income), we bring the concerns of these neighborhoods to the attention of both agencies. Many members of these communities are life-long residents of Baltimore and most belong to an underserved or underrepresented population group (see Attachment A for demographic information).

I. Baltimore's Failure to Meet its Consent Decree Deadlines Harms Residents' Health and Livelihoods and Contaminates Baltimore Waterways

Despite the passage of 13 years and the collection of millions of dollars from city ratepayers, the City is far from meeting its Consent Decree obligations. For example, Baltimore has completed only 31 of 55 deadline-driven Consent Decree projects (see Appendix B).² Moreover, although Baltimore is required to repair or replace 420 miles of sewer lines in order to "eliminate" sewage overflows pursuant to the Consent Decree, only 160 miles of pipes have been replaced or lined (39 percent).³ Meanwhile, the City's failing sewage collection system continues to discharge sewage onto private property and into Baltimore's waterways. MDE's Reported Sewer Overflow Database indicates that the City has reported over 2,000 sanitary sewer overflows (SSOs) resulting in an estimated 22.42 million gallons of raw sewage discharged from 2011 through September 30, 2015 (see Attachment C).⁴ However, widespread wet-weather SSOs likely discharged many more millions of gallons of sewage to local waterways during this period because the City often does not detect or investigate these events.⁵

² City of Baltimore, Department of Public Works, Sanitary Sewer Overflow Consent Decree – Calendar Quarterly Report No. 52 (hereinafter "Quarterly Report No. 52").

³ Email on Nov. 18, 2015, from Jeffrey Raymond, Chief of Communications for the Baltimore Department of Public Works; email on Nov. 16, 2015, from David Sternberg, spokesman for EPA Region III; personal communication on Nov. 13, 2015, with Dana Cooper, Chief of Legal and Regulatory Affairs at the Baltimore Department of Public Works.

⁴ Note: Data only available through September 30, 2015; Maryland Department of the Environment, Maryland Reported Sewer Overflow Database, <http://www.mde.state.md.us/programs/water/overflow/pages/reportedseweroverflow.aspx> (last accessed Nov. 17, 2015) (hereinafter "MD Sewage Overflow Database"); Quarterly Report No. 52, *supra* note 2.

⁵ Blue Water Baltimore, Fact Sheet: Baltimore City's Sewer System Consent Decree, http://www.bluewaterbaltimore.org/wp-content/uploads/BWB-Baltimore-City-Consent-Decree-Fact-Sheet-7-31-13_link.pdf (last accessed Nov. 17, 2015).

Baltimore Homeowners Continue to Be Plagued With Sewage Overflows

Chronic sewage overflows continue to damage many private homes and properties, resulting in property loss and unhealthy human exposure to raw sewage.⁶ Many of these sewage overflows continue to harm the Grove Park, West Arlington, and Glen neighborhoods of Baltimore. Meanwhile, the City's delays and outright failures in responding to claims of financial damage from these overflows are unreasonable.

Baltimore's Law Department has received 413 claims related to damages to private property from sewage overflows from July 1, 2012 to July 1, 2015 (Attachment D). Of these, only 38 claims have been paid by the City (9 percent). Meanwhile, Baltimore has denied 223 of the claims submitted (54 percent) while 152 claims remain open and unpaid (37 percent). In addition, 122 of these open claims are over one-year old.

The damage, suffering, and health risk caused by sewage overflows on the Grove Park, West Arlington, and Glen communities are devastating because residents are already underserved and underrepresented. Over 96 percent of Grove Park and West Arlington residents are African American.⁷ More than 20 percent of residents in both Grove Park and Glen are 65 years old or over.⁸ Additionally, the median household income in these neighborhoods is less than the median City-wide household income (\$39,386). For example, households in Grove Park and Glen make less than \$30,000 annually.⁹ Paying to eliminate the health risk through repair and replacement of property damaged by sewage overflows is more difficult for these communities than for the average Baltimore resident.¹⁰

Thirty four claims have been submitted by Grove Park residents between July 1, 2012 and July 1, 2015. All 34 claims are over a year old and none were addressed by the City during this time (see Attachment E for map of submitted Grove Park claims). This is unacceptable. For example, Charles and Doris Brightful, an elderly African American couple, submitted claims after sewage entered their home in April 2014 and September 2015, damaging both real and personal property (see Attachment F for Doris Brightful's affidavit and Attachment G for photos from September 2015 sewage overflow into the Brightfuls' basement). However, the City has yet to respond to their 2014 claim and recently denied their 2015 claim, forcing the Brightfuls to pay to repair their home and to replace necessary appliances and personal items.

⁶ Scott Tong, Baltimore sewers: time bombs buried under the streets, Marketplace NPR (Feb. 2, 2015), <http://marketplace.org/topics/sustainability/water-high-price-cheap/Baltimore-sewers-time-bombs-buried-under-streets>.

⁷ City of Baltimore Department of Planning, Baltimore's Neighborhood Profiles from 2000 to 2010, <http://baltplanning.maps.arcgis.com/apps/StorytellingSwipe/index.html?appid=5b7ca7af79064f97968951220a9e546> (last accessed Nov. 19, 2015).

⁸ *Id.*

⁹ *Id.* [note: the median household income for the West Arlington community is not available].

¹⁰ *Id.*

It is important to note that these claims represent only a portion of the overflow incidents experienced by residents. Many simply notify the City through the 311 citizen complaint hotline and are not provided information on how to submit claims while others do not notify at all.

Continuous Sewage Contamination Makes Baltimore's Waterways Unsafe to Use

Uncontrolled sewage overflows also present a very real and critical public health threat for recreational users of Baltimore's waterways, such as the Inner Harbor.¹¹ Baltimore's waterways are promoted and utilized for a wide-array of limited-contact recreational and educational activities, such as kayaking, boating, and student stream studies.¹² However, these waterways are severely contaminated by both wet- and dry-weather sewage overflows that result in fecal contamination at levels that routinely exceed the State's weakest standard for bodily contact (see Attachment H). Samples collected by the City's Department of Public Works (DPW) continue to indicate dangerous bacterial levels (*Enterococcus* and *E. coli*) throughout the City's waterways.

The Grove Park and West Arlington communities are located in the Gwynns Falls watershed and sewershed. Approximately 40 percent of the 63 water samples collected at Gwynns Falls Parkway and 56 percent of the 62 water samples collected at Powder Mills from 2008 through 2013, which are the two sampling stations nearest to these communities, had levels of *E. coli* above standards for infrequent contact recreation (576 MPN/100 mL). Meanwhile, the Inner Harbor is potentially exposed to even greater bacteria levels. Seventy five percent of the 111 water samples collected by the City from 2010 through 2014 at Jones Falls, near where it which empties into the Inner Harbor, had levels of enterococcus bacteria that exceeded concentrations considered healthy for infrequent body contact recreation such as kayaking and paddle boats (500 MPN/100 mL).¹³ Fifty-one percent of the samples taken were more than twice as high concentrations considered healthy. Because the City has failed to close two sewage outfalls (SSO Outfalls No. 67 and 72) that intentionally pipe raw sewage mixed with stormwater into the main tributary to Baltimore's Inner Harbor, fecal bacteria levels at the waterfront center remain at levels so high that they pose health threats to children and adults who boat and kayak on the Harbor.

¹¹ See e.g., Cynthia C. McOliver et al., Assessing the Risks of Exposure to *Cryptosporidium* from Recreational Water Activities in Baltimore, Maryland, *Am. Fish. Soc. Sym.* 67 (2008); Cynthia C. McOliver et al., Risks of Recreational Exposure to Waterborne Pathogens Among Persons with HIV/AIDS in Baltimore, Maryland, 99 *Am J Public Health* 6, 1116 (2009); Samuel Dorevitch et al., Health Risks of Limited-Contact Water Recreation, 120 *Environ Health Perspect.*, 2, 192 (2011).

¹² City of Baltimore Department of Recreation and Parks, Outdoor Recreation, <http://bcrp.baltimorecity.gov/Recreation/OutdoorRecreation.aspx> (last accessed Nov. 17, 2015).

¹³ Data from the Lombard Street sampling location of Jones Falls.

II. Baltimore is Failing to Adequately Notify the Public of Sewage Overflows, a Violation of Law Unrelated to Available Funding

In addition to the City's lack of progress in completing construction projects required by the Consent Decree (see Attachment B), the City often fails to provide public notice to Baltimore residents and the media about sewage overflows and spills. Under the Consent Decree, Baltimore was required to submit an Emergency Response Plan (ERP) to EPA and MDE that detailed the actions the City will undertake to "immediately provide notice to the public (through the local news media and other means) of the unpermitted discharge" of sewage.¹⁴ Although EPA and MDE approved the ERP in 2003, the City has repeatedly failed to follow the ERP's public notification requirements.

In addition to the Consent Decree, the City's failures to notify the public of sewage overflows violate State regulations. The table below lists public notification requirements that the City must adhere to according to both the Consent Decree and the Code of Maryland Regulations (COMAR) 26.08.10.08.08. These violations cannot be blamed on a lack of monetary resources because they require little to no cost.

Table 1: Baltimore's Legal Requirements to Notify the Public of Sewage Overflows

| COMAR 26.08.10.08.08 | |
|------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The City must: | <p>As soon as practicable, but no later than 24 hours after becoming aware of an overflow, report to the public:</p> <ul style="list-style-type: none">• All sewage overflows into waters used for boating, fishing or swimming• Any situation where the Department of Health and Mental Hygiene, local health department, or environmental health director has reason to believe is a public health risk• All sewage overflows that are 10,000 gallons or more |
| Sewage Overflow Emergency Response Plan | |
| The City must: | <ul style="list-style-type: none">• Issue press releases for sewage overflows that are 10,000 gallons or more occurring at City-owned wastewater treatment plants, pumping stations, and collection systems• Post Temporary SSO notification signs whenever there is a sewage spill within 100 feet of a public recreation area, within 50 feet of a waterway, or within 50 feet of a building and direct contact is likely |

The City Repeatedly Fails to Issue Press Releases for Sewage Overflows Discharging 10,000 Gallons or More

Both the ERP and State regulations direct the City to notify the public of large sewage overflows (of 10,000 gallons or greater). However, public records show that the City issued press

¹⁴ Consent Decree at 41, United States v. City of Baltimore, No. 02-1524 (4th Cir. Sept. 30, 2002).

releases to notify the public only 19 percent of the time for such large sewage overflows over the last five years.¹⁵ More specifically, the City has issued press releases for merely 3 percent (3 out of 104) of the reported large sewage overflows over the last five years from SSO Outfalls Nos. 67 and 72, which released approximately 336 million gallons of sewage mixed with rainwater into the Jones Falls and Inner Harbor, and for only 58 percent (26 out of 45) of the reported large sewage overflows throughout the rest of the City (see Attachment I for a listing of sewage overflow incidents from SSO Outfalls Nos. 67 and 72).

The City Fails to Warn the Public of Sewage Spills Into Recreational Waters

State regulations require the City to publicly report *all* sewage spills into waters used for boating, fishing or swimming, as soon as practicable, but no later than 24 hours after becoming aware of an overflow.¹⁶ Residents and tourists often kayak and paddleboat in the Inner Harbor, which frequently receives sewage overflows from Jones Falls. However, the City issued press releases for only approximately 2 percent (3 out of 113) of the sewage overflows reported from SSO Outfalls Nos. 67 and 72 over the last five years.

The City Fails to Adequately Post Public Health Advisory Warnings

The ERP also requires the City to post “Temporary Health Warning” advisories whenever there is a sewage spill within 50 feet of a waterway or within 100 feet of a public recreation area.¹⁷ Yet, the city rarely posts these required signs. Although Baltimore had a total of 2,765 sewage overflows of all sizes during the last five years, the City could provide evidence of posting these temporary warning signs only 13 times.¹⁸

The City Fails to Report Sewage Overflow Incidents and Amounts

The City often fails to provide any estimates of sewage amounts when it reports overflow incidents. The City did not provide the discharge volume for 60 percent (1,586 out of 2,649) of the reported sewage overflow incidents over the last five years.¹⁹ Even worse, the City’s ERP does not allow discharge volume to be reported if a City representative fails to come in time to

¹⁵ In response to a Maryland Public Information Act request for copies of all sewage overflow public notifications over the last five years, the Baltimore Department of Public Works emailed the Environmental Integrity Project on October 8, 2015 and November 18, 2015 the press releases that it issued. EIP then compared the dates and locations of these notifications to the MD Sewage Overflow Database.

¹⁶ COMAR 6.08.10.08.08

¹⁷ City of Baltimore Department of Public Works, Wastewater Collection System Emergency Response Plan (2014 Update).

¹⁸ This information is based on the records produced by the Baltimore Department of Public Works in response to a Maryland Public Information Act (PIA) request in addition to the MD Reported Sewage Overflow Database, *supra* note 1.

¹⁹ MD Sewage Overflow Database, *supra* note 4; According to the Emergency Response Plan, quantities of sewage overflow are only accounted for if an overflow is “active” as observed by the City first responder.

see an “active” sewage overflow.²⁰ This strongly suggests that Baltimore is vastly under-estimating the amount of sewage that it releases into the City’s waterways.²¹ For example, on September 29, 2015, the City experienced 2.73 inches of rainfall. However, the City entered “zero” gallons of overflow as the estimated quantity in its sewage overflow report, even though Baltimore residents witnessed large amounts of sewage and suffered severe damage to their homes on that date. (See Attachment F, Affidavit of Doris Brightful, who experienced damage to her basement and personal property due to the sewage overflow that day; see also Attachment G for photos from Doris Brightful’s basement after the sewage overflow).

The City’s failure to consistently notify Baltimore residents and the media is a violation of the Consent Decree and State regulations. Failure to adhere to these requirements is not driven by budget constraints and should not be tolerated. The City of Baltimore must be made to comply with all future public notification requirements.

III. Recommendations

The Consent Decree Deadline Should Not Be Extended Beyond January 1, 2020.

Despite spending \$700 million over the past 13 years, the City of Baltimore will fail to meet its final Consent Decree deadline of January 1, 2016. However, EPA and MDE should not reward the City for its lack of progress nor for its past and continuing violations to the Consent Decree or State law. Baltimore residents in Grove Park, West Arlington, and Glen as well as the rest of the City deserve to be free of property damage and health threats caused by these sewage overflows.

Given that the City projects that it will complete all the construction activities required under the Consent Decree by the end of 2019, we urge EPA and MDE to require completion of all Consent Decree requirements no later than January 1, 2020. An inability to meet its Consent Decree obligations by then will also prevent the City from attaining a goal set by the Waterfront Partnership of Baltimore for a “fishable and swimmable” Harbor by 2020.

Baltimore Ratepayers and Tax-payers Deserve Transparency from the City

The homeowners of Grove Park, West Arlington, and Glen continue to pay increasing rates without seeing direct benefits. In addition to urging EPA and MDE to require Baltimore to improve its public reporting of sewage overflows and properly respond to overflow incidents into residences, we also urge EPA and MDE to require more transparency regarding how the City spends the hundreds of millions of dollars paid for by the ratepayers and tax-payers. This information should be available and maintained online for Baltimore residents and others to see.

²⁰ City of Baltimore Department of Public Works, Wastewater Collection System Emergency Response Plan (2014 Update).

²¹ *Id.*

We would welcome the opportunity to meet with you to discuss our concerns and recommendations. In the meantime, thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary Greene". The signature is fluid and cursive, with the first name "Mary" and last name "Greene" clearly distinguishable.

Mary Greene
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Charles Griffin
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Maxine Webb
President,
Glen Neighborhood Improvement Association

Steve Ward
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| ATTACHMENT | Title/Description |
|-------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A | Neighborhood Demographic Profiles |
| B | Reported Status of Paragraph 8 and Paragraph 9 Construction Projects to be Completed by January 1, 2016 as per the January 1, 2016 Deadline of the Consent Decree |
| C | Map of Reported Sewage Overflows from 2011-2015 |
| D | Map of Open and Paid Claims of Financial Damage Related to Sewage Overflows |
| E | Map of Sewage Overflow Claims from Elderon Ave. in Grove Park |
| F | Affidavit of Doris Brightful Concerning the Sewage Overflow Incidents |
| G | Photos Of the Brightfuls and Their Basement From September 29, 2015 Sewage Overflow |
| H | Graphs of Fecal Contamination in Baltimore Waterways |
| I | Table of Reported Sewage Overflow Amounts from SSO Outfalls Nos. 67 and 72 |

ATTACHMENT A

Neighborhood Demographic Profiles for Grove Park, West Arlington, and Glen¹

| Community | Total Population | % Population Black | % Population 65+ | Median Household Income |
|-------------------|------------------|--------------------|------------------|-------------------------|
| City of Baltimore | 620,961 | 63.7 | 11.7 | \$39,386 |
| Grove Park | 1,934 | 96.1 | 20.0 | \$29,797 |
| West Arlington | 2,041 | 96.7 | 16.8 | \$36,280 |
| Glen | 7,876 | 58.7 | 21.4 | \$29,049 |

¹ Data for these tables were taken from Baltimore City Department of Planning, 2010 Census data, and the 2006-2010 American Community Surveys. The Baltimore City Department of Planning created neighborhood profiles to provide demographic, economic, social, and housing data for public use, *available at* <http://baltplanning.maps.arcgis.com/apps/StorytellingSwipe/index.html?appid=5b7ca7af79064f97968951220a9e5468>. The neighborhood profiles contains 2000 Census, 2010 Census, and the 2006-2010 American Community Survey 5-Year Estimates. The Planning department made a special request of the US Census Bureau to tabulate the 2006-2010 American Community Survey 5-Year Estimates data using Baltimore neighborhood boundaries.

ATTACHMENT B

Reported Status of Paragraph 8 and Paragraph 9 Construction Projects

1. Paragraph 8 Construction Projects

In terms of closing sewage outfall structures as required by Paragraph 8 of the Consent Decree, the City has completed 24 of the 26 projects. Notably, however, the City has left open sewage outfalls SSO Nos. 67 and 72 that continue to dump raw sewage into the Jones Falls, which flows directly into the Inner Harbor. These two outfalls were supposed to be eliminated, according to the Consent Decree, on June 30, 2007, for No. 67; and on June 30, 2006, for No. 72.

In the City's most recent quarterly report, to MDE and EPA, released on October 30, 2015, the City states that it is leaving these outfalls open because it has not yet completed a "hydraulic restriction project" at the Back River Wastewater Treatment Plant, which is a "major contributor to not being able to eliminate these SSOs."¹ The City has requested an extension to MDE and EPA to keep these outfalls open until June 29, 2019, but has not received approval from the federal or state agencies to do so.

2. Paragraph 9 Construction Projects

Paragraph 9 of the Consent Decree requires the City of Baltimore to develop and implement a Sewershed Study and Plan for each of the eight identified sewersheds (Jones Falls, Herring Run, Gwynn Falls, High Level, Low Level, Patapsco, Dundalk, and Outfall) by the January 1, 2016 deadline.² These plans require the City to, among other things, complete specific rehabilitation projects and/or corrective actions to address the deficiencies identified by the City during its evaluation of its sewersheds.³ Overall, the city reports that it has finished only 7 of 29 sewer line repair and replacement projects required by Paragraph 9 of the Consent Decree (approximately 24 percent).⁴ The City projects to finish only one additional project before the January 1, 2016 deadline.

The City projects that it will complete 13 of its required Paragraph 9 sewer line repair and replacement projects by 2016, three each in the years 2017 and 2018, and the remaining 2 projects by 2019.⁵

¹ City of Baltimore, Department of Public Works, Sanitary Sewer Overflow Consent Decree – Calendar Quarterly Report No. 52 (hereinafter "Quarterly Report No. 52").

² Consent Decree, *United States v. City of Baltimore*, No. 02-1524 (4th Cir. Sept. 30, 2002)..

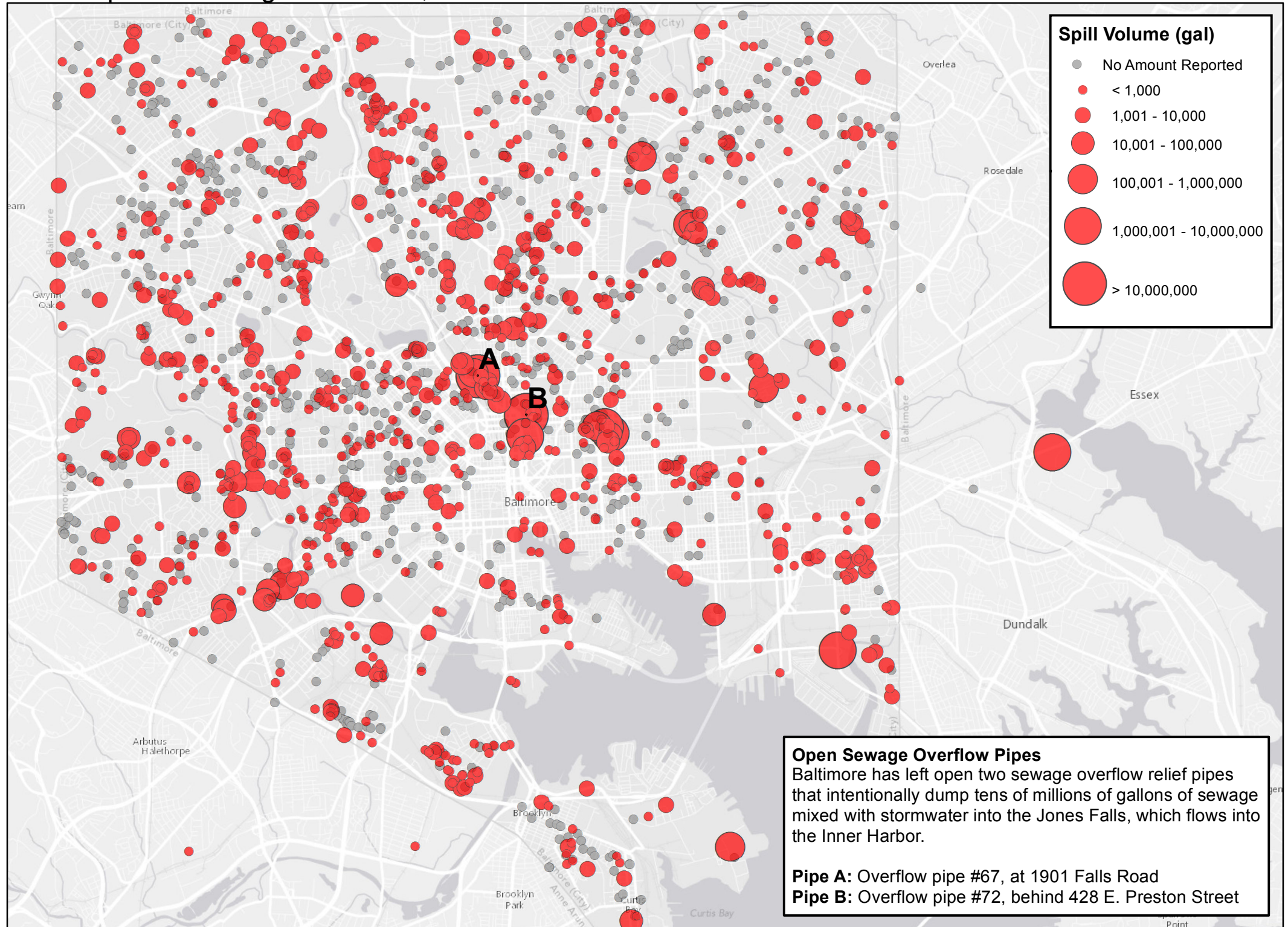
³ *Id.*

⁴ Quarterly Report No. 52

⁵ Quarterly Report No. 52, Appendix 2-2.

ATTACHMENT C

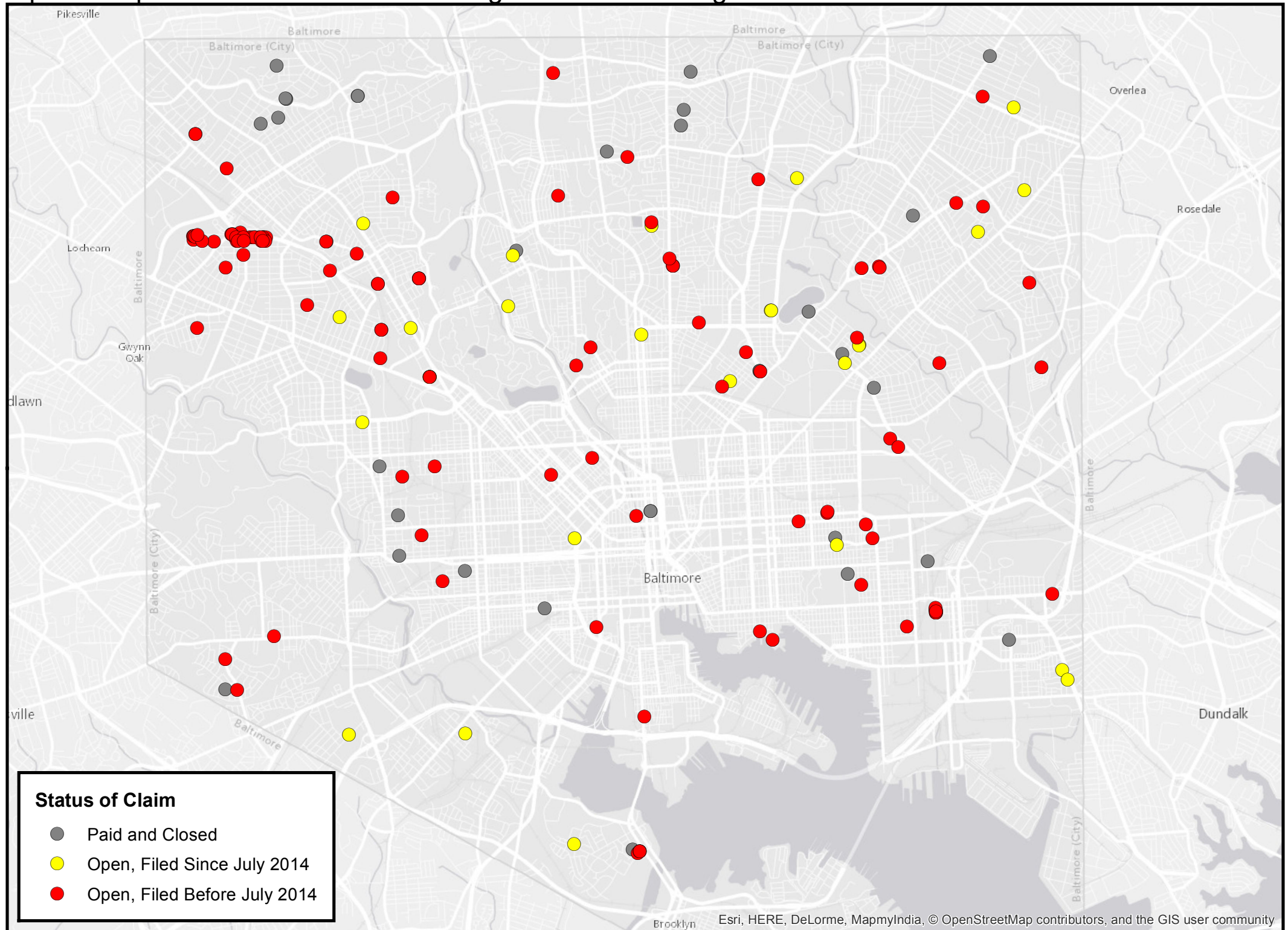
Total Reported Sewage Overflows, 2011-2015



Source: Baltimore Department of Public Works metered sewage overflow data and Maryland Department of Environment's public online sewage overflow database

ATTACHMENT D

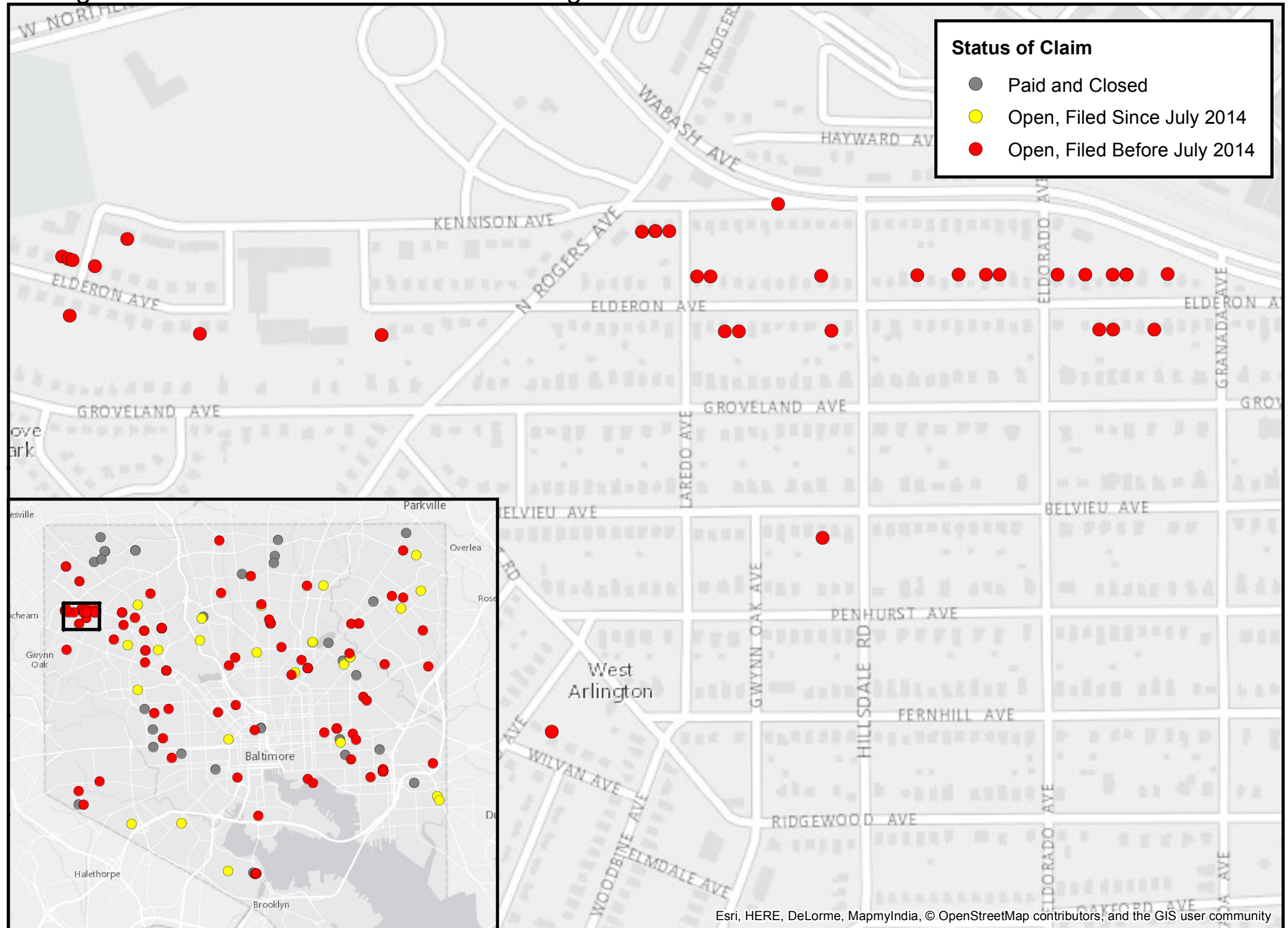
Open and paid claims of financial damage related to sewage overflows



Information current as of July 1, 2015 in response to a Public Information Act request submitted to the City's Law Department.

ATTACHMENT E

Sewage overflow claims in the Grove Park neighborhood of Baltimore



Esri, HERE, DeLorme, MapmyIndia, © OpenStreetMap contributors, and the GIS user community

Information current as of July 1, 2015 in response to a Public Information Act request submitted to the City's Law Department.

ATTACHMENT F

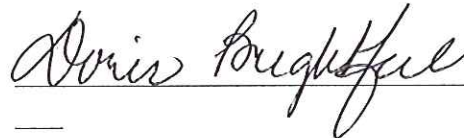
DECLARATION OF DORIS BRIGHTFUL

- My name is Doris Brightful. I reside at 5602 Elderon Avenue in Baltimore, Maryland, 21215.
- I am 79 years old and have lived in the City of Baltimore all my life.
- I have lived in my current home at 5602 Elderon Avenue with my husband, Charles Brightful, for approximately 51 years. My husband and I own the property at 5602 Elderon Avenue.
- I live in the Grove Park community in the City of Baltimore.
- My house has been directly affected by sewage overflows on at least three separate occasions, each occurring in the following years: 2011, 2014, and 2015. On each of these occasions, sewage has backed up out of the toilet in our bathroom and into our home, causing damage to our real property and personal property. For example, the sewage backflow has damaged our bathroom's vanity and doors. Our bathroom had two closets filled with clothes as well as Christmas decorations and keepsakes; these items were ruined because of the sewage. The sewage backflow has destroyed our home's carpeting and walls. The walls' wood paneling had to be replaced because of mold. The sewage backflow was so severe that our furnace, freezer, and water heater had to be completely replaced. Even though these items had a warranty, the warranty did not cover damage caused by sewage backflows, so we had to pay approximately \$5,000 up front before we could replace these items. We also had to replace furniture and a television damaged by the sewage as well as my husband's exercise bicycle that he uses for health reasons.
- On September 29, 2015, at approximately 11:20am, I called the City of Baltimore to report that sewage was overflowing into my home from my toilet. Staff from the Baltimore City Fire Department came to our home but did nothing. I called the City's Department of Public Works. Representatives from the Department of Public Works did not come until the next day, at around 9:00am on September 30th. The

representatives did not come into our house. There was an extreme odor throughout our home from the sewage. I saw that the sewage that entered our home contained long pieces of fecal material.

- I felt devastated after each of the times sewage backup has affected our home and continue to feel devastated and frustrated at the situation. My husband and I are now in the process of repairing our home; we just finished repairing our home in December 2014 from damage caused by the sewage backflow in April 2014.
- As a retired registered nurse, I am very concerned about germs and potential health issues from touching the sewage. I feel helpless and live in constant fear whenever I find out the weather forecast shows potential rain.
- In 2014 and 2015, I sent claims to the City of Baltimore for the damage caused to my property after each incident of sewage overflow affecting our home that year. I have not heard back from the City regarding the 2014 claim. The City rejected my September 2015 claim, alleging that my insurance covers the monetary cost of the damage to my home and belongings. The City did not take into account the deductible I had to pay my insurance company nor did the City provide any status updates to my 2014 claim.
- I have also made phone calls to the City and City Councilmen. As a lifelong resident of Baltimore and a current homeowner and taxpayer, I feel horrible about the City's lack of response.

I solemnly affirm under the penalties of perjury that the contents of the foregoing paper are true to the best of my knowledge, information, and belief.

A handwritten signature in cursive script, reading "Doris Brightful", written over a horizontal line.

Doris Brightful

Notary Verification

On November 19, 2015, the above-named individual, Doris Brightful, appeared before me and, after being duly cautioned and sworn, acknowledged before me that the information above is true and correct and that he affixes his true signature hereto.

In address La Forest Four-Mes Riley

BALTIMORE MD.

Notary Public

Expires 08-10-2018

ATTACHMENT G

Photos Of the Brightfuls and Their Basement From September 29, 2015 Sewage Overflow



Photos Of the Brightfuls and Their Basement From September 29, 2015 Sewage Overflow



Photos Of the Brightfuls and Their Basement From September 29, 2015 Sewage Overflow



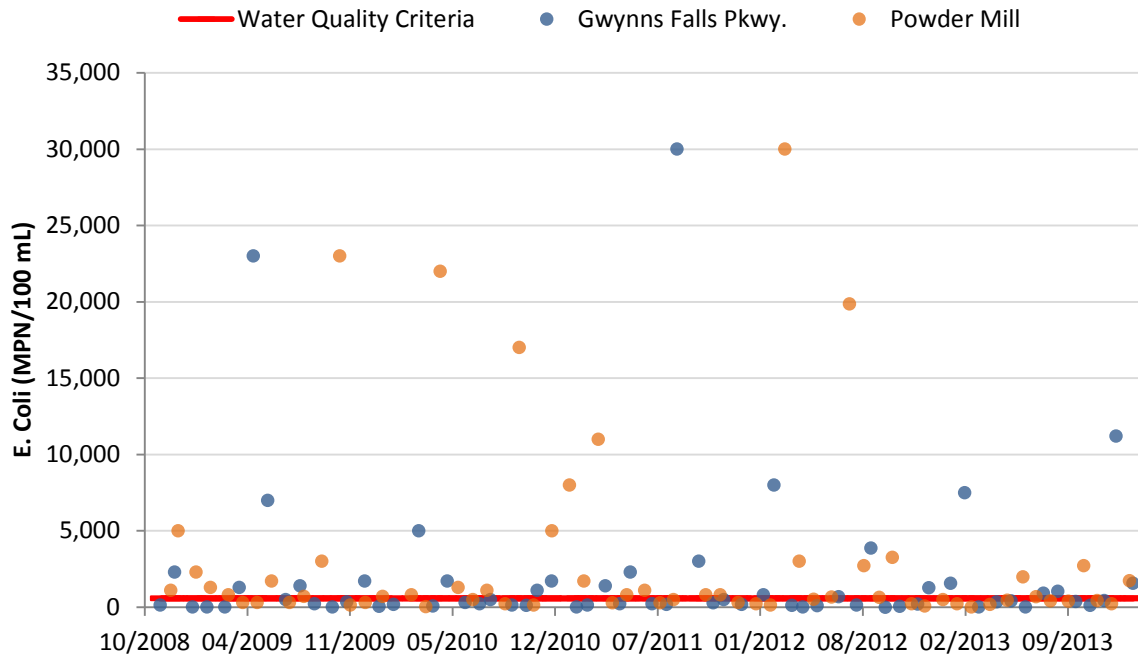
ATTACHMENT H

Graphs of Fecal Contamination in Baltimore Waterways

E. Coli Levels in Gwynns Falls Sewershed (Gwynns Falls Pkwy. & Powder Mill Sampling Locations)

November 2008-January 2014

Safety Threshold Value = 576 MPN/100 mL

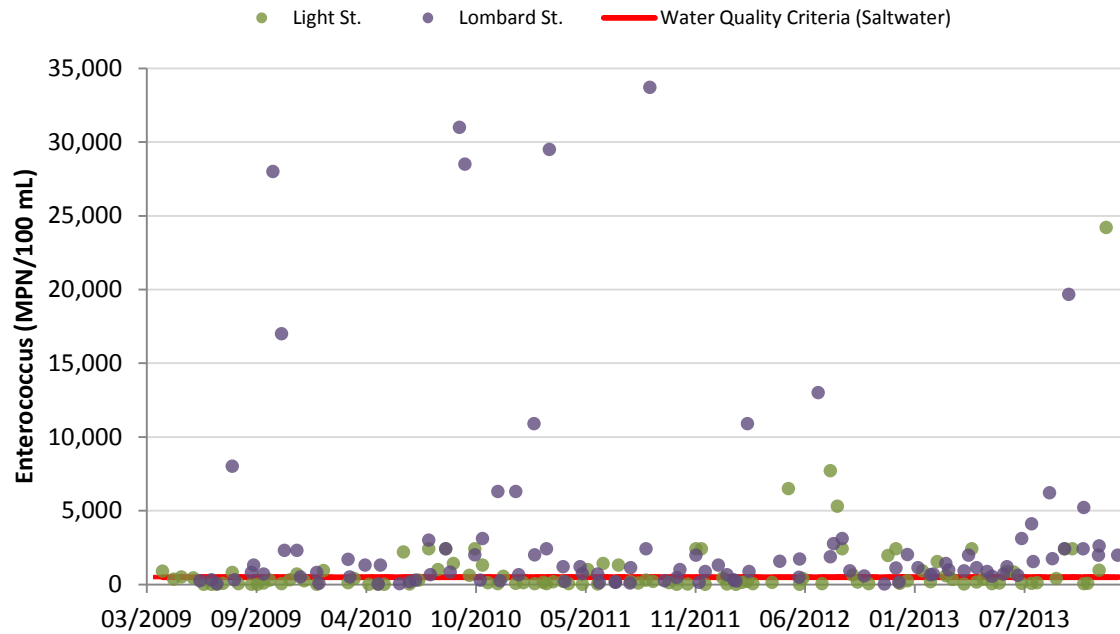


This graph excludes a result of 80,000 MPN/100 mL obtained on September 6, 2011 at the Powder Mill sampling location.

Enterococcus Bacteria Levels in Baltimore's Inner Harbor (Lombard St. & Light St. Sampling Locations)

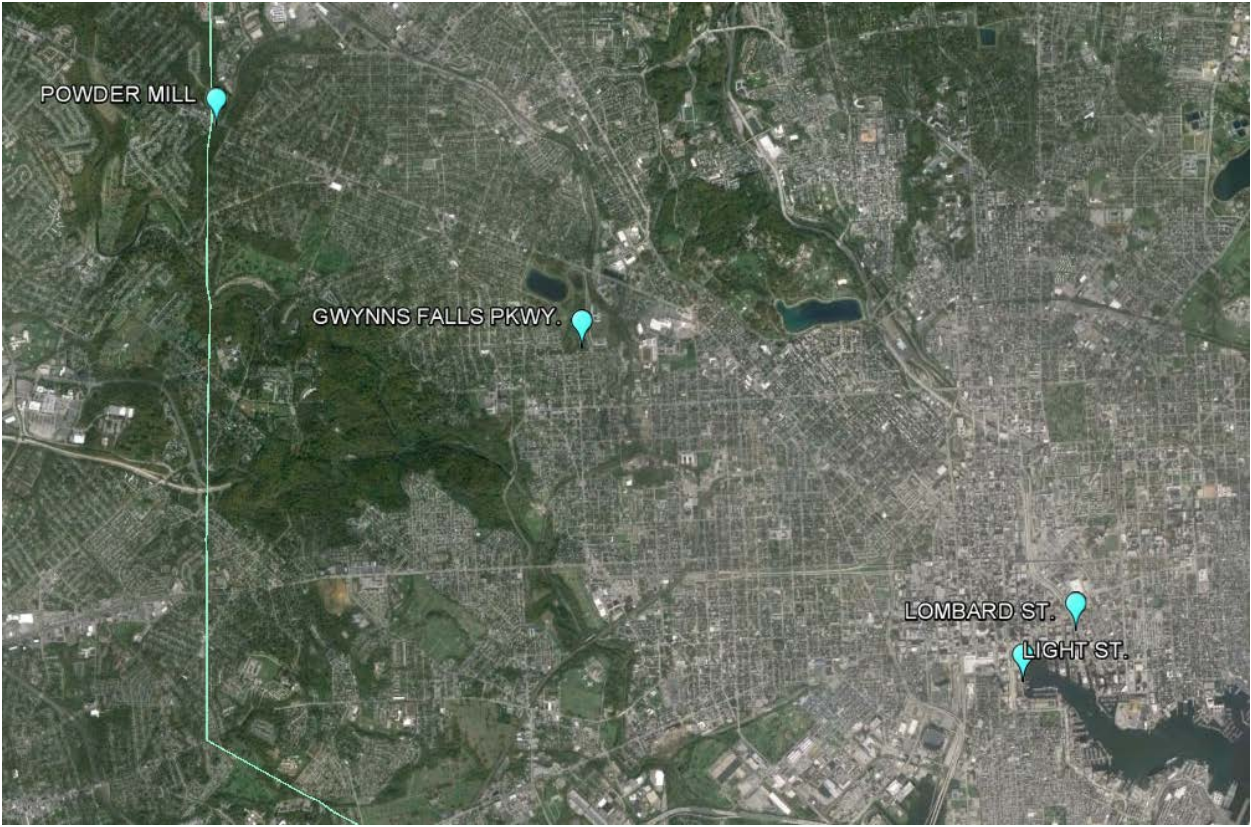
April 2009 - January 2014

Safety Threshold Value = 500 MPN/100 mL



This graph excludes results of 236,000 MPN/100 mL obtained on September 24, 2010 from the Light St. sampling location and 51,720 MPN/100 mL obtained on September 19, 2012 from the Lombard St. sampling location.

Map of Water Sampling Locations



ATTACHMENT I

| Metered sewage overflow events - Outfall SSO #67 Located near 1901 Falls Road - Discharges to Jones Falls | | | | |
|----------------------------------------------------------------------------------------------------------------------------|---------------------------------|--------------------------------|----------------------------------|-----------------------|
| Date | Volume (Million Gal) | Durations (hrs:min) | More than 10,000 gal? | Press release? |
| 4/16/2011 | 0.109 | 03:35 | Y | N |
| 8/14/2011 | 1.113 | 03:35 | Y | N |
| 8/15/2011 | 0.337 | 02:20 | Y | N |
| 8/21/2011 | 0.570 | 03:15 | Y | N |
| 8/27 - 8/28/2011 | 5.280 | 16:50 | Y | N |
| 9/7 - 9/9/2011 | 13.100 | 48:25 | Y | N |
| 9/23/2011 | 1.296 | 07:55 | Y | N |
| 11/22 - 11/23/2011 | 3.277 | 17:30 | Y | Y |
| 12/7 - 12/8/2011 | 3.705 | 10:10 | Y | Y |
| 12/27/2011 | 0.407 | 03:25 | Y | N |
| 6/1 - 6/2/2012 | 1.585 | 6:10 | Y | N |
| 7/19 - 7/20/2012 | 0.017 | 0:20 | Y | N |
| 8/26/2012 | 1.2 | 6:40 | Y | N |
| 10/29 - 10/30/2012 | 13.825 | 35:05 | Y | N |
| 12/21/2012 | 0.018 | 1:20 | Y | N |
| 12/26/2012 | 0.312 | 2:40 | Y | N |
| 1/30/2013 | 4.022 | 11:15 | Y | N |
| 5/11/2013 | <0.001 | 0:05 | N | N |
| 6/7, 6/10 - 6/11, 6/13/2013 | 1.629 | 27:10 | Y | N |
| 10/10/2013 | 0.118 | 1:50 | Y | N |
| 10/11/2013 | 0.579 | 6:55 | Y | N |
| 11/26 - 11/27/2013 | 0.105 | 1:35 | Y | N |
| 12/29/2013 | 0.132 | 2:20 | Y | N |
| 1/11/2014 | 0.064 | 3:30 | Y | N |
| 2/3/2014 | 0.351 | 4:55 | Y | N |
| 2/5/2014 | 0.01 | 2:15 | Y | N |
| 3/29 - 3/30/2014 | 3.065 | 18:55 | Y | N |
| 4/15/2014 | 0.691 | 11:30 | Y | N |
| 4/29 - 5/1/2014 | 10.528 | 42:40 | Y | N |
| 5/16/2014 | 1.406 | 7:40 | Y | N |
| 6/19/2014 | 0.517 | 2:15 | Y | N |
| 8/12/2014 | 2.368 | 9:40 | Y | Y |
| 1/24/2015 | 0.039 | 1:00 | Y | N |
| 3/4 - 3/5/2015 | 0.542 | 3:50 | Y | N |
| 3/10/2015 | 0.108 | 2:40 | Y | N |
| 3/14/2015 | 0.484 | 4:55 | Y | N |
| 4/20/2015 | 2.184 | 6:55 | Y | N |
| 05/18 - 05/19/2015 | 0.479 | 2:50 | Y | N |
| 6/23/2015 | 0.696 | 2:35 | Y | N |
| 6/27/2015 | 3.682 | 8:45 | Y | N |
| 8/24/2015 | 0.646 | 3:15 | Y | N |
| 9/10/2015 | 0.357 | 2:35 | Y | N |
| 9/29 - 9/30/2015 | 0.777 | 2:20 | Y | N |
| Total Events | | | 43 | |
| Total Volume (Million Gallons) | | | 81.7* | |
| Events Over 10,000 gal | | | 42 | |
| Total Press Releases | | | 3 | |

* Total Volume does not include incidents reporting "<.001" or no volume

Source: Baltimore Department of Public Works

| Metered sewage overflow events - Outfall SSO #72 Located behind 428 E. Preston St - Discharges to Jones Falls | | | | |
|--------------------------------------------------------------------------------------------------------------------------------|---------------------------------|--------------------------------|----------------------------------|-----------------------|
| Date | Volume (Million Gal) | Durations (hrs:min) | More than 10,000 gal? | Press release? |
| 9/27/2010 | 0.004 | 01:25 | N | N |
| 9/30 - 10/1/2010 | 0.911 | 27:20 | Y | N |
| 12/1/2010 | 0.105 | 02:10 | Y | N |
| 2/2/2011 | 0.011 | 02:05 | Y | N |
| 3/6/2011 | 0.440 | 06:00 | Y | N |
| 3/10/2011 | 0.111 | 01:20 | Y | N |
| 4/16 - 4/17/2011 | 3.386 | 12:55 | Y | N |
| 7/7/2011 | 0.006 | 01:30 | N | N |
| 7/19/2011 | 0.041 | 01:30 | Y | N |
| 7/25/2011 | 0.384 | 03:05 | Y | N |
| 8/13/2011 | 0.116 | 04:20 | Y | N |
| 8/14/2011 | 0.947 | 07:40 | Y | N |
| 8/15/2011 | 1.804 | 07:35 | Y | N |
| 8/21/2011 | 2.581 | 06:45 | Y | N |
| 8/27 - 8/28/2011 | 0.563 | 01:40 | Y | N |
| 9/6/2011 (am) | 0.004 | 01:10 | N | N |
| 9/6/2011 (pm) | 1.422 | 04:55 | Y | N |
| 9/23/2011 | 7.814 | 10:45 | Y | N |
| 10/29/2011 | 3.011 | 11:30 | Y | N |
| 11/22 - 11/23/2011 | 14.381 | 30:40 | Y | N |
| 12/7 - 12/8/2011 | -- | 19:00 (est.) | - | N |
| 12/23 - 12/24/2011 | 0.674 | 07:35 | Y | N |
| 12/27/2011 | 4.080 | 08:40 | Y | N |
| 1/12/2012 | 0.133 | 04:25 | Y | N |
| 2/29 - 3/1/2012 | 0.628 | 10:10 | Y | N |
| 4/22/2012 | 0.168 | 02:50 | Y | N |
| 6/1 - 6/2/2012 | 5.038 | 7:55 | Y | N |
| 7/19- 7/20/2012 | 0.314 | 3:05 | Y | N |
| 8/26/2012 | 6.71 | 10:35 | Y | N |
| 10/29 - 10/30/2012 | 40.121 | 15:05 | Y | N |
| 12/21/2012 | 1.839 | 5:50 | Y | N |
| 12/26/2012 | 2.732 | 5:40 | Y | N |
| 1/16/2013 | 0.056 | 2:10 | Y | N |
| 1/30/2013 | 1.146 | 10:35 | Y | N |
| 6/7, 6/10 - 6/11, | 12.422 | 34:40 | Y | N |
| 10/10/2013 | 0.234 | 2:30 | Y | N |
| 10/11/2013 | 1.72 | 6:10 | Y | N |
| 11/26 - 11/27/2013 | 1.287 | 4:50 | Y | N |
| 12/14/2013 | 0.114 | 2:10 | Y | N |
| 12/23/2013 | 0.001 | 1:35 | Y | N |
| 12/29/2013 | 1.834 | 5:05 | Y | N |
| 1/11/2014 | 3.122 | 8:05 | Y | N |
| 2/3/2014 | 4.626 | 9:00 | Y | N |
| 2/5/2014 | 2.827 | 11:40 | Y | N |
| 2/14/2014 | <0.001 | 0:35 | N | N |
| 2/21/2014 | 0.007 | 1:45 | N | N |
| 3/29 - 3/30/2014 | 18.349 | 26:00 | Y | N |

| Date | Volume (Million Gal) | Durations (hrs:min) | More than 10,000 gal? | Press release? |
|---------------------------------------|-------------------------|------------------------|--------------------------|----------------|
| 4/15/2014 | 7.992 | 13:40 | Y | N |
| 4/29 - 5/1/2014 | 45.835 | 49:55 | Y | N |
| 5/16/2014 | 7.077 | 9:35 | Y | N |
| 6/13/2014 | <0.001 | 0:10 | N | N |
| 6/19/2014 | 2.061 | 3:50 | Y | N |
| 8/12/2014 | 10.601 | 12:40 | Y | N |
| 9/24 - 9/25/2014 | 0.156 | 2:35 | Y | N |
| 10/15/2014 | 0.12 | 2:15 | Y | N |
| 10/22/2014 | 0.526 | 4:45 | Y | N |
| 11/17/2014 | 0.007 | 1:30 | N | N |
| 11/26/2014 | 0.331 | 3:20 | Y | N |
| 1/24/2015 | 1.171 | 4:30 | Y | N |
| 3/4 - 3/5/2015 | 3.195 | 7:20 | Y | N |
| 3/10 - 3/11/2015 | 2.762 | 8:00 | Y | N |
| 3/14/2015 | 5.143 | 12:10 | Y | N |
| 3/27/2015 | 0.168 | 3:25 | Y | N |
| 4/20/2015 | 6.026 | 9:45 | Y | N |
| 05/18 - 05/19/2015 | 3.433 | 6:30 | Y | N |
| 6/23/2015 | 2.33 | 4:15 | Y | N |
| 6/27/2015 | 4.329 | 5:00 | Y | N |
| 8/25/2015 | 0.027 | 4:00 | Y | N |
| 9/10/2015 | 0.678 | 3:05 | Y | N |
| 9/29 - 9/30/2015 | 2.468 | 3:40 | Y | N |
| Total Events | | | 70 | |
| Total Volume (Million Gallons) | | | 254.7* | |
| Events Over 10,000 gal | | | 62 | |
| Total Press Releases | | | 0 | |

* Total Volume does not include incidents reporting "<.001" or no volume

Source: Baltimore Department of Public Works

APPENDIX C

DECLARATION OF TOM PELTON

1. My name is Thomas C. Pelton. I am employed as the Communications Director at the Environmental Integrity Project (“EIP”), a not-for-profit organization based in Washington, D.C. and dedicated to educating and informing the public about environmental pollution, holding polluters accountable for compliance with state and federal environmental laws, and reducing pollution to protect public health and the environment.
2. I am also the host of a radio show called *The Environment in Focus*, which airs on the WYPR station in Baltimore City.
3. In August 2015, in my role at EIP, I began conducting research for a report that EIP planned to issue on sanitary sewage discharges and backups of sewage in private buildings in Baltimore City. This report was finalized and made available to the public by EIP on December 15, 2015. It is titled *Stopping the Flood Beneath Baltimore’s Streets; The City’s Failure to Comply with a Federal Sewage Consent Decree, and How Delay Harms Homeowners and the Inner Harbor*, and it is available online on EIP’s website.
4. As part of my research for this report, I conducted a recorded interview on November 13, 2015 with three employees of the Baltimore City Department of Public Works (“DPW”): Dana Cooper, Chief of Legal and Regulatory Affairs; Wazir Qadri, Engineer Supervisor; and Jeffrey Raymond, Chief of Communications and Community Affairs. This interview took place at DPW’s office at the Abel Wolman Municipal Building, 200 Holliday St. #600, Baltimore, Maryland 21202.
5. Ms. Cooper, Mr. Qadri, and Mr. Raymond were all aware that the November 13, 2015 interview was being recorded. My recording equipment was in plain view on the table during the interview, and the interviewees spoke into a large microphone (about a foot long) for me to record what they were saying. In addition, before I began recording, I informed Ms. Cooper, Mr. Qadri, and Mr. Raymond that I was recording the interview for a written report that EIP was producing as well as for my radio program.
6. The entire recording of my November 13, 2015 interview with Ms. Cooper, Mr. Qadri, and Mr. Raymond is provided on a Compact Disc (“CD”) that is attached hereto as Exhibit A. The recording is approximately fifty-three minutes long.
7. During the interview, Ms. Cooper acknowledged that problems originating in Baltimore’s collection system contribute to backups in privately owned building in Baltimore. In addition, Ms. Cooper acknowledged that actions taken by Baltimore City have contributed to the increase in these building backups. Specifically, Ms. Cooper made statements quoted below, which are also identified by the time on the recording where they can be found:

- a. “We didn’t really know the right order to do things in, necessarily. And so when we closed those 60 overflows, that actually increased the number of basement backups that we saw in the city – again, because the sewage has to go somewhere.” Time: 13:46.
- b. “[W]ithout commenting on any particular sewage backup, I will say that, basement backups are caused by a number of issues. There are main line issues, that include capacity in the system, which we will be upgrading, as part of the consent decree. But there are also maintenance issues that we are also responsible for – doing pro-active maintenance on our system, to make sure that, for example – roots. Tree roots love sewage. And you frequently see roots growing into either the laterals or even the main lines that block the pipe and cause sewage backups. Fats, oils and grease are a huge problem in the city.” Time: 41:45.
- c. “In general, basement backups can be caused by capacity problems; basement backups can be caused by localized maintenance issues; they can be caused by collapsed pipes – either on the private side of the line, the public side of the line, or in the main line. And all of these things are what we need to work against. And in the last couple years we’ve really been amping up our pro-active maintenance program, to be going after those root and grease issues, to be inspecting our system, and to be pro-actively cleaning where we are seeing blockages so that we can prevent that. But as we said before, closing those 60 structured overflows, that also had a big impact on basement backups.” Time: 43:01.

I declare under penalty of perjury and upon personal knowledge that the foregoing is true and correct.

Executed on: August 3, 2016



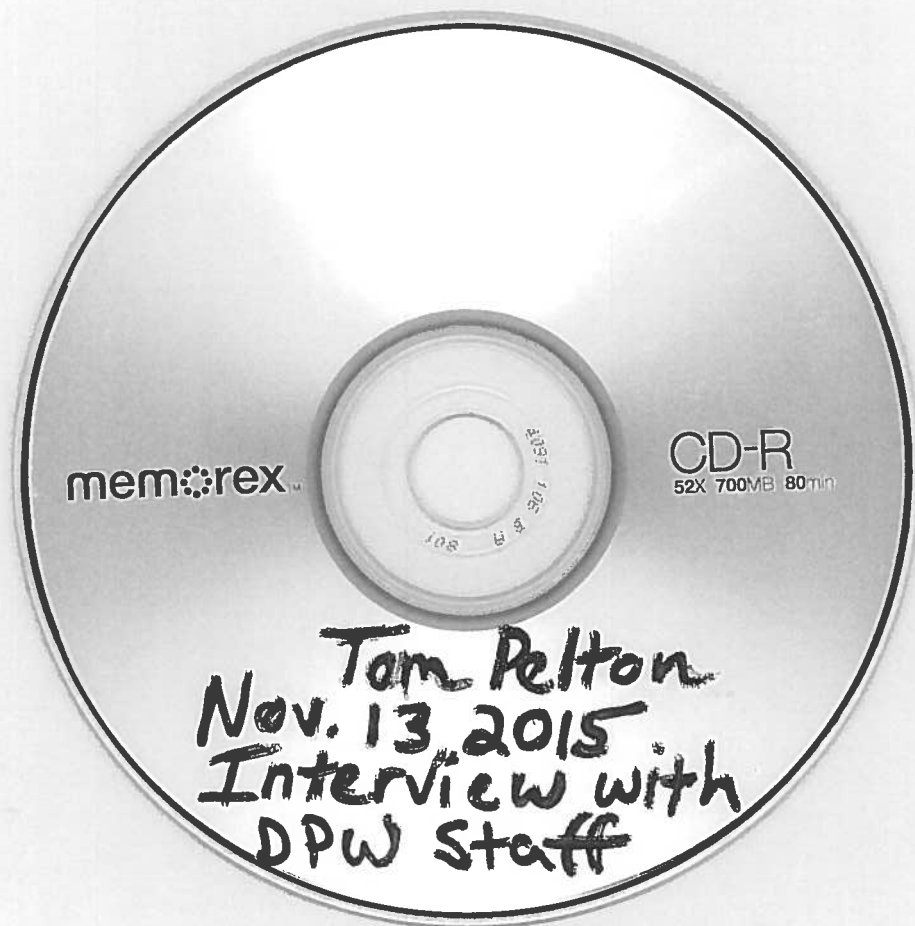
Thomas C. Pelton

Exhibit A

To Declaration of Tom Pelton dated August 3, 2016

Compact Disc (“CD”) of Entire Recording of November 13, 2015 Interview with
Baltimore City Department of Public Works (“DPW”) Staff

This CD is being provided only with hard copies of these comments. The Environmental
Integrity Project is willing to provide additional CDs upon request.



memorex

CD-R
52X 700MB 80min

Tom Pelton
Nov. 13 2015
Interview with
DPW Staff

APPENDIX D

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

| | | |
|---------------------------|---|------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| |) | |
| Plaintiff, |) | |
| |) | CASE NO. 5:09-cv-00272 |
| v. |) | |
| |) | JUDGE JOHN R. ADAMS |
| THE CITY OF AKRON, OHIO |) | MAGISTRATE PEARSON |
| |) | |
| and |) | |
| |) | |
| THE STATE OF OHIO, |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

CONSENT DECREE

been placed in full operation, and is expected to both function and perform as designed, plus completion of modified operations and maintenance manuals. This specifically includes all control systems and instrumentation necessary for normal operations and all residual handling systems. Certain specified CSO and WPCS Control Measures set forth in Akron's LTCP Update may consist of separate components. For those specified CSO and WPCS Control Measures, "Achievement of Full Operation" shall not be achieved until the last component is completed.

C. "Bidding of Control Measures" means completion of contract documents including plans and specifications, and advertisement of bids by Akron for a specific CSO or WPCS Control Measure specified in the LTCP Update (or portion thereof).

D. "Building/Property Backup" means a Sanitary Sewer Overflow or CSS Release in the form of wastewater release or backup into a building or onto private property that is caused by blockages, flow conditions, or other malfunctions in the Sewer System. A wastewater backup or release that is caused by blockages, flow conditions, or other malfunctions of a Private Service Connection Lateral is not a Building/Property Backup for purposes of this Decree.

E. "Bypass" as that term is defined in 40 C.F.R. § 122.41(m) means the intentional diversion of waste streams from any portion of the WPCS.

F. "Combined Sewer Overflow" or "CSO" means any Discharge from any Outfall identified as a CSO Outfall in Akron's Current NPDES Permit.

G. "Combined Sewer Overflow Control Policy" or "CSO Control Policy" means the U.S. EPA policy found at 59 Fed. Reg. 18688 (April 19, 1994).

O. Description of a “root cause analysis” process for situations in which the City’s Sewer System failed to perform as designed or resulted in an SSO or CSS Release. This process shall include the documentation of all the known operational variables that lead to the failure in performance of the Sewer System or the SSO or CSS Release event; and

P. An annual update of the operation and maintenance manuals.

3. Akron shall implement the Collection System CMOM Program upon approval by EPA. Akron shall annually review the program and update the program as necessary to ensure that the program is consistent with accepted industry practices to properly manage, operate and maintain sewer systems, identify and inventory areas within sewer systems with capacity constraints, implement measures to ensure adequate capacity throughout their sewer system, and respond to SSOs and CSS releases.

EMERGENCY RESPONSE PLAN

4. Within ninety (90) Days of the Date of Lodging, Akron shall develop a comprehensive Emergency Response Plan for its WPCS and Sewer System and submit the Plan to U.S. EPA and OEPA for review and approval pursuant to Section XVII of this Consent Decree (Review and Approval Procedures). The Plan shall require Akron to: (i) promptly respond to and resolve all SSOs and CSS Releases; (ii) mitigate the SSOs and CSS Releases through specific measures; and (iii) take appropriate steps to prevent the immediate recurrence of the SSO or CSS Release.

5. The Emergency Response Plan shall provide procedures for promptly responding to SSOs and CSS Releases and to minimize the environmental impact and potential human health risk posed by such events. The Emergency Response Plan shall include:

- A. A requirement that Akron provide immediate notice to the public (through the local news media or other means, including signs or barricades to restrict access) of an SSO or CSS Release, and a detailed description of the actions Akron will undertake to immediately provide such notice;
- B. A detailed description of the actions Akron will undertake to provide notice of an SSO or CSS Release to appropriate federal, state, or local agencies/authorities, including but not limited to the requirements contained in Part II of the NPDES Permit;
- C. A detailed plan to minimize overflow volumes by limiting the volume of untreated wastewater transmitted to the portion of the Sewer System impacted by the events causing the SSO and/or CSS Release;
- D. For Building/Property Backups, a detailed plan describing the standard operating procedures to be followed by Akron personnel in responding to an SSO or CSS Release that is a Building/Property Backup, including:
 - (i) A description of methods for communicating with customers about how to report Building/Property Backups, and how to obtain clean-up; and
 - (ii) A description of Akron's procedures for responding to Building/Property Backups, including the timeframe for responses; the measures for cleanup of Building/Property Backups found to be caused by conditions in Akron's Sewer System (such as procedures to ensure disinfection or removal of items potentially contaminated by Building/Property Backups); and the measures taken to correct or repair conditions in the Sewer System causing or contributing to Building/Property Backups;

- E. A description of the resources to be used to correct or repair the condition causing or contributing to the SSO and/or CSS Release;
 - F. A plan to ensure the preparedness of Akron employees, contractors, and personnel of other affected agencies necessary to implement the Emergency Response Plan, including but not limited to responsiveness training; and
 - G. Identification of locations in the Sewer System at which an SSO and/or CSS Release is likely to first occur in the event of Pump Station failure or Force Main failure.
6. Upon approval of the Emergency Response Plan by U.S. EPA and OEPA, Akron shall immediately implement the approved Emergency Response Plan.

APPENDIX E

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION**

| | | |
|----------------------------------|---|-------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| and |) | |
| |) | |
| STATE OF MARYLAND, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | Civil Action No. |
| v. |) | |
| |) | |
| BALTIMORE COUNTY, |) | |
| MARYLAND, |) | |
| |) | |
| Defendant. |) | |
| | | |

COMPLAINT

The United States of America ("United States"), by the authority of the Attorney General of the United States and through its undersigned counsel, acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), and the State of Maryland, acting by the authority of the Attorney General of Maryland and through its undersigned counsel, and acting at the request and on behalf of the Maryland Department of the Environment ("Department" or "MDE"), file this complaint and allege as follows:

NATURE OF THE ACTION

1. This is a civil action brought pursuant to Section 309(b) and (d) of the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987 (the "Clean Water Act" or "the Act"), 33 U.S.C. § 1319(b) and (d), for injunctive relief and the assessment of civil penalties against Baltimore County, Maryland ("Baltimore County"), for the discharge of pollutants in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). Baltimore County has violated Section 301(a) of the Act by discharging pollutants without permit authority.

2. Plaintiff State of Maryland also brings supplemental state claims for violations of Sections 9-322 and 9-323 of the Environment Article, Annotated Code of Maryland.

JURISDICTION, VENUE, NOTICE, AND AUTHORITY

3. This Court has jurisdiction over the subject matter of this action pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, and 1355. This Court has jurisdiction over the claims of the State of Maryland asserted under the Environment Article pursuant to 28 U.S.C. § 1367 (supplemental jurisdiction).

4. Venue is proper in the District of Maryland pursuant to 28 U.S.C. § 1391(b), and Section 309(b) of the Act, 33 U.S.C. § 1319(b), because it is the judicial district where Baltimore County is located and where the alleged violations occurred.

5. Pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), notice of the commencement of this action has been given to the State of Maryland, which joins in this action as a co-plaintiff.

6. Authority to bring this action is vested in the United States Department of Justice by 28 U.S.C. §§ 516, 519, and Section 506 of the Clean Water Act, 33 U.S.C. § 1366.

7. Authority to bring the supplemental claims identified in this action is vested in the Office of the Attorney General of Maryland by § 9-344 of the Environment Article, Annotated Code of Maryland.

DEFENDANT

8. Defendant Baltimore County is a political subdivision of the State of Maryland, formed under the laws of the State of Maryland, and is a "municipality" within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4), and a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

FEDERAL STATUTES AND REGULATIONS

9. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the “discharge of pollutants” into navigable waters except in compliance with a National Pollutant Discharge Elimination System (“NPDES”) permit issued by U.S. EPA or an authorized state pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

10. The term “discharge of pollutants” is defined in Section 502(12) of the Act, 33 U.S.C. § 1362(12), to mean “any addition of any pollutant to navigable waters from any point source”

11. The term “navigable waters” is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(12) to mean “the waters of the United States, including the territorial seas.”

12. The term “point source” is defined in Section 502(14) of the Act, 33 U.S.C. § 1362(14), to mean “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel . . . from which pollutants are or may be discharged.”

13. Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b), authorizes EPA to commence a civil action for appropriate relief, including a permanent or temporary injunction, when any person is in violation of, inter alia, Section 301 of the Clean Water Act, 33 U.S.C. § 1311.

14. Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19, provides that any person who violates, inter alia, Section 301 of the Clean Water Act, 33 U.S.C. § 1311, shall be subject to a civil penalty not to exceed \$27,500 per day for each such violation occurring after January 31, 1997 through and including March 15, 2004, or not to exceed \$32,500 per day for each such violation thereafter.

MARYLAND STATUTES AND REGULATIONS

15. Section 9-253 of the Environment Article, Annotated Code of Maryland, confers upon the Secretary of MDE all powers that are necessary to comply with and represent the State of Maryland (referred to throughout the Environment Article as “this State”) under the federal

Clean Water Act.

16. Pursuant to Section 9-322 of the Environment Article, "a person may not discharge any pollutant into waters of this State" except in compliance with certain provisions of the Environment Article, including Section 9-323.

17. Section 9-323 of the Environment Article requires a person to hold a discharge permit issued by the Department before the person may, among other things, operate any disposal system the operation of which could cause or increase the discharge of pollutants to waters of this State.

18. The term "discharge" is defined in Section 9-101(b) of the Environment Article as "(1) The addition, introduction, leaking, spilling, or emitting of a pollutant into the waters of this State; or (2) The placing of a pollutant in a location where the pollutant is likely to pollute."

19. The term "pollutant" means: " (1) Any waste or wastewater that is discharged from: (i) A publicly owned treatment works; or (ii) An industrial source; or (2) Any other liquid, gaseous, solid, or other substance that will pollute any waters of this State." Environment Article § 9-101(g).

20. The term "waters of this State" is defined by Section 9-101(l) to include "(1) both surface and underground waters within the boundaries of this State subject to its jurisdiction, including parts of the Atlantic Ocean within the boundaries of this State, the Chesapeake Bay, and its tributaries, and all ponds, lakes, rivers, streams, public ditches, tax ditches, and public drainage systems within this State, other than those designed to collect, convey, or dispose of sanitary waste; and (2) the flood plain of free-flowing waters determined by the Department of Natural Resources on the basis of the 100-year flood."

21. Section 9-339 of the Environment Article authorizes MDE to bring an action for an injunction against any person who violated any provision of Title 9, Subtitle 3 of the Environment Article or any rule, regulation, order or permit adopted or issued by the Department thereunder.

22. Section 9-342(a) of the Environment Article provides that a person who violates any provision of Title 9, Subtitle 3 of the Environment Article or any rule, regulation, order or permit

adopted or issued by the Department thereunder, is subject to a civil penalty of up to \$10,000 per violation, with each day a violation occurs constituting a separate violation.

GENERAL ALLEGATIONS

23. Baltimore County owns and operates a municipal wastewater collection system that includes almost 3,000 miles of sewer lines and over 100 pump stations (hereinafter, the "Collection System"). The Collection System conveys wastewater generated by Baltimore County residents and businesses, as well as wastewater from neighboring Anne Arundel and Howard Counties, to the border Baltimore County shares with Baltimore City.

24. At various locations along the County/City border, Baltimore County's wastewater enters connecting sewage lines owned by Baltimore City and is conveyed for treatment at the Back River and Patapsco Waste Water Treatment Plants owned and operated by Baltimore City.

25. Baltimore County does not hold a National Pollutant Discharge Elimination System (NPDES) permit or a State discharge permit authorizing it to discharge wastewater from the Collection System to navigable waters or waters of the State.

26. At all times relevant to this Complaint, Baltimore County has discharged and continues to discharge untreated wastewater containing raw sewage from the Collection System through "point sources" to navigable waters and waters of the State, including, inter alia, Lynch Cove, Mardella Branch, Towson Run, Stemmers Run, Back River, Lake Roland, Patapsco River, North Point Creek, Bear Creek, Merrymans Branch, Loch Raven, White Marsh Creek, White Marsh Run, Northeast Creek, Bens Run, Gunpowder Falls, Herring Run, Jones Falls, Gwynns Falls and Jones Creek.

27. Wastewater collected by and transported through the Collection System is a "pollutant" as that term is defined at Section 502(6) of the Clean Water Act, 33 U.S.C. § 1362(6), and at Section 9-101(g) of the Environment Article.

28. The waters identified in Paragraph 26, above, as well as other such surface waters to which pollutants have been discharged, are "navigable waters" within the meaning of Section 502(7) of the Clean Water Act, 33 U.S.C. § 1362(7), and "waters of this State" within the meaning of Section 9-101(l) of the Environment Article.

29. The waters identified in Paragraph 26, above, are tributaries to the Chesapeake Bay. The Chesapeake Bay is the nation's largest estuary, "a national treasure and a resource of worldwide significance," and for that reason accorded special recognition under Section 117 of the Clean Water Act, 33 U.S.C. § 1267.

30. Between July 1997 and the present, Baltimore County has discharged tens of millions of gallons of untreated wastewater containing raw sewage from its Collection System without NPDES permit authority. Unpermitted discharges from Baltimore County's Collection System have resulted from multiple causes including, inter alia, inadequate flow capacity, inadequate pumping capacity, inadequate maintenance of the collection system including pumping stations, and excessive infiltration and inflow to the sanitary sewers.

31. Untreated wastewater containing raw sewage can carry bacteria, viruses, parasitic organisms, intestinal worms, and borroughs (inhaled molds and fungi) and may cause a number of diseases in those persons who may come in contact with such wastewater. These diseases include, but are not limited to, highly communicable enteric diseases such as gastroenteritis, dysentery, and cholera.

32. Unpermitted discharges of raw sewage from the Collection System to certain receiving water bodies in and around Baltimore County have caused and/or contributed to the presence of elevated levels of coliform bacteria in these water bodies. Coliform bacteria is an indicator that unacceptable levels of disease-causing organisms may be present in receiving water bodies.

FIRST CLAIM FOR RELIEF (CLEAN WATER ACT)

33. Paragraphs 1 through 14 and 23 through 32 are re-alleged and incorporated herein by reference.

34. On various dates from July 8, 1997, and continuing periodically to the present, Baltimore County has discharged pollutants from its Collection System into navigable waters without the authorization of a NPDES permit in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

35. Each day of each unpermitted discharge of pollutants is a separate violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

36. Unless enjoined by the Court, Baltimore County will continue to discharge pollutants to navigable waters in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

37. Pursuant to Sections 309(b) and (d) of the Act, 33 U.S.C. §§ 1319 (b) and (d), as modified by 40 C.F.R. Part 19, Baltimore County is liable for injunctive relief and civil penalties of up to \$27,500 per day for each such violation occurring after January 31, 1997 through and including March 15, 2004, and up to \$32,500 per day for each such violation thereafter.

STATE OF MARYLAND'S FIRST SUPPLEMENTAL CLAIM FOR RELIEF

38. Paragraphs 1 through 32 are re-alleged and incorporated herein by reference.

39. At least since July 1997, Baltimore County has discharged, and on occasion continues to discharge, pollutants from its Collection System into waters of this State without the authorization of a State discharge permit.

40. The unpermitted discharges include, without limitation, the unpermitted discharges identified in Paragraph 26, above.

41. Each day of each unpermitted discharge of pollutants is a separate violation of Sections 9-322 and 9-323 of the Environment Article, Annotated Code of Maryland.

42. Pursuant to Section 9-342(a) of the Environment Article, Plaintiff State of Maryland is entitled to a civil penalty of up to \$10,000 for each day of each of Baltimore County's violation of Sections 9-322 and 9-323 of the Environment Article.

43. Unless enjoined by the Court, Baltimore County will continue to discharge pollutants to waters of this State without a permit in violation of Sections 9-322 and 9-323 of the Environment Article.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, the United States of America and the State of Maryland, respectfully pray that this Court provide the following relief:

1. A permanent injunction enjoining Baltimore County from any further violations of, and directing Baltimore County to take all steps necessary to come into permanent, consistent compliance with, the Clean Water Act and Title 9, Subtitle 3 of the Environment Article, and the regulations promulgated thereunder.

2. A judgment assessing civil penalties against Baltimore County of up to \$27,500 per day for each violation of the Clean Water Act occurring after January 31, 1997 through and including March 15, 2004, and up to \$32,500 per day for each such violation thereafter;

3. A judgment awarding the United States and the State of Maryland the costs of this action; and

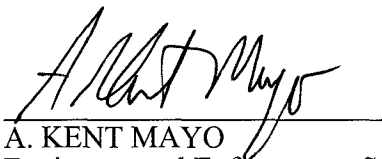
4. Such further relief as this Court may deem appropriate.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA



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Acting Assistant Attorney General
Environment and Natural Resources Division



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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

UNITED STATES OF AMERICA
STATE OF MARYLAND

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
See attachment

DEFENDANTS

BALTIMORE COUNTY, MARYLAND

County of Residence of First Listed Defendant Baltimore County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)
See attachment

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|-----------------------------------------|----------------------------|----------------------------|---------------------------------------------------------------|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| | | | | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark | <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY | CIVIL RIGHTS | PRISONER PETITIONS | LABOR | SOCIAL SECURITY |
| <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights | <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition | <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 |

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

See attachment

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

07/25/2005

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

ATTACHMENT TO CIVIL COVER SHEET
(United States and State of Maryland v. Baltimore County, Maryland)

I.(c) ATTORNEYS

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egilliss@rmmr.com

VI. CAUSE OF ACTION

Plaintiff United States brings this civil action pursuant to Section 309(b) and (d) of the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987 (the "Clean Water Act" or "the Act"), 33 U.S.C. § 1319(b) and (d), for injunctive relief and the assessment of civil penalties against Baltimore County, Maryland, for the discharge of pollutants in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). Plaintiff State of Maryland brings supplemental state claims for violations of Sections 9-322 and 9-323 of the Environment Article, Annotated Code of Maryland.

VII. DEMAND

The United States and Maryland seek injunctive relief to remedy the alleged violations. The United States also seeks civil penalties in an amount up to \$32,500 per violation per day, and the State of Maryland seeks civil penalties in an amount up to \$10,000 per violation per day.

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

| | | |
|--------------------------|---|------------------|
| UNITED STATES OF AMERICA |) | |
| and STATE OF MARYLAND, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | Civil Action No. |
| v. |) | |
| |) | |
| BALTIMORE COUNTY, |) | |
| MARYLAND, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

CONSENT DECREE

County to take all measures necessary to comply with the Clean Water Act and the regulations promulgated thereunder, and the Maryland water pollution control laws and the regulations promulgated under such laws, with the goal of eliminating Sanitary Sewer Overflows.

IV. DEFINITIONS

6. Unless otherwise defined herein, the terms used in this Consent Decree will have the meaning given to those terms in the Clean Water Act, 33 U.S.C. §§ 1251 et seq., and the regulations promulgated thereunder or, if not defined in the Clean Water Act or its regulations, then as defined in Title 9, Subtitle 3 of the Environment Article, Annotated Code of Maryland, and the regulations promulgated thereunder. Any other words shall be given their ordinary meaning.

The following terms used in this Consent Decree, its appendices, and studies and plans submitted by Baltimore County and approved by EPA and MDE will be defined as follows:

- A. “Annual Report” shall mean the annual progress report to be submitted by Baltimore County pursuant to Paragraph 20 of this Consent Decree.
- B. “Building Backup” shall mean a release from the Collection System, through a lateral to a building or structure.
- C. “Collection System” or “Separate Sanitary Sewer Collection System” shall mean the collection and transmission system (including all pipes, Force Mains, sanitary sewer lines, SSO Structures, Pump Stations, manholes, and appurtenances thereto) owned by Baltimore County and designed to convey only sewage, and not storm water, from residences, commercial buildings, industrial plants and institutions for treatment at Baltimore City’s Patapsco or Back River wastewater treatment plants, including portions of the system added after the Effective Date.
- D. “Date of Lodging of the Consent Decree” or “Date of Lodging” shall mean the date on which the Consent Decree is lodged with the United States District Court for the District of Maryland.

B. **Submission of Operation and Maintenance Plan.** Within 120 days of the Effective Date, Baltimore County shall submit for review and comment by EPA and MDE a comprehensive operation and maintenance plan that shall provide for, at a minimum, the following:

- i. A gravity line inspection program that provides for
 - (a) CCTV or other inspection of Gravity Sewer Lines as required by Paragraph 8 of this Consent Decree;
 - (b) CCTV inspection, consistent with the requirements of Paragraph 8.C., of all Gravity Sewer Lines greater than or equal to 8 inches and less than or equal to 27 inches in diameter that were constructed prior to 1980, to be completed within 15 years of the Effective Date. Baltimore County shall not be required to re-inspect gravity line segments inspected pursuant to the requirements of Paragraph 8.C. solely for the purpose of complying with the requirements of this Paragraph 15.B.i(b). In each Annual Report, Baltimore County shall summarize its progress toward completion of the requirements set forth in Paragraphs 15.B.i(b) and 15.B.v(b) as of the end of the prior calendar year. Following completion of the requirements set forth in Paragraphs 15.B.i(b) and 15.B.v(b), Baltimore County shall certify that all such requirements have been completed and summarize the actions taken by Baltimore County to complete these requirements in the Quarterly Report for the calendar quarter in which the requirements were completed.
 - (c) Ongoing CCTV or comparable inspection of the Collection System necessary to maintain a current assessment of the condition of the Collection System, including a program goal of inspecting all Gravity Sewer Lines greater than 8 inches in diameter on a regular, scheduled basis that provides for inspection of the entire Collection System every 15 years.
- ii. A sewer line cleaning program adequate to address blockages and potential blockages within the Collection System. In addition to addressing ongoing cleaning requirements, the cleaning program shall provide for the cleaning of all Gravity Sewer Lines greater

than 8 inches in diameter within 7 years of the Effective Date, and shall provide for the regular, scheduled cleaning of all such lines thereafter at least every 7 years. In each Annual Report, Baltimore County shall summarize its progress toward completion of the initial cleaning requirements set forth in this Paragraph 15.B.ii. as of the end of the prior calendar year. Following completion of the requirement for cleaning all Gravity Sewer Lines greater than 8 inches in diameter within 7 years of the Effective Date, Baltimore County shall certify that such requirement has been completed and summarize the actions taken by Baltimore County to complete the requirement in the Quarterly Report for the calendar quarter in which the requirement was completed.

- iii. Routine preventative maintenance of Pump Stations consistent with Paragraph 13.I.;
- iv. Routine preventative maintenance of grinder pumps;
- v. Inspection of manholes
 - (a) Inspection of manholes as provided in Paragraph 8.D;
 - (b) Inspection of manholes located within or immediately adjacent to gravity line segments to be inspected pursuant to Paragraph 15.B.i.b. above;
 - (c) Routine inspection of manholes that are entered for the purposes of cleaning, inspection, or other routine maintenance activities.
- vi. Procedures for ensuring that new sewers and connections are properly designed and constructed (including testing of new sewer installations) to prevent SSOs and to ensure that new connections of inflow sources are prohibited;
- vii. Procedures for ensuring that rehabilitation projects are properly designed and constructed (including testing of rehabilitation installations) to prevent SSOs;
- viii. A root control program that addresses, at minimum, scheduling and performing corrective measures including both short-term mitigation of root intrusion (i.e., routine

maintenance) and rehabilitation of the areas in which root intrusion has caused recurring blockages (i.e., sewer replacement or relining), and a proposal that includes scheduled inspection and cleaning of known problem areas;

ix. Procedures for responding to, investigating, mitigating, correcting, and preventing Building Backups.

x. Procedures for identification of all known locations where Baltimore County does not have ready physical and legal access to the Collection System, the causes for lack of access, and its strategy for obtaining and maintaining access to such location;

xi. Procedures for documenting complaints (including procedures for ensuring that complaints reach the appropriate departments), work orders, updates to equipment inventory, and changes to Collection System components, as well as entry of such data into databases comprising the information management system required under Paragraph 16;

xii. Procedures for corrective maintenance response and reporting;

xiii. Procedures to ensure that staff receive regular training, including wastewater operator certification as required, to avoid potential SSOs relating to operator error; and

xiv. A FOG program consistent with the requirements of Paragraph 11.

C. **Implementation of Operation and Maintenance Program.** Baltimore County shall begin implementation of its operation and maintenance plan within 90 days of submittal to EPA and MDE for comment.

D. **Reporting Requirements.** Baltimore County shall report to EPA and MDE on its performance of the requirements in this Paragraph 15 as specifically set forth in Section VI (Reporting Requirements), Paragraph 20.B.xiii. & ix., of this Consent Decree.

16. **Information Management System Program.**

A. **Utilities Management Application for Collection System.** By agreement of the Parties, Baltimore County shall implement its planned Utilities Management Application to establish, update, and coordinate data systems used to collect information regarding the operation, maintenance and performance of the Collection System, as provided in Baltimore County Contract No. 42235, attached as Appendix G. Baltimore County shall install all hardware and software necessary for the Utilities Management Application and ensure that such hardware and software are operational and that the County has beneficial use of the specified features by no later than September 1, 2005. Baltimore County shall certify completion of these requirements in the applicable Quarterly Report.

B. **Geographic Information System.** As part of its information management system programs above, Baltimore County shall use a computerized geographic information system ("GIS") to map the Collection System.

- i. The GIS shall be able to:
 - (a) Display all Collection System components and Pump Stations;
 - (b) Use embedded objects (or other alternative, equivalent methods) to link to schematic diagrams and attribute data (including inventory information) for Collection System components;
 - (c) Display by color coding the portions of the Collection System that have been inspected and rehabilitated; and
 - (d) Display the location(s) at which samples from flow meters and rain gauges have been collected for development of the model required under Paragraph 14.
- ii. Baltimore County shall install all hardware and software necessary for the GIS system and ensure that the system is operational and that the County has beneficial use of the specified features by no later than one year from the Effective Date. Following completion of these

requirements, Baltimore County shall certify in the applicable Quarterly Report, and, if requested, demonstrate to EPA and MDE, that the GIS is fully functioning and capable of displaying the information described in Paragraph 16.B.i., above. Baltimore County shall complete the installation of, and transfer of all relevant data to, the GIS System for each Sewershed by no later than the date that the SRRR Plan for such Sewershed is due under Paragraph 10.

C. **Global Positioning System.**

i. Within one hundred and twenty (120) days of the Effective Date of this Consent Decree, Baltimore County shall have global positioning system (GPS) units available to its Utilities Maintenance Division for use to correct and/or update component information on the Collection System maps. Baltimore County shall certify completion of this requirement in the applicable Quarterly Report.

ii. Baltimore County shall use GPS units or other equivalent methods to record the location of sewer maintenance work related to the removal of tree roots and/or grease. Baltimore County shall track and plot this information as part of its root and grease programs required by Paragraph 15.

D. **Inventory of Collection System Components.**

i. Within two (2) years of the Effective Date, the Utilities Management Application shall include an inventory database of the Collection System components. Following completion of this requirement, Baltimore County shall certify in the applicable Quarterly Report, and, if requested, demonstrate to EPA and MDE, that the Utilities Management Application is functioning and capable of displaying the information identified in Paragraph 16.D.ii., below.

ii. By no later than the date that the SRRR Plan for the relevant Sewershed is due pursuant to Paragraph 10, the inventory database shall include, for each component in such Sewershed, a unique identification number and a corresponding data file that stores the following

information:

- (a) Identification number;
- (b) Capacity (e.g., for pipes: diameter, for valves: flow rate);
- (c) Date of installation;
- (d) Location of installation (address and/or latitude and longitude);
- (e) Useful life and scheduled date for repair, replacement, or

rehabilitation;

- (f) Repair history;
- (g) Make and model, if applicable;
- (h) Type (e.g., material of construction, configuration of valve, etc.);

and

- (i) Service status (i.e., whether or not component is in service).

E. **Update Inventory of Collection System Components.** Beginning two years from the Effective Date, Baltimore County shall update, within ninety (90) days of completion of any inspection, condition assessment, or rehabilitation of a Collection System component required pursuant to the terms of this Consent Decree, the Utilities Management Application inventory database such that the updated inventory database includes, for the relevant component, the information described in Paragraph 16.D.ii.

F. **Reporting Requirements.** Baltimore County shall report to EPA and MDE on its performance of the requirements in this Paragraph 16 as specifically set forth in Section VI (Reporting Requirements) of this Consent Decree.

17. **Emergency Response Plan**

A. Baltimore County shall develop and implement an Emergency Response Plan to

respond adequately to the occurrence of Discharges from its Collection System and to protect the health and welfare of persons in the event of Discharges.

B. **Specific Requirements.** Within sixty (60) days of the Effective Date of this Consent Decree, Baltimore County shall provide to EPA and MDE, for approval pursuant to Section VIII (Review and Approval Procedures) of this Consent Decree, an Emergency Response Plan that addresses the actions to be taken by Baltimore County in the event of a Discharge. The Emergency Response Plan shall include, but not be limited to, the following:

- i. A detailed description of the actions Baltimore County will undertake to provide notice to the public in the event of a Discharge in accordance with Environment Article, Section 9-331.1, Annotated Code of Maryland and regulations promulgated thereunder;
- ii. A description of how Baltimore County shall notify MDE and EPA when Discharges occur. Baltimore County shall notify MDE of the occurrence of Discharges in accordance with Environment Article, Section 9-331.1, Annotated Code of Maryland and regulations promulgated thereunder;
- iii. A description of how Baltimore County shall coordinate with local health departments regarding the posting of waters where a Discharge has occurred in accordance with the regulations promulgated under the Environment Article, Section 9-331.1, Annotated Code of Maryland;
- iv. A detailed plan describing the standard operating procedures to be followed by Baltimore County personnel in responding to a Discharge, including the steps to be taken to minimize the volume of untreated wastewater discharge as a result of a Discharge;
- v. A general identification of resources that Baltimore County shall make available to correct or repair conditions causing or contributing to the Discharge. This shall include an organizational chart identifying the operational units responsible for conducting such tasks;
- vi. A plan to ensure adequate training of Baltimore County personnel

responding to a Discharge.

C. Upon learning of an Discharge, Baltimore County shall perform monitoring, sampling, and analysis in accordance with the regulations promulgated under the Environment Article, Section 9-331.1, Annotated Code of Maryland. Baltimore County shall provide copies of field sample reports and laboratory analysis results to EPA and MDE upon request.

D. Upon approval or approval with conditions by EPA and MDE of Baltimore County's Emergency Response Plan, pursuant to Section VIII (Review and Approval Procedures) of this Consent Decree, Baltimore County shall implement the Plan as approved, and the Emergency Response Plan shall be incorporated into, and shall become enforceable under, this Consent Decree. The Parties agree to meet and confer, as needed, to discuss the development and implementation of Baltimore County's Emergency Response Plan.

E. Baltimore County shall review the Emergency Response Plan on an annual basis and update the Plan as necessary. Each annual update of the Emergency Response Plan shall be submitted to EPA and MDE for approval pursuant to Section VIII (Review and Approval Procedures) of this Consent Decree, and upon EPA and MDE approval shall be incorporated into, and become enforceable under, this Consent Decree. Baltimore County shall maintain a copy of the Emergency Response Plan required by this Paragraph 17 at each of its Tier 1 and Tier 2 Pump Stations.

F. Any dispute with respect to any portion of the Emergency Response Plan required by this Paragraph shall not delay the development or implementation of the undisputed portions of the Emergency Response Plan.

G. **Reporting Requirements.** Baltimore County shall report to EPA and MDE on its implementation of its Emergency Response Plan as specifically set forth in Section VI (Reporting Requirements) of this Consent Decree.

H. **Response to Building Backups.** Consistent with Paragraph 15.B.ix., Baltimore County shall also develop and implement procedures for responding to, investigating, mitigating, and correcting Building Backups.

18. **Reporting of Discharges and Building Backups and Record Keeping.**

A. **General Requirement.** Baltimore County shall report information about Discharges and Building Backups to MDE and EPA and keep appropriate records related to Discharges and Building Backups.

B. **Specific Requirements for Discharges.**

i. Baltimore County shall report to MDE by oral notification any Discharges within twenty-four (24) hours of the time Baltimore County first becomes aware of the Discharge.

ii. A written report shall also be provided to EPA and MDE within five (5) days of the time Baltimore County first became aware of the Discharge. Any written report shall be made to the Water Protection Division, United States Environmental Protection Agency, Region III and to the Compliance Program, Water Management Administration, MDE, and shall contain the information required under Code of Maryland Regulations (COMAR) 26.08.10.04 & .05.

C. **Specific Requirements for Building Backups.** On an annual basis, as part of each Annual Report to be submitted pursuant to this Consent Decree, Baltimore County shall report any known Building Backups. The report should include:

- i. the location of the Building Backup;
- ii. the cause of the Building Backup, if known;
- iii. an estimate of the amount of sewage released into the building; and
- iv. the location of sewage disposal (if known).

D. Baltimore County shall maintain for at least five years a list and description of any complaints from customers or others related to reported Building Backups.

E. Until termination of the Consent Decree, Baltimore County shall maintain records of the written reports required by Paragraph 18.B. and C., above, as set forth in Section XVIII (Record Keeping) of this Consent Decree.

VI. REPORTING REQUIREMENTS

19. Quarterly Reporting.

A. **Timing.** Beginning with the first full calendar quarter after the Effective Date, and for each calendar quarter thereafter until termination of the Consent Decree, Baltimore County shall submit to EPA and MDE a Quarterly Report containing the information set forth in Paragraph 19.B., below. The Quarterly Report shall be postmarked and sent by the 45th day after the end of the calendar quarter (which shall be May 15, August 14, November 14, or February 14, respectively, or the next business day consistent with the definition of “day” in Section IV of this Consent Decree). In lieu of submitting a separate Quarterly Report for any fourth calendar quarter, Baltimore County may submit a combined Quarterly and Annual Report, provided that the combined Report is submitted no later than the due date for the relevant Quarterly Report and includes all information required to be included in the Quarterly Report pursuant to this Paragraph 19 and all information required to be included in the Annual Report pursuant to Paragraph 20, below.

B. **Contents.** The Quarterly Report shall include the information set forth below regarding activities performed in the prior calendar quarter (or, in the case of the first Quarterly Report, activities performed since the Effective Date):

i. SSO Structures.

(a) Report the information required by Paragraph 7.C.ii.(a) & (b) with respect to any discharges from SSO Structures during the previous quarter;

APPENDIX G



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Suite 1100
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Main: 202-296-8800
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www.environmentalintegrity.org

January 20, 2016

Shawn M. Garvin
Regional Administrator
U.S. Environmental Protection Agency, Region 3
1650 Arch Street
Mail Code 3RA00
Philadelphia, PA 19103

Benjamin H. Grumbles
Secretary of the Environment
Maryland Department of the Environment
1800 Washington Blvd.
Baltimore, MD 21230

Re: Supplemental Environmental Projects to help families flooded with sewage in Baltimore

Dear Regional Administrator Garvin and Secretary Grumbles:

This letter is written to urge you to address the public health and environmental justice issues regarding the hundreds of residential sewage backups that are the result of the city's chronically failing, and still largely unremediated, sewer system. We ask EPA and MDE to require Baltimore to complete a supplemental environmental project that would help address some of the damage to homes caused by the city's failure to meet the deadlines of its 2002 sewage Consent Decree. On January 1, Baltimore missed the final compliance deadline established by the Consent Decree for upgrading the city's overwhelmed sewer system and halting the sewage overflows that are contaminating the Inner Harbor and flooding city homes. The city's most recent quarterly progress report to the U.S. Environmental Protection Agency and Maryland Department of the Environment concedes that Baltimore is far from finished with the required work, having completed only 31 of the 55 projects listed with deadlines in the Consent Decree.¹ It is our understanding that the city, EPA, and MDE are now negotiating a proposed revision to the decree that would grant the city several more years to comply beyond the January 1, 2016 original deadline.

EPA and MDE should enforce as rapid a timetable as practical for finally cleaning up the Inner Harbor and Baltimore's waterways. Even more urgent than the unsafe fecal bacteria levels in the harbor, however, is the need for the city to immediately address the backups of raw sewage, triggered by rain infiltrating an overwhelmed system, that are damaging hundreds of city homes. These sewage backups into homes are causing financial losses, stress, and health risks to vulnerable populations, especially in Northwest Baltimore. The city's failure to respond to this problem is an environmental justice issue, because homeowners in wealthy suburbs, such as those in Montgomery County, do not suffer the same neglect and indifference from local authorities when they suffer sewage overflows caused by an

¹ City of Baltimore, Department of Public Works, Sanitary Sewer Overflow Consent Decree – Calendar Quarterly Report No. 52 (hereinafter "Quarterly Report No. 52").

overwhelmed municipal sewer system. They typically get help from their local governments - immediately.

The problem of sewage overflows into homes is not the only concern we have with Baltimore's failure to comply with the consent decree and the impending modifications proposed to the consent decree (see attached report, "Stopping the Flood Beneath Baltimore's Streets.")

Across Baltimore, 413 families filed damage claims between July 1, 2012 and July 1, 2015 because sewage erupted from manholes and their toilets during storms, swamping their homes.² Elderly and low-income homeowners have found their basements inundated with such large volumes of human waste that could not possibly have been caused by homeowner negligence –whether through poor maintenance of private lines, or through error by clogging a toilet.³ Despite the obvious weather-related and systemic nature of these residential backups, Baltimore has assumed an aggressive posture of challenging claims and blaming the victims. The city has only approved payments for nine percent of the damage claims (38 total), and has declined to help even sick and elderly people clean ankle-deep, virus-and-bacteria ridden sludge out of their homes.⁴ This problem has been particularly acute in the Grove Park, West Arlington, and Glen neighborhoods of Northwest Baltimore. There, residents filed 34 claims over the last three years – all of which were either denied or unaddressed by the city for more than a year.⁵ For example, Doris and Charles Brightful of the 5600 block of Elderon Avenue submitted claims to the city after vast amounts of sewage erupted from their basement toilet during rain storms in April 2014 and September 2015, destroying their furniture, television, and hot water heater. However, the city has yet to respond to their 2014 claim and recently denied their 2015 claim, forcing the Brightfuls to pay at least \$4,500 to replace their appliances and repair their basement and bathroom.⁶

We believe that the city is obligated to take action to help these residents, in part because the Baltimore Department of Public Works has suggested that the city's own actions in trying to comply with the Consent Decree may have made the residential backup problem worse. In a November 13, 2015, interview with the author of the Environmental Integrity Project's report on the sewage overflows,⁷ Dana Cooper, Chief of Legal and Regulatory Affairs at the Baltimore Department of Public Works, said that when the city closed 60 of its 62 sewage outfall pipes that had been used to relieve pressure in the system during rain storms, the result was that pressure increased, leading to the system being overwhelmed and more homes being inundated with sewage. "We didn't really know the right order to do things in, necessarily," Cooper said. "And so when we closed those 60 overflows, that actually increased the number of basement backups that we saw in the city – again, because the sewage has to go somewhere." An even bigger issue is that Baltimore has failed to solve the underlying infiltration and systemic backup problems that are causing flooding problems throughout the city, despite being given 13 years and more than a billion dollars (through water and sewer rate hikes) to do so. This failure to meet its legal obligations suggests that Baltimore bears a responsibility to help clean up health hazards when its overwhelmed system overflows into homes.

To address this problem, we suggest that EPA and MDE require Baltimore to complete the following supplemental environmental projects:

² In response to a Maryland Public Information Act request, the Baltimore Department of Public Works provided EIP with lists of households that had filed damage complaints with the city, and how many had resulted in city payments.

³ Ibid.

⁴ Ibid. Numbers through July 1, 2015.

⁵ Ibid.

⁶ Interview with Doris and Charles Brightful on October 29, 2015.

⁷ Environmental Integrity Project report, "Stopping the Flood Beneath Baltimore's Streets," released December 15, 2015. Available at www.environmentalintegrity.org

- 1) Baltimore should establish a protocol for rapidly responding to reports of sewage floods into homes during rain storms. The city should require Department of Public Works employees or private contractors to visit the flooded homes within four hours. When inspections determine that sewage has backed up into a home, Baltimore should deploy appropriate personnel and equipment to clean out the waste.
- 2) Using some of the funds collected by the city's tripling of water and sewer bills over the last 12 years, Baltimore should establish a special fund to pay for the city's cleanup of flooded homes, or reimburse homeowners who incurred cleanup costs when the city failed to act in a timely manner.
- 3) Baltimore should immediately assess the sewer lines in the Grove Park, West Arlington, and Glen neighborhoods of Northwest Baltimore, and take the actions necessary to stop the backup into homes, whether this requires expanding sewer lines, adding equipment such as backflow preventers, or taking other steps.
- 4) To enhance the city's work to improve the public sewer lines in Northwest Baltimore, the city should also pay for the replacement of privately-owned lateral sewer lines in the Grove Park, West Arlington, and Glen neighborhoods, provided that the owners of the properties agree and want the lines replaced.

If you would like to discuss these suggestions or any other aspect of Baltimore's compliance with the sewage consent decree, we would be more than happy to meet with you.

Sincerely,



Mary E. Greene
Deputy Director
Environmental Integrity Project

Halle Van der Gaag
Executive Director
Blue Water Baltimore

David Flores
Baltimore Harbor Waterkeeper
Blue Water Baltimore

Alison Prost
Maryland Executive Director
Chesapeake Bay Foundation

Charles Griffin
President,
West Arlington Improvement Association

Steve Ward
Vice President,
Grove Park Improvement Association

Maxine Webb
President,
Glenn Neighborhood Improvement Association

APPENDIX H

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
STATE OF MARYLAND,)
)
Plaintiff-Intervenor,)
)
and)
)
ANACOSTIA WATERSHED SOCIETY,)
AUBUBON NATURALIST SOCIETY OF)
THE CENTRAL ATLANTIC STATES, INC.)
FRIENDS OF SLIGO CREEK, and)
NATURAL RESOURCES DEFENSE COUNCIL,)
)
Plaintiffs-Intervenors,)
)
v.)
)
WASHINGTON SUBURBAN SANITARY)
COMMISSION,)
)
Defendant.)
_____)

Civil Action No. PJM-04-3679

Judge Messitte

CONSENT DECREE

IV. DEFINITIONS

11. Unless otherwise defined herein, the terms used in this Consent Decree will have the meaning given to those terms in the CWA, 33 U.S.C. §§ 1251 et seq. and the regulations promulgated there under or, if not defined in the CWA or its regulations, then as defined in Maryland's Environment Article Title 9, Subtitles 1 and 3, and the regulations promulgated there under.

The following terms used in this Consent Decree will be defined as follows:

A. "Annual Report" shall mean the report that WSSC shall submit for each calendar year, by March 1st of the year following the calendar year in question, which report will incorporate the format set out in Appendix A to this Consent Decree.

B. "Article" shall mean a subpart of the Remedial Measures Section (Section V.) of this Consent Decree.

C. "Building Backup" shall mean a release from the Collection System, through a lateral to a building or structure.

D. "Calendar Quarter" shall mean the three-month periods ending on March 31st, June 30th, September 30th, and December 31st of each year.

E. "Citizens Groups" shall mean the Plaintiff-Intervenors in this action, the Natural Resources Defense Council, the Anacostia Watershed Society, the Audubon Naturalist Society of the Central Atlantic States, Inc., and the Friends of Sligo Creek.

F. "Closed Circuit Television" or "CCTV" shall mean an inspection technique that uses a closed-circuit TV camera to observe the interior condition of Sewer Segments from within the Sewer Segments.

installations) to prevent discharges and new connections of stormwater inflow, as set forth in the O & M Plan;

4. The requirement under Article Eleven B.7 that WSSC ensure that rehabilitation projects are properly designed and constructed, as set forth in the O & M Plan;

5. The requirement under Article Eleven B. 2 to CCTV any Sewer Segment that is on the preventive cleaning and chemical root control program before removing it from that program, as set forth in the O & M Plan, and

6. The requirement under Article Eleven B. 2 to CCTV any Sewer Segment at which a structural or maintenance problem is revealed during Sewer Segment cleaning, as set forth in the O & M Plan.

E. Annual Reporting and Statement or Certification Requirements. In the Annual Reports and Statement or Certifications to be submitted pursuant to this Consent Decree (See Appendix A, Annual Report and Statement or Certification), WSSC shall report on its progress towards compliance with, and/or shall provide a Statement or Certification regarding its compliance with the applicable provisions of Article Eleven, as set forth in those Appendices.

F. Submission Requirements. For a summary of individual submissions required under Article Eleven, see Appendix D to this Consent Decree.

Article Twelve- Emergency Response Plan(s)

A. General Requirement. WSSC shall develop and implement an Emergency Response Plan(s) to adequately respond to the occurrence of SSDs and Building Backups and to protect the health and welfare of persons in the event of SSDs and/or Building Backups.

B. Specific Requirements.

Within 90 days of the Date of Entry of this Consent Decree, WSSC shall provide to EPA, MDE and the CitizensGroups for review and comment and for EPA's and MDE's approval, an Emergency Response Plan. Comments from the Citizens Groups, if any, shall be submitted to EPA, MDE and WSSC within thirty (30) days of their receipt of the Emergency Response Plan.

1. For SSDs, the Emergency Response Plan shall include, but not be limited to, the following:

a. A description of the actions WSSC shall undertake to provide notice to the public in accordance with the Environment Article, Section 9-331.1, Annotated Code of Maryland and Code of Maryland Regulation 26.08.10, attached to this Consent Decree as Appendix E, and amendments thereto;

b. A description of how WSSC shall notify MDE and the local health department when SSDs occur in accordance with Article Thirteen of the Remedial Measures Section (Section V) of this Consent Decree, below;

c. A description of how WSSC shall coordinate with local health departments regarding the posting of waters where an overflow has occurred in accordance with Environment Article, Section 9-331.1, Annotated Code of Maryland and regulations promulgated there under;

d. A detailed plan describing the standard operating procedures to be followed by WSSC personnel in responding to an SSD occurrence, including the steps to

be taken to minimize the volume of untreated wastewater discharge to surface waters as a result of an SSD;

e. A general identification of resources that WSSC shall make available to correct or repair conditions causing or contributing to the SSD; and

f. A plan to ensure training of WSSC personnel responding to an SSD.

2. For Building Backups, the Emergency Response Plan shall include a detailed plan describing the standard operating procedures to be followed by WSSC personnel in responding to a Building Backup, including:

a. A description of methods for communicating with customers about:

(i) How to report Building Backups, and

(ii) How to obtain clean-up;

b. A description of WSSC's response to Building Backups including:

(i) The timeframes for responses,

(ii) The measures taken to cleanup Building Backups found to be caused by conditions in WSSC's Collection System; and

(iii) The measures taken to correct or repair conditions in the Collection System causing or contributing to the Building Backup; and

c. A description of WSSC's follow-up process to insure adequacy of cleanup.

3. In the event of an SSD, WSSC shall perform monitoring, sampling, and analysis in accordance with Environment Article, Section 9-331.1, Annotated Code of Maryland and regulations promulgated there under. WSSC shall provide copies of field sample reports and laboratory analysis results to EPA and MDE upon request.

C. Within sixty (60) days of receipt of EPA and MDE's comments on the Emergency Response Plan(s), WSSC shall, if necessary, modify the plan(s) and resubmit the revised plan(s) to EPA and MDE for final approval.

D. WSSC shall begin implementation of the final plan(s) within 30 days of receipt of final approval from EPA and MDE. The Emergency Response Plan(s) shall be incorporated into and shall be enforceable under this Consent Decree.

E. WSSC shall review the Emergency Response Plan(s) on an annual basis and update the plan as necessary. An update and/or revision of the Emergency Response Plan(s) shall be subject to EPA and MDE approval in the manner described herein regarding the development of the Emergency Response Plan(s).

F. Annual Reporting and Statement or Certification Requirements. In the Annual Reports and Statement/Certifications to be submitted pursuant to this Consent Decree (See Appendix A, Annual Report and Statement/Certification), WSSC shall report on its progress towards compliance with, and/or shall provide a Statement or Certification regarding its compliance with the applicable provisions of Article Twelve., as set forth in those Appendices.

G. Individual Submission Requirements. For a list of individual submissions required under Article Twelve, see Appendix D.

Article Thirteen- Reporting and Recordkeeping

A. General Requirement. WSSC shall report information to MDE and EPA about SSOs, and shall keep appropriate records, as set forth below.

B. Specific Requirements for SSDs.

1. WSSC shall orally report SSD events to MDE in accordance with Code of Maryland Regulation 26.08.10, attached to this Consent Decree as Appendix E, and Environment Article, Section 9-331.1 Annotated Code of Maryland, and amendments thereto.

2. Further, WSSC shall submit written reports on SSD events to both MDE and EPA in accordance with the requirements of Code of Maryland Regulation 26.08.10, (See Appendix E), Environment Article, Section 9-331.1, Annotated Code of Maryland, and amendments thereto.

3. The SSD information submitted in the written report to EPA and MDE shall be placed on the WSSC website within 10 days of the SSD event.

C. Quarterly Reporting Requirements for Building Backups

On a quarterly basis, and as part of each Quarterly Report to be submitted pursuant to this Consent Decree, WSSC shall report any known Building Backups that have occurred in the WSSD in the preceding quarter. The Quarterly Report should include:

1. The street address (or location) at which the Building Backup occurred;
2. The Sewer Basin in which the Building Backup occurred; and
3. The Sewer Segment in which the Building Backup occurred.

D. WSSC shall maintain for at least five years a list and description of any complaints from customers or others related to reported SSDs, and Building Backups.

APPENDIX I

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

| | | |
|----------------------------|---|------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| and |) | |
| |) | |
| THE STATE OF MISSOURI, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| and |) | No. 4:07-CV-1120 (CEJ) |
| |) | |
| MISSOURI COALITION FOR THE |) | <u>CONSENT DECREE</u> |
| ENVIRONMENT FOUNDATION, |) | |
| |) | |
| Plaintiff/Intervenor, |) | |
| |) | |
| v. |) | |
| |) | |
| THE METROPOLITAN ST. LOUIS |) | |
| SEWER DISTRICT, |) | |
| |) | |
| Defendant. |) | |
| |) | |

Design Criteria, Performance Criteria, and Critical Milestones” and any modifications and/or extensions approved by EPA pursuant to Paragraphs 55, 58-63 of this Consent Decree.

c. “Approved Supplemental Remedial Measures Plan” shall mean any Supplemental Remedial Measures Plan approved in accordance with Section VI.E, or established through Dispute Resolution pursuant to Section XIV of this Consent Decree.

d. “Asset Management” shall mean a continuous process of managing infrastructure, capital assets, and operation to deliver optimized customer service and to protect health and the environment while minimizing costs over the assets’ lifetimes.

e. “Bid Year” shall mean the date that a notice to proceed with construction has been issued and remains in effect for the CSO Control Measure. For CSO Control Measures with multiple phases or packages, the Bid Year shall mean the date the notice to proceed has been issued and remains in effect for the first construction phase or package.

f. “Building Backup” shall mean a wastewater backup occurring into a building which is caused by blockages, flow conditions, or malfunctions within the Sewer System. Building Backup does not include wastewater backups resulting from (i) flow conditions caused by overland flooding or (ii) blockages, flow conditions, or malfunctions of a Private Lateral.

g. “Bypass” shall mean the intentional diversion of waste streams from any portion of a Wastewater Treatment Facility, as defined by 40 C.F.R. § 122.41(m).

h. “Coalition” shall refer to the Plaintiff-Intervenor in this action, Missouri Coalition for the Environment Foundation and its affiliated organizations.

i. “Combined Sewer Overflow” or “CSO” shall mean any discharge from the Combined Sewer System at a point prior to the headworks of a Wastewater Treatment Facility.

days of receipt of EPA's approval of such Plan. MSD shall provide notice and certify to EPA, with copies to the State and the Coalition, in accordance with Sections XVII and XVIII, that the Non-Capacity Related SSO Response Plan has been fully implemented. The Non-Capacity Related SSO Response Plan shall be updated and implemented as appropriate. Any substantive updates, changes or revisions to the Non-Capacity Related SSO Response Plan shall be subject to EPA's review and approval in accordance with Section VII.

L. Building Backup Response Plan

46. No later than three months from the Effective Date, MSD shall provide to EPA and the State for review and EPA's approval, with a copy to the Coalition, in accordance with the requirements of Section VII, a Building Backup Response Plan that (a) results in Building Backups being responded to and, if determined to be a Building Backup, halted as expeditiously as practicable, and (b) results in appropriate measures being implemented to address Building Backup recurrence.

47. The Building Backup Response Plan shall provide procedures for responding to Building Backup calls to minimize the potential human health risk from contact with sewage. The Building Backup Response Plan shall include, but not limited to:

a. Standard Operating Procedures to be followed by MSD personnel in responding to Building Backup calls shall include MSD personnel recording information and responding to the calls, generating a service request, and providing onsite response, if necessary. If determined to be a Building Backup, the backup will be eliminated within four (4) hours of receiving notice or as quickly as possible if extenuating circumstances exist. If onsite response is given then MSD shall provide building occupants and/or owners with the Building Backup clean-up guide as

required by Paragraph 47(c), as well as provide information on the prevention of Building Backups, backup prevention devices, and the possibility of monetary reimbursement if occupants and/or owners may be eligible as determined by MSD.

b. A description of the actions MSD shall undertake to educate the public through appropriate and current methods, including MSD website, brochures, door hangers, billing inserts or other methods regarding Building Backups, including how to report Building Backups to MSD, protection from contact with raw sewage during cleanup, potential health effects and safety issues related to contact with raw sewage, professional clean up assistance, the availability of MSD's Building Backup clean-up guide as required by Paragraph 47(c), and the availability of Building Backup monetary reimbursement and/or MSD's Sewer Separation Program ("SSP"), as appropriate.

c. A revised Building Backup clean-up guide produced in multiple languages to be made available on MSD website and distributed to property owners or residents if onsite response is given by MSD. This clean-up guide shall provide recommended clean-up procedures necessary to disinfect and/or remove items potentially contaminated by the Building Backup. The clean-up guide shall also provide descriptions of potential health affects and safety issues resulting from contact with sewage, as well as provide information on how to minimize exposure.

d. A Building Backup Prevention Program that describes MSD's activities and programs to prevent the occurrence of Building Backups through, for example, MSD's SSP which includes the installation and maintenance of individual grinders, pump stations and sewerage back-flow preventers and the referral of customers to local lateral repair programs to

address Building Backups. The Building Backup Prevention Program shall also provide:

- i. A summary of completed and ongoing SSP activities;
- ii. Annual inspection and maintenance of SSP projects;
- iii. An assessment of SSP effectiveness in reducing Building Backups on an individual residential unit basis and its overall effectiveness in reducing the number of Building Backup events throughout MSD's jurisdictional boundary;
- iv. Anticipated changes regarding SSP use, availability to the public, ongoing maintenance activities and responsibilities, and type(s) of equipment; and
- v. A summary of how the SSP installation and maintenance procedures will be communicated to the customers.

48. MSD shall implement the Building Backup Response Plan within 60 days of receipt of EPA's approval of such Plan or resolution of a dispute concerning the Building Backup Response Plan pursuant to Section XIV. The Building Backup Response Plan shall be updated and implemented on a regular basis, as appropriate. Any substantive updates, changes or revisions to the Building Backup Response Plan shall be subject to EPA's review and approval in accordance with Section VII.

M. Cityshed Mitigation Program

49. MSD shall continue its Cityshed Mitigation Program to mitigate the effect of wet weather surcharging and overland flooding of the combined sewer system (Citysheds). This program may consist of but is not limited to sewer separation, relief sewers, sewer separation program ("SSP") for individual properties, control/detention of wet weather flows, relocation of existing residents, and mapping of flood prone areas. MSD shall maintain a regular annual

APPENDIX J

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND, SOUTHERN DIVISION**

| | | |
|------------------------------|---|------------------|
| UNITED STATES OF AMERICA |) | |
| |) | |
| Plaintiff, |) | |
| |) | Civil Action No. |
| v. |) | |
| |) | Judge |
| WASHINGTON SUBURBAN SANITARY |) | |
| COMMISSION, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

COMPLAINT

The United States of America, by authority of the Attorney General of the United States, and acting on behalf of the Administrator of the United States Environmental Protection Agency ("U.S. EPA") file this Complaint, and allege as follows:

NATURE OF ACTION

1. This is a civil action brought pursuant to Section 309(b) and (d) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(b) and (d), for injunctive relief and for the assessment of civil penalties against Defendant Washington Suburban Sanitary Commission ("WSSC"), for numerous unpermitted and illegal discharges of pollutants in violation of Section 301(a) of the CWA, 33 U.S.C. §§ 1311(a). This complaint also alleges that Defendant violated several terms and conditions of National Pollutant Discharge Elimination System ("NPDES") permits that have been issued to it, also in violation of Section 301(a) of the CWA. This action is also brought pursuant to Section 504 of the CWA, 33 U.S.C. § 1364, to require WSSC to take such action as may be

necessary to abate the imminent and substantial endangerment to the health of persons presented by WSSC's collection and conveyance system.

JURISDICTION, VENUE, AUTHORITY AND NOTICE

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b) and 28 U.S.C. §§ 1331, 1345 and 1355.

3. Venue is proper in the District of Maryland pursuant to 28 U.S.C. § 1391(b), and Section 309(b) of the CWA, 33 U.S.C. § 1319(b), because it is the judicial district where the Defendant is located and where the alleged violations occurred.

4. The United States has provided notice of this action to the State of Maryland pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

5. Authority to bring this civil action on behalf of the United States is vested in the Attorney General of the United States pursuant to Section 506 of the CWA, 33 U.S.C. § 1366, and 28 U.S.C. §§ 516 and 519.

DEFENDANT

6. Defendant WSSC was created in 1918 by act of the Maryland Legislature to provide drinking water and sanitary sewage treatment for residents of Prince George's and Montgomery Counties. Defendant's service area currently covers approximately 1,000 square miles, with a residential population of over 1.6 million. Defendant is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and a "municipality" within the meaning of Section 502(4) of the CWA, 33 U.S.C. § 1362(4).

JOINDER OF NECESSARY PARTY

7. Section 309(e) of the CWA requires that a State be joined as a party to the litigation when the United States sues a municipality of the State. The State of Maryland intends to intervene in this action as a co-plaintiff, and the United States supports such intervention.

FEDERAL STATUTES AND REGULATIONS

8. Section 301(a) of the CWA, 33 U.S.C. § 1311(a) prohibits the discharge of any pollutants by any person except as authorized by and in compliance with certain other sections of the Act, including Section 402, 33 U.S.C. § 1342. Section 502(12) defines “discharge of a pollutant” to mean, among other things, “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12). Section 502(7) of the CWA defines navigable waters “to be the waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).

9. EPA regulations promulgated pursuant to the CWA define the term “waters of the United States” to include, among other things, (i) all waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; (ii) all interstate waters; (iii) all other waters such as intrastate lakes, rivers and streams, including intermittent streams, the use, degradation or destruction of which would or could affect interstate or foreign commerce; (iv) tributaries of waters of the United States; and (v) certain wetlands (or wetlands adjacent to these waters). 40 C.F.R. § 122.2.

10. Section 502(6) of the CWA defines “pollutant” to include sewage. 33 U.S.C. § 1362(6).

11. The term “point source” is defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14) as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel . . . from which pollutants are or may be discharged.”

12. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that EPA may issue NPDES permits to “persons” that authorize the discharge of any pollutant to navigable waters, but only in compliance with Section 301 of the CWA, 33 U.S.C. § 1311, and such terms and conditions as EPA determines are necessary to carry out the provisions of the CWA.

13. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), provides that a State may establish its own permit program, and after receiving EPA’s authorization of its program, may issue NPDES permits. The State of Maryland established its own NPDES permit program and received EPA authorization of its program in 1974.

14. Section 309(b) of the CWA, 33 U.S.C. § 1319(b), authorizes EPA to commence a civil action for appropriate relief, including a permanent or temporary injunction, when any person is in violation of, among other things, Section 301 of the CWA, 33 U.S.C. § 1311, or violates any of the terms or conditions of any permit implementing, among other things, Section 301, 308 or 402 of the CWA, 33 U.S.C. §§ 1311, 1318 or 1342.

15. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), provides that any person who violates, among other things, Section 301 of the CWA, 33 U.S.C. § 1311, or who violates any condition or limitation of a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. §1342, shall be subject to a civil penalty not to exceed \$25,000 per

day of violation, with each day in which a violation occurs constituting a separate violation.

16. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note: Pub. L. 101-40, enacted October 5, 1990; 104 Stat. 890), as amended by the Debt Collection Improvements Act of 1996 (31 U.S.C. § 3701 note; Pub. L. 104-134, enacted April 26, 1996; 110 Stat. 1321), EPA may seek civil penalties of up to \$27,500 per day for each violation occurring on or after January 31, 1997. All violations at issue in this Complaint occurred after January 31, 1997.

17. Further, pursuant to EPA's latest Civil Monetary Penalty Inflation Adjustment Rule, finalized on February 13, 2004, and effective March 15, 2004, the maximum civil penalty for violations of CWA Section 301 is \$32,500 per day. 69 Fed. Reg. 7121 (Feb. 13, 2004). Hence, any violations occurring on or after March 15, 2004 would be subject to the \$32,500 daily maximum.

18. Finally, Section 504 of the CWA, 33 U.S.C. § 1364 states that upon receipt of evidence that a pollution source or combination of sources is presenting an imminent and substantial endangerment to the health of persons the United States may bring suit to immediately restrain any person causing or contributing to the alleged pollution to stop the discharge of pollutants or to take such other action as may be necessary.

GENERAL ALLEGATIONS

19. Defendant WSSC owns and operates a "treatment works" as that term is defined in CWA Section 212(2), 33 U.S.C. § 1292, and a "publicly owned treatment works" ("POTW") as that term is defined in U.S. EPA regulations implementing the CWA, 40 C.F.R. § 122.2 (cross-referencing the definition at 40 C.F.R. § 403.3).

Defendant's POTW collects, conveys, treats and disposes of sanitary sewage from Montgomery County and Prince Georges County, Maryland, an area covering approximately 1,000 square miles, with a population of approximately 1.6 million.

20. In addition to providing sewage service, Defendant provides drinking water to residents of Montgomery County and Prince Georges County, Maryland.

21. Defendant's POTW consists of over 5,000 miles of pipe with over 131,000 manholes, and over 40 wastewater pump stations ("WWPSs") which convey approximately 180 million gallons of sewage a day to seven wastewater treatment plants ("WWTPs"), six of which are owned and operated by Defendant, and one of which is owned by the District of Columbia.

22. Defendant's six WWTPs are the Damascus WWTP, the Hyattstown WWTP, the Parkway WWTP, the Piscataway WWTP, the Seneca WWTP, and the Western Branch WWTP. These WWTPs, combined, have the capacity to treat over 73 million gallons of sewage per day.

23. The WWTP in the District of Columbia which receives flow from Defendant's system is known as the Blue Plains WWTP. Pursuant to the Blue Plains Intermunicipal Agreement of 1985 entered into by the District of Columbia, Fairfax County, Virginia, Montgomery County, Maryland, Prince Georges County, Maryland and WSSC, 170 million gallons a day of the Blue Plains WWTP's treatment capacity has been allocated to WSSC for the treatment of waste water from Montgomery County and Prince Georges County.

24. The sewers in Defendant's system are all separate sanitary sewers, which means that they were designed to carry waste water, rather than a combination of waste

water and rain water. WSSC does not own or operate “combined sewers” (i.e. sewers that were designed to carry both waste water and rain water together).

25. The waste water that is controlled, conveyed and stored by Defendant in its system, as well as the waste water that is treated and disposed of by Defendant at its six WWTPs constitute “pollutants” as that term is defined in Section 502(6) of the CWA, 33 U.S.C. § 1362(6) and § 9-101(g) of the Environment Article.

26. On or about February 1, 1995, the State of Maryland issued NPDES Permit No. MD0020982 and State Discharge Permit No. 00-DP-0162 to Defendant for the Damascus WWTP (“the Damascus WWTP Permit”) under the authority of Section 402 of the CWA, 33 U.S.C. § 1342, and Title 9 of the Maryland Environment Article, Annotated Code of Maryland, and implementing regulations codified at COMAR 26.08.01 et seq. The Damascus WWTP Permit was reissued on December 1, 2000, and is currently scheduled to expire on November 30, 2005.

27. On or about January 1, 1997, the State of Maryland issued NPDES Permit No. MD0067768 and State Discharge Permit No. 96-DP-3200 to Defendant for the Hyattstown WWTP (“the Hyattstown WWTP Permit”) under the authority of Section 402 of the CWA, 33 U.S.C. § 1342, and Title 9 of the Maryland Environment Article, Annotated Code of Maryland, and implementing regulations codified at COMAR 26.08.01 et seq. The Hyattstown WWTP Permit, although originally set to expire on December 31, 2001, was continued by operation of law when Defendant timely applied for a renewal of the permit in April 2001. See Maryland State Gov’t. Code Ann. Section 10-226(b). The Hyattstown Permit was reissued on September 1, 2004, and is currently set to expire August 31, 2009.

28. On or about June 1, 1995 and again on or about December 1, 2000, the State of Maryland issued NPDES Permit No. MD0021725 and State Discharge Permit No. 00-DP-0631 to Defendant for the Parkway WWTP (“the Parkway WWTP Permit”) under the authority of Section 402 of the CWA, 33 U.S.C. § 1342, and Title 9 of the Environment Article, Annotated Code of Maryland, and implementing regulations codified at COMAR 26.08.01 et seq. The June 1, 1995 Parkway WWTP Permit was extended by operation of law from the date Defendant timely applied for a reissued permit, March 27, 2000, until the date the permit was reissued, December 1, 2000. The Parkway WWTP Permit is currently scheduled to expire on November 30, 2005.

29. On or about October 1, 1997, the State of Maryland issued NPDES Permit No. MD0021539 and State Discharge Permit No. 02-DP-0667 to Defendant for the Piscataway WWTP (“the Piscataway WWTP Permit”) under the authority of Section 402 of the CWA, 33 U.S.C. § 1342, and Title 9 of the Environment Article, Annotated Code of Maryland, and implementing regulations codified at COMAR 26.08.01 et seq. On or about March 8, 2002, the Piscataway WWTP Permit was extended by operation of law when Defendant timely filed an application for reissuance of the permit. On August 12, 2003, the Piscataway WWTP Permit was reissued, and is currently scheduled to expire on July 31, 2008.

30. On or about March 1, 1993, and again on or about September 1, 1999, the State of Maryland issued NPDES Permit No. MD0021491 and State Discharge Permit No. 00-DP-0156 to Defendant for the Seneca WWTP (“the Seneca WWTP Permit”) under the authority of Section 402 of the CWA, 33 U.S.C. § 1342, and Title 9 of the Environment Article, Annotated Code of Maryland, and implementing regulations

codified at COMAR 26.08.01 et seq. The September 1, 1999 Seneca WWTP was scheduled to expire on August 31, 2004. However, on or about February 2, 2004, the September 1, 1999 Seneca WWTP Permit was extended by operation of law when Defendant timely filed an application for reissuance of the permit.

31. On or about January 1, 1995, the State of Maryland issued NPDES Permit No. MD0021741 and State Discharge Permit No. 00-DP-0632 to Defendant for the Western Branch WWTP (“the Western Branch WWTP Permit”) under the authority of Section 402 of the CWA, 33 U.S.C. § 1342, and Title 9 of the Environment Article, Annotated Code of Maryland, and implementing regulations codified at COMAR 26.08.01 et seq. The Western Branch WWTP Permit was reissued effective January 1, 2001, and is currently scheduled to expire on December 31, 2005.

32. While the six NPDES permits that Defendant holds for its six WWTPs authorize it to discharge treated effluent that meets effluent limitations for specified pollutants from designated outfalls at its WWTPs, none of the six NPDES permits authorize Defendant to discharge untreated sewage from its control, collection and conveyance system.

33. The NPDES permits issued to Defendant for its six WWTPs contain conditions which require Defendant to operate its facilities efficiently to minimize upsets and discharges of excessive pollutants, and to provide adequate operating staff to carry out functions required to ensure compliance with the permits.

34. The NPDES permits issued to Defendant for its six WWTPs contain conditions which require Defendant to maintain compliance with effluent limitations and

the terms and conditions of the permit in the event of a loss or failure of the primary source of power to facilities.

35. The currently effective NPDES permits issued to Defendant for the Damascus, Parkway, Piscataway, and Western Branch WWTPs contain conditions which require Defendant orally to report discharges from the control, collection and conveyance systems tributary to each of those WWTPs within 24 hours, and in writing within 5 days, providing certain information concerning the discharge.

Unpermitted Discharges

36. From March 13, 1997 to the present (hereinafter “times relevant to this Complaint”) there have been over a thousand discharges of untreated waste water containing raw sewage from parts of Defendant’s POTW, including but not limited to manholes, pump stations, and sewer pipes, to waters of the United States and/or to waters of the State of Maryland, including but not limited to the Anacostia River (and its tributaries), the Patuxent River (and its tributaries), the Potomac River (and its tributaries), and Rock Creek (and its tributaries). These discharges shall be referred to in this Complaint as “Sanitary Sewer Overflows” or “SSOs.” These SSOs are unpermitted discharges, not authorized by any of Defendant’s NPDES permits.

37. The Anacostia River (and its tributaries), the Patuxent River (and its tributaries), the Potomac River (and its tributaries), and Rock Creek (and its tributaries), among other water bodies that have received SSOs from Defendant’s system, are “navigable waters” of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), as well as “waters of the state” as defined in Section 9-101(l) of the Environment Article, Annotated Code of Maryland. The Anacostia River, the

Patuxent River, the Potomac River and Rock Creek are each tributary to the Chesapeake Bay, which is the nation's largest estuary, "a national treasure and a resource of worldwide significance," and for that reason accorded special recognition under Section 117 of the CWA, 33 U.S.C. § 1267.

38. SSOs from Defendant's POTW have resulted from multiple causes including, among other things, breaks in sewer pipes, inadequate maintenance procedures resulting in blockages in sewer pipes caused by grease and/or roots, inadequate inspection of, and enforcement of regulations applicable to, food establishments that contribute grease to the system, and power failures, resulting from inadequate back up power at pump stations.

39. Untreated sewage contains organic matter, bacteria and other potential pathogens, which are harmful to the environment, including but not limited to aquatic life. Additionally, the pathogens in raw sewage can cause a number of diseases in humans, including but not limited to enteric diseases such as gastroenteritis, dysentery and cholera. These diseases are communicable. Hence, untreated sewage poses a risk to human health.

FIRST CLAIM FOR RELIEF

(Unpermitted Discharges of Pollutants in Violation of CWA Section 301(a))

40. Paragraphs 1-39 are re-alleged and incorporated herein by reference.

41. On various dates from March 13, 1997, and continuing to the present, Defendant WSSC has spilled or discharged pollutants from point sources not specified in any NPDES Permit issued by U.S. EPA or the State of Maryland pursuant to Section 402 of the CWA, 33 U.S.C. § 1342 to navigable waters of the United States.

42. Each day of each unpermitted discharge of pollutants to navigable waters of the United States is a separate violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

43. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), provides that any person who violates Section 301 of the CWA, 33 U.S.C. § 1311, shall be subject to a civil penalty. The statutory maximum civil penalty amounts that may be awarded per day for each violation are set forth in paragraphs 16-18, *supra*.

44. Unless enjoined by an order of the Court, Defendant WSSC will continue to discharge pollutants to navigable waters of the United States without a permit in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

SECOND CLAIM FOR RELIEF

(Violation of the “Proper Operation and Maintenance” Condition (General Condition III.B.3) in Certain of Defendant’s NPDES Permits)

45. Paragraphs 1-39 are re-alleged and incorporated herein by reference.

46. 40 C.F.R. § 122.41 sets forth a list of general conditions that all NPDES permits issued under State NPDES permitting programs must contain to meet Federal minimum standards. Subpart (e) of 40 C.F.R. § 122.41 sets forth the General Condition for “Proper Operation and Maintenance” of facilities and systems. Section 122.41(e) states that a “permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of [the] permit.”

47. The term “facility” is defined in the regulations as “any NPDES ‘point source’ or any other facility . . . (including land or appurtenances thereto) that is subject to regulation under the NPDES program.” 40 C.F.R. §122.2.

48. The term “point source” is defined in the regulations as “any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, [or] container . . . from which pollutants are or may be discharged” Id.

49. Seven of the Defendant’s NPDES permits contain the following “General Condition” in Section III.B.3 of the permit. This condition is the Maryland equivalent of 40 C.F.R. §122.41(e), and is known as the “Proper Operation and Maintenance Condition”:

Facility Operation and Quality Control

All waste collection, control, treatment and disposal facilities shall be operated in a manner consistent with the following:

- a. Facilities shall be operated efficiently to minimize upsets and discharges of excessive pollutants.
- b. The permittee shall provide an adequate operating staff qualified to carry out operation, maintenance and testing functions required to ensure compliance with this permit. . . .

The NPDES permits that contain the above language in Section III.B.3 are the 6/1/95 Parkway WWTP Permit; the 12/1/00 Parkway WWTP Permit; the 8/1/03 Piscataway WWTP Permit; the 3/1/93 Seneca WWTP Permit; the 1/1/95 Western Branch WWTP Permit; and the 1/1/01 Western Branch WWTP Permit.

50. Further, the “Proper Operation and Maintenance Condition” in Defendant’s 10/1/97 Piscataway WWTP Permit is identical to the language set forth in paragraph 60 above, except that the term “collection” is deleted from the list of facilities appearing in the first line.

51. On hundreds of days between March 13, 1997 and the present, hundreds of unauthorized discharges of raw sewage have occurred from sewer pipes, manholes, pump stations and other “facilities” upstream of (or tributary to) the Parkway WWTP, the Piscataway WWTP, the Seneca WWTP and the Western Branch WWTP. Raw sewage contains excessive levels of pollutants, including but not limited to fecal coliform and suspended solids. These unauthorized discharges of raw sewage evidence a failure to properly operate and maintain “facilities” upstream of (or tributary to) these WWTPs so as to minimize upsets and discharges of excessive pollutants, and a failure to maintain adequate operating staff to carry out operation, maintenance and testing functions necessary to minimize unauthorized discharges, and hence maintain compliance with its NPDES permits.

52. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), provides that any person who violates Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, shall be subject to a civil penalty. The statutory maximum civil penalty amounts that may be awarded per day for each violation are set forth in paragraphs 16-18, *supra*. Each day of Defendant’s failure to comply with a “General Condition” in an NPDES permit, such as the “Proper Operation and Maintenance Condition,” is a violation of CWA Sections 301 and 402.

53. Unless enjoined by an order of the Court, Defendant WSSC will continue to violate the “Proper Operation and Maintenance Condition” in the NPDES Permits mentioned in paragraphs 49 and 50, *supra*.

THIRD CLAIM FOR RELIEF

(Emergency Powers Provision in Section 504(a) of the CWA)

54. Paragraphs 1-39 are re-alleged and incorporated herein by reference.
55. Section 504(a) of the CWA, 33 U.S.C. § 1364(a) states in pertinent part:

Emergency Powers

Notwithstanding any other provision of this chapter, the Administrator upon receipt of evidence that a pollution source or combination of sources is presenting an imminent and substantial endangerment to the health of persons . . . may bring suit on behalf of the United States in the appropriate district court to immediately restrain any person causing or contributing to the alleged pollution to stop the discharge of pollutants causing or contributing to such pollution or to take such other action as may be necessary.

56. The Administrator is in receipt of evidence that on numerous occasions over the past seven years untreated sewage from Defendant's sewer system has been released onto public and private property, including but not limited to streets and playground areas, and into buildings, including homes and office buildings, located in Montgomery County and Prince Georges County where persons have or may have come into contact with such sewage. Untreated sewage is "pollution" as that term is defined in Section 501(10) of the CWA, 33 U.S.C. § 1362(19). As such, Defendant and its sewer system are a "pollution source" within the meaning of Section 504(a). Many of these releases have ultimately resulted in a "discharge" to "waters of the United States" when such releases were cleaned up.

57. Untreated sewage can carry bacteria, viruses, parasitic organisms, intestinal worms, and borroughs (inhaled molds and fungi). The diseases these may cause range in severity from mild gastroenteritis (causing stomach cramps and diarrhea) to life-threatening ailments such as cholera, dysentery, infectious hepatitis, and severe

gastroenteritis. Untreated sewage, therefore, presents an “imminent and substantial endangerment to the health of persons” who may come into contact with it. Groups facing greater risks are children, the elderly, immunocompromised groups, and pregnant women. The endangerment from untreated sewage remains imminent until the area impacted by the sewage is adequately cleaned and disinfected.

58. Pursuant to Section 504(a), the United States seeks an order requiring Defendant: 1) to take measures to minimize to the greatest extent possible the release of sewage into streets, yards, parks, buildings and other areas where persons may come into contact with it when the release was caused by conditions in its Collection System; 2) when releases do occur which are caused by conditions in its Collection System, to clean up and disinfect the affected property as promptly as possible so as to remove endangerment to public health; and 3) to take such other action as may be necessary.

FOURTH CLAIM FOR RELIEF

(Violation of the SSO Reporting Condition (General Condition III.C. and III.B. 1) in Certain of Defendant’s NPDES Permits)

59. Paragraphs 1-39 are re-alleged and incorporated herein by reference.

60. General Condition C in Section III of the Defendant’s currently effective NPDES Permits for the Parkway WWTP, the Piscataway WWTP and the Western Branch WWTP states that discharges from the sewer collection system are not authorized by the permits, and that if such discharges do occur, they shall be reported in accordance with General Condition B.1 in Section III.

61. General Condition B.1 in Section III of Defendant’s Parkway WWTP and Western Branch WWTP Permits states that if the permittee does not comply with any permit condition, within 24 hours of learning of a non-complying discharge the permittee

shall notify MDE by telephone of the discharge, providing, among other things the location, cause, estimated volume and duration of the discharge, and shall within 5 days following the telephone notification, submit a written report on the discharge event providing, among other things, the information set forth above.

62. On numerous occasions since the SSO Reporting Conditions set forth above became effective, the Defendant has failed properly to report SSOs that have occurred in the collection systems tributary to the Parkway WWTP, the Piscataway WWTP and the Western Branch WWTPs in accordance with those Reporting Conditions. These failures include providing no notice whatsoever of an SSO, failing to provide oral notice within 24 hours of learning of the event, failing to provide written notice within 5 days of providing oral notice, and providing insufficient notice that lacked one or more of the elements set forth in the permits' SSO Reporting Condition.

63. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), provides that any person who violates Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, shall be subject to a civil penalty. The statutory maximum civil penalty amounts that may be awarded per day for each violation are set forth in paragraphs 16-18, *supra*.

64. Unless enjoined by an order of the Court, Defendant WSSC will continue to violate the SSO Reporting Condition in the NPDES Permits mentioned in Paragraph 60, *supra*.

FIFTH CLAIM FOR RELIEF

(Violation of the "Back up Power" Condition (General Condition B.8) in Defendant's NPDES Permit for the Piscataway WWTP)

65. Paragraphs 1-39 are re-alleged and incorporated herein by reference.

66. General Condition B.8 in Section III of Defendant's NPDES Permit for the Piscataway WWTP provides in pertinent part:

Power Failure

The permittee shall maintain compliance with the effluent limitations and all other terms and conditions of this permit in the event of a reduction, loss or failure of the primary source of power to the wastewater collection and treatment facilities.

67. On several occasions starting in 1998, several facilities located in the Piscataway WWTP and the Seneca Creek WWTP collection system areas, including but not limited to the Fort Washington Estate Pump Station, the Fort Washington Forest Pump Station and the Seneca Pump Station have experienced SSOs as a result of a failure of their primary power source.

68. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), provides that any person who violates Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, shall be subject to a civil penalty. The statutory maximum civil penalty amounts that may be awarded per day for each violation are set forth in paragraphs 16-18, *supra*.

69. Unless enjoined by an order of the Court, Defendant WSSC will continue to violate the "Back up Power" Condition in certain of its NPDES permits.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America respectfully prays that this Court provide the following relief:

1. A permanent injunction directing Defendant WSSC to take all steps necessary to come into permanent and consistent compliance with the prohibition on unpermitted discharges contained in Section 301(a) of the Clean Water Act;

2. A permanent injunction directing Defendant WSSC to take such steps as are necessary to minimize the imminent and substantial risk to human health posed by pollutants (raw sewage) originating in its Collection System, in accordance with Section 504(a) of the CWA;

3. A permanent injunction directing Defendant WSSC to take all steps necessary to comply with all terms and conditions of its NPDES permits that relate to its Collection System, including but not limited to the General Conditions requiring "Proper Operation and Maintenance" and maintenance of back-up power for facilities;

4. A permanent injunction directing Defendant WSSC to comply with the SSO reporting requirements set forth in the General Conditions of its NPDES Permits;

5. A judgment assessing civil penalties against Defendant WSSC and in favor of the United States, not to exceed \$27,500 per day for each violation of the CWA which occurred between January 30, 1997 and March 14, 2004, and not to exceed \$32,500 per day for each violation of the CWA which occurred on or after March 15, 2004.


6. Award the United States of America its costs and disbursements in this action; and

7. Grant such other relief as this Court deems appropriate.

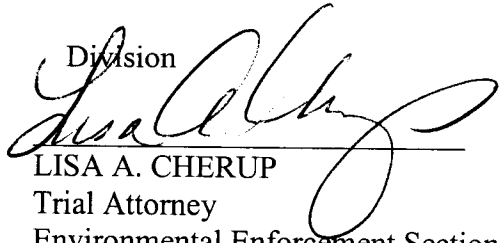
Respectfully submitted,

FOR THE UNITED STATES OF AMERICA

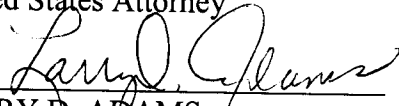
Dated: 11.9.04


THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources

Dated: 11/16/04

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The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM).

I. (a) PLAINTIFFS**UNITED STATES OF AMERICA****DEFENDANTS****WASHINGTON SUBURBAN SANITARY COMMISSION****(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF**

(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

**Montgomery and
Prince George's**

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

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Washington, D.C. 20006

II. BASIS OF JURISDICTION

(PLACE "X" IN ONE BOX ONLY)

☒ **1** U.S. Government
Plaintiff☐ **3** Federal Question
(U.S. Government Not a Party)☐ **2** U.S. Government
Defendant☐ **4** Diversity
(Indicate Citizenship of Parties in item III)**III. CITIZENSHIP OF PRINCIPAL PARTIES**

(FOR DIVERSITY CASES ONLY)

(PLACE AN "X" IN ONE BOX
FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

PTF DEF

PTF DEF

Citizen of This State

☒ **1**☒ **1** Incorporated or Principal Place☐ **4**

Citizen of Another State

☐ **2**☐ **2** Incorporated and Principal Place of
Business in Another State☐ **5**☐ **5**

Citizen or Subject of a Foreign Cntry

☐ **3**☐ **3** Foreign Nation☐ **6**☐ **6****IV. CAUSE OF ACTION**

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Violation of Clean Water Act, 33 U.S.C. § 1319, 1311, 1364

V. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

| CONTRACT | TORTS | | FORFEITURE/ PENALTY | BANKRUPTCY | OTHER STATUTES |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input checked="" type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment at Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury | PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury Med. Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Prod. Liab. PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Prod. Product Liability | <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure at Property 21 U.S.C. 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other | <input type="checkbox"/> 422 Appeal 28 U.S.C. 158 <input type="checkbox"/> 423 Withdrawal 28 U.S.C. 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark | <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/ Commodities/ Exchange <input type="checkbox"/> 875 Customer Challenge 12 U.S.C. 3140 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determ. Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions |
| REAL PROPERTY | CIVIL RIGHTS | PRISONER PETITION | LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung(923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 U.S.C. 7609 | |

VI. ORIGIN☒ **1** Original Proceeding☐ **2** Removed from
State Court☐ **3** Remanded from
Appellate Court☐ **4** Reinstated or
Reopened☐ **5** Transferred from
another district (specify)☐ **6** Multidistrict
Litigation☐ **7** Appeal to District
Judge from Magistrate**VII. REQUESTED IN
COMPLAINT:**CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P. 23**DEMAND \$
FIELD(4) +**Injunction for Compliance with CWA, penalties, award U.S. costs and
disbursements.**VII. RELATED CASE(S) (See instructions):
IF ANY**

APPENDIX K

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND, SOUTHERN DIVISION**

STATE OF MARYLAND,

Plaintiff,

V.

**WASHINGTON SUBURBAN SANITARY
COMMISSION,**

Defendant.

Civil Action No.

Judge

COMPLAINT IN INTERVENTION

The State of Maryland (“State”), by the authority of the Attorney General of Maryland, acting at the request of and on behalf of the Maryland Department of the Environment (“MDE” or “Department”) files this Complaint In Intervention, and alleges as follows:

NATURE OF ACTION

1. This is a civil action initially brought by the United States of America acting on behalf of the United States Environmental Protection Agency (“U.S.EPA”) pursuant to Section 309(b) and (d) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(b) and (d). The State, by this Complaint, joins the litigation pursuant to Section 505(b) of the CWA, 33 U.S.C. § 1365(b), and by the authority conferred upon MDE under Title 9, Subtitles 2 and 3 of the Environment Article, Annotated Code of Maryland (1996) (“Maryland’s Environment Article, Title 9, Subtitle 3”). The State seeks injunctive relief and the assessment of civil penalties against Defendant Washington Suburban Sanitary Commission (“WSSC”), for numerous unpermitted and illegal discharges of pollutants in violation of Section 301(a) of the CWA, 33 U.S.C. §§ 1311(a) and Sections 9-322 and 323 of the Environment Article, Annotated Code of Maryland (1996) (“Environment Article”). This Complaint also alleges that Defendant violated several

terms and conditions of National Pollutant Discharge Elimination System ("NPDES") permits that have been issued to it, also in violation of Section 301(a) of the CWA and Maryland's Environment Article Title 9, Subtitle 3. This action is also brought pursuant to Sections 9-220, 9-252, 10-105 of the Environment Article, to require WSSC to take such action as may be necessary to abate the imminent and substantial endangerment to the health of persons presented by WSSC's collection and conveyance system.

JURISDICTION, VENUE, AND AUTHORITY

2. This Court has jurisdiction over the subject matter of this action pursuant to Sections 309(b), 309(e) and 505(b)(1)(B) of the CWA, 33 U.S.C. § 1319(b), 1319(e) and 1365(b)(1)(B) and 28 U.S.C. §§ 1331, 1345, 1355 and 1367. The Court has jurisdiction over the claims of the State of Maryland pursuant to 28 U.S.C. § 1367 (supplemental jurisdiction).

3. Venue is proper in the District of Maryland pursuant to 28 U.S.C. § 1391(b), and Section 309(b) of the CWA, 33 U.S.C. § 1319(b) because it is the judicial district where the Defendant is located and where the alleged violations occurred.

4. Authority to bring this civil action on behalf of the State of Maryland is vested in the Attorney General of the State of Maryland pursuant to § 9-344(a) of Maryland's Environment Article.

5. Section 309(e) of the CWA requires that a State be joined as a party to the litigation when the United States sues a municipality of the State. Because Defendant is a municipality within the meaning of § 502(4) of the CWA, 33 U.S.C. § 1362(4), the State of Maryland is a proper party plaintiff to this litigation. Further, the State may bring suit to enforce the CWA pursuant to Section 505(b)(1)(B) of the CWA, 33 U.S.C. § 1365(b)(1)(B).

PARTIES

6. MDE is a State agency within the executive branch of the State of Maryland, as more fully described in Subtitle 2 of Title 8 of the State Government Article, Annotated Code of Maryland (1999). MDE is charged with the responsibility and duty to license and regulate those engaged in the discharge of pollutants to waters of this State pursuant to Maryland's Environment Article Title 9, Subtitle 3. MDE is also a "person" within the meaning of Section 505 of the CWA, 33 U.S.C. § 1365.

7. Defendant WSSC was created in 1918 by act of the Maryland Legislature to provide drinking water and sanitary sewage treatment for residents of Prince George's and Montgomery Counties. Defendant's service area currently covers approximately 1,000 square miles, with a housing population of over 1.6 million. Defendant is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5) and Sections 1-101(h) and 9-301(d) of the Environment Article.

STATUTES AND REGULATIONS

8. Section 301(a) of the CWA, 33 U.S.C. § 1311(a) prohibits the discharge of any pollutant by any person except as authorized by and in compliance with certain other sections of the Act, including Section 402, 33 U.S.C. § 1342. Section 502(12) defines "discharge of a pollutant" to mean, among other things, "any addition of any pollutant to navigable waters from any point source." 33 U.S.C. § 1362(12). Section 502(7) of the CWA defines navigable waters "to be the waters of the United States, including the territorial seas." 33 U.S.C. § 1362(7).

9. EPA regulations promulgated pursuant to the CWA define the term "waters of the United States" to include, among other things, (i) all waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; (ii) all interstate waters; (iii) all other waters such as intrastate lakes, rivers

and streams, including intermittent streams, the use, degradation or destruction of which would or could affect interstate or foreign commerce; (iv) tributaries of waters of the United States; and (v) certain wetlands (or wetlands adjacent to these waters). 40 C.F.R. § 122.2.

10. Section 502(6) of the CWA defines “pollutant” to include sewage. 33 U.S.C. § 1362(6).

11. The term “point source” is defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14) as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel . . . from which pollutants are or may be discharged.”

12. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that EPA may issue NPDES permits to “persons” that authorize the discharge of any pollutant to navigable waters, but only in compliance with Section 301 of the CWA, 33 U.S.C. § 1311, and such terms and conditions as EPA determines are necessary to carry out the provisions of the CWA.

13. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), provides that any person who violates, among other things, Section 301 of the CWA, 33 U.S.C. § 1311, or who violates any condition or limitation of a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, shall be subject to a civil penalty not to exceed \$25,000 per day of violation, with each day in which a violation occurs constituting a separate violation.

14. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101-40, enacted October 5, 1990; 104 Stat. 890), as amended by the Debt Collection Improvements Act of 1996 (31 U.S.C. § 3701 note; Pub. L. 104-134, enacted April 26, 1996; 110 Stat. 1321), civil penalties of up to \$27,500 per day may be assessed for each violation occurring on or after January 31, 1997. All violations at issue in this Complaint occurred after January 31, 1997.

15. Further, pursuant to EPA's latest Civil Monetary Penalty Inflation Adjustment Rule, finalized on February 13, 2004, and effective March 15, 2004, the maximum civil penalty for violations of CWA Section 301 is \$32,500 per day. 69 Fed. Reg. 7121 (Feb. 13, 2004). Hence, any violations occurring on or after March 15, 2004 would be subject to the \$32,500 daily maximum.

16. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), provides that a State may establish its own permit program, and after receiving EPA's authorization of its program, may issue NPDES permits. The State of Maryland established its own NPDES permit program and received EPA authorization of its program in 1974.

17. Section 9-253 of the Environment Article, Annotated Code of Maryland, confers upon the Secretary of MDE all powers that are necessary to comply with and represent the State of Maryland under the Federal Clean Water Act. MDE administers, and at all times relevant to this Complaint has administered, its own NPDES program for issuance of discharge permits. As a result, the permits issued under the program are joint State and federal NPDES permits.

18. Pursuant to Section 9-322 of the Environment Article, "a person may not discharge any pollutant into waters of this State except in compliance with certain provisions of the Environment Article, including Section 9-323.

19. Section 9-323 of the Environment Article requires a person to hold a discharge permit issued by the Department before the person may, among other things, operate any disposal system the operation of which could cause or increase the discharge of pollutants to waters of this State.

20. The term "discharge" is defined in Section 9-101(b) of the Environment Article as "(1) The addition, introduction, leaking, spilling, or emitting of a pollutant into the waters of this State; or (2) The placing of a pollutant in a location where the pollutant is likely to pollute."

21. The term "pollutant" is defined in § 9-101(g) of Environment Article as: "(1) Any waste or wastewater that is discharged from (i) A publicly owned treatment works; or (ii) An industrial source; or (2) Any other liquid, gaseous, solid, or other substance that will pollute any waters of this State."

22. The term "waters of this State" is defined by Section 9-101(I) to include "(1) both surface and underground waters within the boundaries of this State subject to its jurisdiction, including parts of the Atlantic Ocean within the boundaries of this State, the Chesapeake Bay, and its tributaries, and all ponds, lakes, rivers, streams, public ditches, tax ditches, and public drainage systems within this State, other than those designed to collect, convey, or dispose of sanitary waste; and (2) the flood plain of free-flowing waters determined by the Department of Natural Resources on the basis of the 100-year flood."

23. Sections 9-323 and 9-324 of the Environment Article authorize MDE to issue permits to persons authorizing the discharge of pollutants, but only in compliance with State and Federal water quality standards, effluent limitations and any conditions the Department considers necessary to prevent violation of Title 9, Subtitle 3, of the Environment Article.

24. Section 9-339 of the Environment Article authorizes MDE to bring an action for an injunction against any person who violated any provision of Title 9, Subtitle 3 of the Environment Article or any rule, regulation, order or permit adopted or issued by the Department thereunder.

25. Section 9-342(a) of the Environment Article provides that a person who violates any provision of Title 9, Subtitle 3 of the Environment Article or any rule, regulation, order or permit adopted or issued by the Department thereunder, is subject to a civil penalty of up to \$10,000 per violation, with each day a violation occurs constituting a separate violation.

GENERAL ALLEGATIONS

26. Defendant WSSC owns and operates a “treatment works” as that term is defined in CWA Section 212(2), 33 U.S.C. §1292, and Code of Maryland Regulations (“COMAR”) 26.08.01.01B(95) and a “publicly owned treatment works” (“POTW”) as that term is defined in U.S. EPA regulations implementing the CWA, 40 C.F.R. § 122.2 (cross-referencing the definition at 40 C.F.R. § 403.3) and COMAR 26.08.01.01B(71). Defendant’s POTW collects, conveys, treats and disposes of sanitary sewage from Montgomery County and Prince Georges County, Maryland, an area covering approximately 1,000 square miles, with a population of approximately 1.6 million.

27. In addition to providing sewage service, Defendant provides drinking water to residents of Montgomery County and Prince George’s County, Maryland.

28. Defendant’s POTW consists of over 5,000 miles of pipe with over 131,000 manholes, and over 40 wastewater pump stations (“WWPSs”) which convey approximately 180 million gallons of sewage a day to seven wastewater treatment plants (“WWTPs”), six of which are owned and operated by Defendant, and one of which is owned by the District of Columbia.

29. Defendant’s six WWTPs are the Damascus WWTP, the Hyattstown WWTP, the Parkway WWTP, the Piscataway WWTP, the Seneca WWTP, and the Western Branch WWTP. These WWTPs, combined, have the capacity to treat over 73 million gallons of sewage per day.

30. The WWTP in the District of Columbia which receives flow from Defendant’s system is known as the Blue Plains WWTP. Pursuant to the Blue Plains Intermunicipal Agreement of 1985 entered into by the District of Columbia; Fairfax County, Virginia; Montgomery County, Maryland; Prince Georges County, Maryland; and WSSC, 170 million gallons a day of the Blue Plains WWTP’s

treatment capacity has been allocated to WSSC for the treatment of waste water from Montgomery County and Prince George's County.

31. The sewers in Defendant's system are all separate sanitary sewers, which means that they were designed to carry waste water, rather than a combination of waste water and rainwater. WSSC does not own or operate "combined sewers" (i.e. sewers that were designed to carry both waste water and rain water together).

32. The waste water that is controlled, conveyed and stored by Defendant in its system, as well as the waste water that is treated and disposed of by Defendant at its six WWTPs constitute "pollutants" as that term is defined in Section 502(6) of the CWA, 33 U.S.C. § 1362(6) and § 9-101(g) of the Environment Article.

33. On or about February 1, 1995, the State of Maryland issued NPDES Permit No. MD0020982 and State Discharge Permit No. 00-DP-0162 to Defendant for the Damascus WWTP ("the Damascus WWTP Permit") under the authority of Section 402 of the CWA, 33 U.S.C. § 1342, and Title 9 of the Environment Article, Annotated Code of Maryland, and implementing regulations codified at COMAR 26.08.01 et seq. The Damascus WWTP Permit was reissued on December 1, 2000, and is currently scheduled to expire on November 30, 2005.

34. On or about January 1, 1997, the State of Maryland issued NPDES Permit No. MD0067768 and State Discharge Permit No. 96-DP-3200 to Defendant for the Hyattstown WWTP ("the Hyattstown WWTP Permit") under the authority of Section 402 of the CWA, 33 U.S.C. § 1342, and Title 9 of the Environment Article, Annotated Code of Maryland, and implementing regulations codified at COMAR 26.08.01 et seq. The Hyattstown WWTP Permit, although originally set to expire on

December 31, 2001, was continued by operation of law when Defendant timely applied for a renewal of the permit in April 2001. See Maryland State Gov't. Code Ann. § 10-226(b).

35. On or about June 1, 1995, and again on or about December 1, 2000, the State of Maryland issued NPDES Permit No. MD0021725 and State Discharge Permit No. 00-DP-0631 to Defendant for the Parkway WWTP ("the Parkway WWTP Permit") under the authority of Section 402 of the CWA, 33 U.S.C. § 1342, and Title 9 of the Environment Article, Annotated Code of Maryland, and implementing regulations codified at COMAR 26.08.01 et seq. The June 1, 1995 Parkway WWTP Permit was extended by operation of law from the date Defendant timely applied for a reissued permit, March 27, 2000, until the date the permit was reissued, December 1, 2000. The Parkway WWTP Permit is currently scheduled to expire on November 30, 2005.

36. On or about October 1, 1997, the State of Maryland issued NPDES Permit No. MD0021539 and State Discharge Permit No. 02-DP-0667 to Defendant for the Piscataway WWTP ("the Piscataway WWTP Permit") under the authority of Section 402 of the CWA, 33 U.S.C. § 1342, and Title 9 of the Environment Article, Annotated Code of Maryland, and implementing regulations codified at COMAR 26.08.01 et seq. On or about March 8, 2002, the Piscataway WWTP Permit was extended by operation of law when Defendant timely filed an application for reissuance of the permit. On August 1, 2003, the Piscataway WWTP Permit was reissued, and is currently scheduled to expire on July 31, 2008.

37. On or about March 1, 1993, and again on or about September 1, 1999, the State of Maryland issued NPDES Permit No. MD0021491 and State Discharge Permit No. 00-DP-0156 to Defendant for the Seneca WWTP ("the Seneca WWTP Permit") under the authority of Section 402 of the CWA, 33 U.S.C. § 1342, and Title 9 of the Environment Article, Annotated Code of Maryland, and

implementing regulations codified at COMAR 26.08.01 et seq. The September 1, 1999 Seneca WWTP Permit was scheduled to expire on August 31, 2004. However, on or about February 2, 2004, the Seneca WWTP Permit was extended by operation of law when Defendant timely filed an application for reissuance of the permit.

38. On or about January 1, 1995, the State of Maryland issued NPDES Permit No. MD0021741 and State Discharge Permit No. 00-DP-0632 to Defendant for the Western Branch WWTP (“the Western Branch WWTP Permit”) under the authority of Section 402 of the CWA, 33 U.S.C. § 1342, and Title 9 of the Environment Article, Annotated Code of Maryland, and implementing regulations codified at COMAR 26.08.01 et seq. The Western Branch WWTP Permit was reissued effective January 1, 2001, and is currently scheduled to expire on December 31, 2005.

39. While the six NPDES permits that Defendant holds for its six WWTPs authorize it to discharge treated effluent that meets effluent limitations for specified pollutants from designated outfalls at its WWTPs, none of the six NPDES permits authorize Defendant to discharge untreated sewage from its control, collection and conveyance system.

40. The NPDES permits issued to Defendant for its six WWTPs contain conditions which require Defendant to operate its facilities efficiently to minimize upsets and discharges of excessive pollutants, and to provide adequate operating staff to carry out functions required to ensure compliance with the permits.

41. The NPDES permits issued to Defendant for its six WWTPs contain conditions which require Defendant to maintain compliance with effluent limitations and the terms and conditions of the permit in the event of a loss or failure of the primary source of power to facilities.

42. The currently effective NPDES permits issued to Defendant for the Damascus, Parkway, Piscataway, and Western Branch WWTPs contain conditions which require Defendant orally to report discharges from the control, collection and conveyance systems tributary to each of those WWTPs within 24 hours, and in writing within 5 days, providing certain information concerning the discharge.

43. Further, pursuant to Maryland Environment Article Section 9-331.1 and effective October 1, 2001, the owner or operator of any sanitary sewer system or WWTP shall report to the Maryland Department of the Environment (MDE) any sewer overflow or treatment plant bypass that results in the direct or potential discharge of raw or diluted sewage into the surface waters or groundwaters of the State, by providing oral notice, by telephone, within 24 hours of becoming aware of the event, and by providing a written report within 5 days after the telephone notification. Section 9-331.1 applies to all owners and operators of sanitary sewer systems in the State of Maryland, regardless whether the system in question is or is not covered, in whole or in part, by a NPDES permit.

Unpermitted Discharges

44. From March 13, 1997 to the present (hereinafter "times relevant to this Complaint") there have been over a thousand discharges of untreated waste water containing raw sewage from parts of Defendant's POTW, including but not limited to manholes, pump stations, and sewer pipes, to waters of the United States and/or to waters of the State of Maryland, including but not limited to the Anacostia River (and its tributaries), the Patuxent River (and its tributaries), the Potomac River (and its tributaries), and Rock Creek (and its tributaries). These discharges shall be referred to in this Complaint as "Sanitary Sewer Overflows" or "SSOs." These SSOs are unpermitted discharges, not authorized by any of Defendant's NPDES permits.

45. The Anacostia River (and its tributaries), the Patuxent River (and its tributaries), the Potomac River (and its tributaries), and Rock Creek (and its tributaries), among other water bodies that have received SSOs from Defendant's system, are "navigable waters" of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), as well as "waters of the State" as defined in Section 9-101(l) of the Environment Article, Annotated Code of Maryland. The Anacostia River, the Patuxent River, the Potomac River and Rock Creek are each tributary to the Chesapeake Bay, which is the nation's largest estuary, "a national treasure and a resource of worldwide significance," and for that reason accorded special recognition under Section 117 of the CWA, 33 U.S.C. § 1267.

46. In addition to discharging untreated pollutants into navigable waters of the United States, Defendant has discharged pollutants to locations that may constitute "waters of the state" of Maryland, while not qualifying as "navigable waters of the United States." The Maryland definition of "waters of the State" includes, among other things, groundwater. See Section 9-101(l) of the Environment Article, Annotated Code of Maryland (quoted in paragraph 22, *supra*), and its definition of "discharge" includes "the placing of a pollutant in a location where it is likely to pollute." See Section 9-101(b) of the Environment Article, Annotated Code of Maryland (quoted in paragraph 20, *supra*).

47. SSOs from Defendant's POTW have resulted from multiple causes including, among other things, breaks in sewer pipes, inadequate maintenance procedures resulting in blockages in sewer pipes caused by grease and/or roots, inadequate inspection of and enforcement of regulations applicable to, food establishments that contribute grease to the system, and power failures, resulting from inadequate back up power at pump stations.

48. Untreated sewage contains organic matter, bacteria and other potential pathogens, which are harmful to the environment, including but not limited to aquatic life. Additionally, the pathogens in

raw sewage can cause a number of diseases in humans, including but not limited to enteric diseases such as gastroenteritis, dysentery and cholera. These diseases are communicable. Hence, untreated sewage poses a risk to human health.

FIRST CLAIM FOR RELIEF

(Clean Water Act Claim - - Unpermitted Discharges of Pollutants)

49. Paragraphs 1-48 are re-alleged and incorporated herein by reference.

50. On various dates from March 13, 1997, and continuing to the present, Defendant WSSC has spilled or discharged pollutants from point sources not specified in any NPDES Permit issued by the U.S. EPA or the State of Maryland pursuant to Section 402 of the CWA, 33 U.S.C. § 1342 to navigable waters of the United States.

51. Each day of each unpermitted discharge of pollutants to navigable waters of the United States is a separate violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

52. Pursuant to Section 309(b) and 309(d) of the CWA, 33 U.S.C. §§ 1319(b) and 1319(d), any person who violates Section 301 of the CWA, 33 U.S.C. § 1311, shall be subject to injunctive relief and civil penalties of i) up to \$25,000 per day for each day of each violation occurring prior to January 30, 1997, and ii) pursuant to the Debt Collection Improvements Act of 1996, (31 U.S.C. §3701 note; Pub. L. 104-134, enacted April 26, 1996; 110 Stat. 1321), for civil penalties of up to \$27,500 per day for each violation occurring on or after January 30, 1997, and iii) pursuant to EPA's civil monetary penalty inflation adjustment rule, 69 Fed. Reg. 7121 (February 13, 2004), for civil penalties of up to \$32,500 per day for each violation occurring on or after March 15, 2004.

53. Unless enjoined by an order of the Court, Defendant WSSC will continue to discharge pollutants to navigable waters of the United States without a permit in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

SECOND CLAIM FOR RELIEF

(Violation of the “Proper Operation and Maintenance” Condition (General Condition III.B.3) in Certain of Defendant’s NPDES Permits)

54. Paragraphs 1-48 are re-alleged and incorporated herein by reference.

55. C.F.R. § 122.41 sets forth a list of general conditions that all NPDES permits issued under State NPDES permitting programs must contain to meet Federal minimum standards. 40 C.F.R. § 122.41(e) sets forth the General Condition for “Proper Operation and Maintenance” of facilities and systems. Section 122.41(e) states that a “permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of [the] permit.”

56. The term “facility” is defined in the regulations as “any NPDES ‘point source’ or any other facility . . . (including land or appurtenances thereto) that is subject to regulation under the NPDES program.” 40 C.F.R. §122.2.

57. The term “point source” is defined in the regulations as “any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, [or] container . . . from which pollutants are or may be discharged” *Id.*

58. Defendant’s NPDES permits contain the following “General Condition” in Section III.B.3 of the permit. This condition is the Maryland equivalent of 40 C.F.R. §122.41(e), and is known as the “Proper Operation and Maintenance Condition”:

Facility Operation and Quality Control

All waste collection, control, treatment and disposal facilities shall be operated in a manner consistent with the following:

- a. Facilities shall be operated efficiently to minimize upsets and discharges of excessive pollutants.
- b. The permittee shall provide an adequate operating staff qualified to carry out operation, maintenance and testing functions required to ensure compliance with this permit. . . .

The NPDES permits that contain the above language in Section III.B.3 are the June 1, 1995 Parkway WWTP Permit; the December 1, 2000 Parkway WWTP Permit; the August 1, 2003 Piscataway WWTP Permit; the March 1, 1993 Seneca WWTP Permit; the January 1, 1995 Western Branch WWTP Permit; and the January 1, 2001 Western Branch WWTP Permit.

59. Further, the "Proper Operation and Maintenance Condition" in Defendant's October 1, 1997 Piscataway WWTP Permit is identical to the language set forth in paragraph 58 above, except that the term "collection" is deleted from the list of facilities appearing in the first line.

60. On hundreds of days between March 13, 1997 and the present, hundreds of unauthorized discharges of raw sewage have occurred from sewer pipes, manholes, pump stations and other "facilities" upstream of (or tributary to) the Parkway WWTP, the Piscataway WWTP, the Seneca WWTP and the Western Branch WWTP. Raw sewage contains excessive levels of pollutants, including but not limited to fecal coliform and suspended solids. These unauthorized discharges of raw sewage evidence a failure to properly operate and maintain "facilities" upstream of (or tributary to) these WWTPs so as to minimize upsets and discharges of excessive pollutants, and a failure to maintain adequate operating staff to carry out operation, maintenance and testing functions necessary to minimize unauthorized discharges, and hence maintain compliance with its NPDES permits.

61. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), provides that any person who violates Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, shall be subject to a civil penalty. The statutory maximum civil penalty amounts that may be awarded per day for each violation are set forth in paragraphs 13-15, *supra*. Each day of Defendant's failure to comply with a "General Condition" in an NPDES permit, such as the "Proper Operation and Maintenance Condition," is a violation of CWA Sections 301 and 402.

62. Unless enjoined by an order of the Court, Defendant WSSC will continue to violate the "Proper Operation and Maintenance Condition" in the NPDES Permits mentioned in paragraphs 58 and 59, *supra*.

THIRD CLAIM FOR RELIEF

(Violation of the SSO Reporting Condition (General Condition III.C. and III.B. 1) in Certain of Defendant's NPDES Permits)

63. Paragraphs 1-48 are re-alleged and incorporated herein by reference.

64. General Condition C in Section III of the Defendant's currently effective NPDES Permits for the Parkway WWTP, the Piscataway WWTP and the Western Branch WWTP states that discharges from the sewer collection system are not authorized by the permits, and that if such discharges do occur, they shall be reported in accordance with General Condition B.1 in Section III.

65. General Condition B.1 in Section III of Defendant's Parkway WWTP, Piscataway WWTP and Western Branch WWTP Permits states that if the permittee does not comply with any permit condition, within 24 hours of learning of a non-complying discharge the permittee shall notify MDE by telephone of the discharge, providing, among other things the location, cause, estimated volume and duration of the discharge, and shall within 5 days following the telephone notification,

submit a written report on the discharge event providing, among other things, the information set forth above.

66. On numerous occasions since the SSO Reporting Conditions set forth above became effective, the Defendant has failed properly to report SSOs that have occurred in the collection systems tributary to the Parkway WWTP, the Piscataway WWTP and the Western Branch WWTPs in accordance with those Reporting Conditions. These failures include providing no notice whatsoever of an SSO, failing to provide oral notice within 24 hours of learning of the event, failing to provide written notice within 5 days of providing oral notice, and providing insufficient notice that lacked one or more of the elements set forth in the permits' SSO Reporting Condition.

67. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), provides that any person who violates Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, shall be subject to a civil penalty. The statutory maximum civil penalty amounts that may be awarded per day for each violation are set forth in paragraphs 13-15, *supra*.

68. Unless enjoined by an order of the Court, Defendant WSSC will continue to violate the SSO Reporting Condition in the NPDES Permits mentioned in Paragraphs 64 and 65, *supra*.

FOURTH CLAIM FOR RELIEF

(Violation of the "Back up Power" Condition (General Condition B.8) in Defendant's NPDES Permit for the Piscataway WWTP)

69. Paragraphs 1-48 are re-alleged and incorporated herein by reference.

70. General Condition B.8 in Section III of Defendant's NPDES Permit for the Piscataway WWTP and General Condition B.7 in Section III of the Seneca Permit provides in pertinent part:

Power Failure

The permittee shall maintain compliance with the effluent limitations and

all other terms and conditions of this permit in the event of a reduction, loss or failure of the primary source of power to the wastewater collection and treatment facilities.

71. On several occasions starting in 1998, several facilities located in the Piscataway WWTP and the Seneca Creek WWTP collection system areas, including but not limited to the Fort Washington Estate Pump Station, the Fort Washington Forest Pump Station and the Seneca Pump Station have experienced SSOs as a result of a failure of their primary power source.

72. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), provides that any person who violates Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, shall be subject to a civil penalty. The statutory maximum civil penalty amounts that may be awarded per day for each violation are set forth in paragraphs 13-15, *supra*.

73. Unless enjoined by an order of the Court, Defendant WSSC will continue to violate the “Back up Power” Condition in certain of its NPDES permits.

FIFTH CLAIM FOR RELIEF

(Unpermitted Discharges under Maryland Law)

74. Paragraphs 1-48 are re-alleged and incorporated herein by reference.

75. From at least March 13, 2001 to the present, the Defendant has discharged pollutants from its POTW into “waters of the State” without the authorization of a State discharge permit.

76. These discharges include the unpermitted discharges that are the subject of the First Claim for Relief under the CWA, *supra*, and any other “discharges” as that term is defined under Maryland law.

77. Each day of each unpermitted discharge of pollutants is a separate violation of Section 9-322 and 9-323 of the Environment Article, Annotated Code of Maryland.

78. Pursuant to Section 9-342(a) of the Environment Article, Plaintiff State of Maryland is entitled to a civil penalty of up to \$10,000 for each day of each violation of Sections 9-322 and 9-323 of the Environment Article.

79. Unless enjoined by the Court, Defendant will continue to discharge pollutants in violation of Sections 9-322 and 9-323 of the Environment Article.

SIXTH CLAIM FOR RELIEF

(State Law Claim -- Violation of the "Proper Operation and Maintenance" Condition (General Condition III.B.3) in Certain of Defendant's NPDES Permits)

80. Paragraphs 1-48 are re-alleged and incorporated herein by reference.

81. Defendant's NPDES permits contain the following "General Condition" in Section III.B.3 of the permit, known as the "Proper Operation and Maintenance" Condition:

Facility Operation and Quality Control

All waste collection, control, treatment and disposal facilities shall be operated in manner consistent with the following:

- a. Facilities shall be operated efficiently to minimize upsets and discharges of excessive pollutants.
- b. The permittee shall provide an adequate operating staff qualified to carry out operation, maintenance and testing functions required to ensure compliance with this permit. . . .

The NPDES permits that contain the above language in Section III.B.3 are the June 1, 1995 Parkway WWTP Permit; the December 1, 2000 Parkway WWTP Permit; the August 1, 2003 Piscataway WWTP Permit; the March 1, 1993 Seneca WWTP Permit; the January 1, 1995 Western Branch WWTP Permit; and the January 1, 2001 Western Branch WWTP Permit.

82. Further, the Proper Operation and Maintenance Condition (General Condition B.3, Section III) in Defendant's October 1, 1997 Piscataway WWTP Permit is identical to the language set

forth in paragraph 81 above, except that the term "collection" is deleted from the list of facilities appearing in the first line.

83. On hundreds of days between March 13, 2001 and the present, hundreds of unauthorized discharges of raw sewage have occurred from sewer pipes, manholes, pump stations and other "facilities" upstream of (or tributary to) the Parkway WWTP, the Piscataway WWTP, the Seneca WWTP and the Western Branch WWTP. These unauthorized discharges of raw sewage evidence a failure on the part of Defendant to properly operate and maintain "facilities" upstream of (or tributary to) these WWTPs so as to minimize upsets and discharges of excessive pollutants, and a failure to maintain adequate operating staff to carry out operation, maintenance and testing functions necessary to minimize unauthorized discharges, and hence maintain compliance with its NPDES permits. Thus, these unauthorized discharges are a violation of General Condition B.3 in Section III. of WSSC's NPDES permit, and also a violation of Sections 9-322 and 9-323 of the Environment Article, Annotated Code of Maryland.

84. Pursuant to Section 9-342(a) of the Environment Article, Plaintiff State of Maryland is entitled to a civil penalty of up to \$10,000 for each day of each of Defendant's violation of Sections 9-322 and 9-323 of the Environment Article.

85. Unless enjoined by the Court, Defendant will continue to discharge pollutants in violation of General Condition B.3 of Section III of the above-mentioned NPDES Permits, and in violation of Sections 9-322 and 9-323 of the Environment Article.

SEVENTH CLAIM FOR RELIEF

(State Law Claim -- Violation of the SSO Reporting Condition (General Condition III.C. and III.B. 1) in Certain of Defendant's NPDES Permits)

86. Paragraphs 1-48 are re-alleged and incorporated herein by reference.

87. General Condition C in Section III of the Defendant's currently effective NPDES Permits for the Parkway WWTP, the Piscataway WWTP and the Western Branch WWTP states that discharges from the sewer collection system are not authorized by the permits, and that if such discharges occur, they shall be reported in accordance with General Condition B.1 in Section III.

88. General Condition B.1 in Section III of Defendant's Piscataway WWTP, Parkway WWTP and Western Branch WWTP Permits states that if the permittee does not comply with any permit condition, within 24 hours of learning of a non-complying discharge the permittee shall notify MDE by telephone of the discharge, providing, among other things the location, cause, estimated volume and duration of the discharge, and shall within 5 days following the telephone notification, submit a written report on the discharge event providing, among other things, the information set forth above.

89. On numerous occasions since the SSO Reporting Conditions set forth in Paragraph 88 above became effective, the Defendant has failed properly to report SSOs that have occurred in the collection systems tributary to the Parkway WWTP, Piscataway WWTP and the Western Branch WWTPs in accordance with those Reporting Conditions. These failures include providing no notice whatsoever of an SSO, failing to provide oral notice within 24 hours of learning of the event, failing to provide written notice within 5 days of providing oral notice, and providing insufficient notice that lacked one or more of the elements set forth in the permits' Reporting Condition.

90. Pursuant to Section 9-342(a) of the Environment Article, Plaintiff State of Maryland is entitled to a civil penalty of up to \$10,000 for each day of each of Defendant's violation of above-cited reporting requirements set forth in General Conditions of Defendant's NPDES permits for the Parkway WWTP, the Piscataway WWTP and the Western Branch WWTP.

91. Unless enjoined by the Court, Defendant will continue to fail to comply with these above-cited reporting requirements in the above-mentioned NPDES permits.

EIGHTH CLAIM FOR RELIEF

(State Law Claim - Violation of the SSO Reporting Requirements Established in Section 9-331.1 of the Environment Article, Annotated Code of Maryland)

92. Paragraphs 1-48 and Paragraphs 87-91 are re-alleged and incorporated herein by reference.

93. As set forth in Paragraphs 87-91, Defendant has violated certain SSO reporting obligations set forth in the General Conditions contained in its NPDES Permits for the Parkway WWTP, the Piscataway WWTP and the Western Branch WWTP.

94. Additionally, under Section 9-331.1 of the Environment Article, Annotated Code of Maryland, which became effective October 1, 2001, all owners and operators of any sanitary collection system must report SSOs from their sanitary collection system regardless whether all, part, or none of their system is subject to an NPDES permit. Section 9-331.1 states in pertinent part:

(a)(1) The owner or operator of any sanitary sewer system . . . or wastewater treatment plant shall report to the Department any sewer overflow or treatment plant bypass that results in the direct or potential discharge of raw or diluted sewage into the surface waters or groundwaters of the State.

(2) The report shall be made by telephone as soon as practicable but no later than 24 hours after the time that the operator or owner became aware of the event.

(3) Within 5 calendar days after the telephone notification of the event, the owner or operator shall provide the Department with a written report regarding the incident that includes any information required by the Department.

95. On numerous occasions since October 1, 2001, WSSC has violated Section 9-331.1 by failing properly to report "sewer overflow[s] . . . that [have] result[ed] in the direct or potential discharge of raw or diluted sewage into the surface waters or groundwaters of the State." These failures to

properly report include, among other things, totally failing to report the occurrence of a "sewer overflows," providing only a telephone report, but no follow up written report, providing no telephone report, and failing to provide all information requested by MDE in the written report.

96. Pursuant to Section 9-342(a) of the Environment Article, Plaintiff State of Maryland is entitled to a civil penalty of up to \$10,000 for each day of each violation of Section 9-331.1 of the Environment Article.

97. Unless enjoined by the Court, Defendant will continue to fail to comply with Section 9-331.1 of the Environment Article, Annotated Code of Maryland.

NINTH CLAIM FOR RELIEF

(State Law Claim - Violation of the "Back up Power" Condition (General Condition B.8) in Defendant's NPDES Permit for the Piscataway WWTP)

98. Paragraphs 1-48 are re-alleged and incorporated herein by reference.

99. General Condition B.8 in Section III of Defendant's NPDES Permit for the Piscataway WWTP and General Condition B.7 in Section III of the Seneca Permit provide in pertinent part:

Power Failure

The permittee shall maintain compliance with the effluent limitations and all other terms and conditions of this permit in the event of a reduction, loss or failure of the primary source of power to the wastewater collection and treatment facilities.

100. On several occasions starting in 1998, several facilities located in the Piscataway WWTP and the Seneca Creek WWTP collection system areas, including but not limited to the Fort Washington Estate Pump Station, the Fort Washington Forest Pump Station and the Seneca Pump Station have experienced SSOs as a result of a failure of their primary power source.

101. Pursuant to Section 9-342(a) of the Environment Article, Plaintiff State of Maryland is entitled to a civil penalty of up to \$10,000 for each day of each violation of General Condition B.8 of WSSC's NPDES permit for the Piscataway WWTP.

102. Unless enjoined by the Court, Defendant will continue to fail to comply with General Condition B.8 of its NPDES permit for the Piscatway WWTP.

TENTH CLAIM FOR RELIEF

(State Law Claim - Protection of Public Health or Comfort)

103. Paragraphs 1-48 are re-alleged and incorporated herein by reference.

104. Section 9-220 of the Environment Article provides that where a sewerage system is not producing reasonable results from a sanitary viewpoint, is a menace to health or comfort, or is causing a nuisance, the Secretary is authorized to order proper operation and maintenance to correct the above conditions.

105. Section 9-252 of the Environment Article authorizes the Secretary to order works to be executed to prevent and correct pollution of the waters of the State, and to require any public sewerage system to be operated in a manner that will protect public health and comfort.

106. Section 10-105 of the Environment Article provides that "the Secretary may bring an action to enjoin any person from committing any nuisance subject to this title." Section 10-102 states that the Secretary shall investigate all nuisances that affect the public health and to devise means for control of these nuisances.

107. The MDE is in receipt of evidence that, on numerous occasions over the past seven years, untreated sewage from Defendant's sewer system has been released onto public and private property, including but not limited to streets and playground areas, and into buildings, including homes, owned by

residents of Montgomery County and Prince Georges County, in locations where persons have or may have come into contact with such sewage. Untreated sewage is "pollution" as that term is defined in Section 9-101(g) of the Environment Article.

108. Untreated sewage can carry bacteria, viruses, parasitic organisms, intestinal worms, and boroughs (inhaled molds and fungi). The diseases these may cause range in severity from mild gastroenteritis (causing stomach cramps and diarrhea) to life-threatening ailments such as cholera, dysentery, infectious hepatitis, and severe gastroenteritis. Untreated sewage, therefore, presents a nuisance and a menace to health or comfort of persons who may come into contact with it, and the menace to health or comfort from untreated sewage remains imminent until the area impacted by the sewage is adequately cleaned and disinfected.

109. Pursuant to Sections 9-220, 9-252 and 10-105 of the Environment Article the State seeks an order requiring Defendant: 1) to take measures to minimize to the greatest extent possible the release of sewage into streets, yards, parks, buildings and other areas where persons may come into contact with it when the release was caused by conditions in its Collection System; 2) when releases do occur which are caused by conditions in its Collection System, to clean up and disinfect the affected property as promptly as possible so as to remove endangerment to public health; and 3) to take such other action as may be necessary.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff the State of Maryland, respectfully prays that this Court provide the following relief:

1. A permanent injunction directing Defendant WSSC to take all steps necessary to come into permanent and consistent compliance with the prohibition on unpermitted discharges contained in Section 301(a) of the Clean Water Act and § 9-322 and 9-323 of the Environment Article;
2. A permanent injunction directing Defendant WSSC to take all steps necessary to comply with all terms and conditions of its NPDES permits that relate to its Collection System, including but not limited to the General Conditions requiring "Proper Operation and Maintenance," Reporting of SSOs, and maintenance of back-up power for facilities;
3. A permanent injunction directing Defendant WSSC to comply with the SSO reporting requirement set forth in Section 9-331.1 of the Environment Article, Annotated Code of Maryland;
4. A permanent injunction directing Defendant WSSC to take such steps as are necessary to minimize the imminent and substantial risk to human health posed by pollutants (raw sewage) originating in its Collection System, in accordance with Sections 9-220, 9-252 and 10-105;
5. A judgment assessing civil penalties against Defendant WSSC and in favor of the United States, not to exceed \$27,500 per day for each violation of the CWA which occurred between January 30, 1997 and March 14, 2004, and not to exceed \$32,500 per day for each violation of the CWA which occurred on or after March 15, 2004;
6. Pursuant to Section 9-342 of the Maryland Environment Article, a judgment assessing civil penalties against Defendant WSSC and in favor of the State for any violations of Maryland law, separate and apart from CWA violations, not to exceed \$10,000 per day for each such violation;
7. Award the State of Maryland its costs and disbursements in this action; and
8. Grant such other relief as this Court deems appropriate.

Respectfully submitted,

J. JOSEPH CURRAN, JR.
Attorney General of Maryland

Dated: _____

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APPENDIX L

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

UNITED STATES OF AMERICA,
THE STATE OF OHIO, and
OHIO RIVER VALLEY WATER
SANITATION COMMISSION

Plaintiffs,

v.

THE BOARD OF COUNTY
COMMISSIONERS OF HAMILTON
COUNTY, OHIO and THE CITY OF
CINCINNATI,

Defendants.

Civil Action No. C-1-02-107
Judge S. Arthur Spiegel

CONSENT DECREE ON COMBINED SEWER OVERFLOWS, WASTEWATER TREATMENT
PLANTS AND IMPLEMENTATION OF CAPACITY ASSURANCE PROGRAM PLAN FOR
SANITARY SEWER OVERFLOWS

Non-MSD Sewer System, at the time of lodging of the SSO Decree, are generally depicted in Exhibit 1 to the SSO Decree.

"Ohio River Basin" shall mean the waters of the Ohio River and its tributaries.

"ORSANCO" shall mean the Ohio River Valley Water Sanitation Commission.

"Paragraph" shall mean a portion of this Consent Decree identified by an uppercase letter.

"Parties" shall mean the United States, the State of Ohio, ORSANCO, and/or the Defendants.

"Plaintiff" or "Plaintiffs" shall mean the United States, the State of Ohio, and/or ORSANCO, as appropriate.

"Sanitary Sewer Discharge" and "SSD" shall mean any discharge to waters of the State or United States from Defendants' Sanitary Sewer System through a point source not specified in any NPDES permit.

"Sanitary Sewer Overflow" and "SSO" shall mean any discharge to waters of the State or United States from Defendants' Sanitary Sewer System through point sources not specified in any NPDES permit, as well as any release of wastewater from Defendants' Sanitary Sewer System to public or private property that does not reach waters of the United States or the State, such as a release to a land surface or structure that does not reach waters of the United States or the State; provided, however, that wastewater

backups into buildings that are caused by blockages, flow conditions, or malfunctions in a building lateral, other piping or conveyance system that is not owned or operationally controlled by Defendants are not SSOs for the purposes of this Consent Decree. As such, the term SSO includes Water-in-Basements ("WIBs") released from Defendants' Sanitary Sewer System.

"Sanitary Sewer System" or "SSS" shall mean all portions of the Defendants' Sewer System that are not a part of the Defendants' Combined Sewer System. SSS does not include any non-MSD Sewer System.

"Section" shall mean a portion of this Consent Decree identified by an uppercase Roman Number.

"Sewage" shall mean municipal sewage, including domestic, commercial and industrial sewage.

"Sewer System" shall mean the wastewater collection and transmission system owned or operated by Defendants designed to collect and convey municipal sewage (domestic, commercial and industrial) to the Defendants' Wastewater Treatment Plants or overflow structures.

"Sewer System Hydraulic Model" shall mean the hydraulic model developed in accordance with Paragraph VII.B of the SSO Decree.

"Plaintiffs," and each individually is a "Plaintiff" under this Decree.

"Wastewater Treatment Plant(s)" ("WWTP(s)") shall refer to:
1) the following wastewater treatment plants: Mill Creek, Little Miami, Muddy Creek, Sycamore, Polk Run, Indian Creek, and Taylor Creek; and 2) the permitted treatment facilities owned or operated by Defendants identified in Exhibit 2 to the SSO Decree.

"Water-in-Basement(s)" ("WIB(s)") shall mean any release of wastewater from Defendants' Sewer System to buildings that (i) is not the result of blockages, flow conditions, or malfunctions of a building lateral or other piping/conveyance system that is not owned or operationally controlled by Defendants; and (ii) is not the result of overland, surface flooding not emanating from Defendants' Sewer System.

VI. CAPITAL IMPROVEMENT PROJECTS

Defendants shall construct Capital Improvement Projects (CIP) consistent with the descriptions set forth in Exhibit 1 to this Consent Decree and in accordance with the Substantial Completion of Construction Dates for each project set forth in Exhibit 1. In light of the substantial costs and magnitude of the remedial measures that will be required to be implemented by Sections VI (Capital Improvement Projects); VII (Long Term Control Plan Update); and VIII (Implementation of Capacity

XII. COMPLIANCE WITH EFFLUENT LIMITATIONS; MONITORING, RECORD-KEEPING AND REPORTING REQUIREMENTS; AND OPERATION AND MAINTENANCE REQUIREMENTS AT WASTEWATER TREATMENT PLANTS

Defendants shall comply with the effluent limitations; monitoring, record-keeping and reporting requirements; and operation and maintenance requirements of Defendants' Current Permits applicable to Defendants' Wastewater Treatment Plants. These limitations and requirements include, but are not limited to, the requirements in Parts I.A, I.B, II (other than Pretreatment Requirements), and III.3-III.7 of Defendants' Current Permits applicable to Defendants' Wastewater Treatment Plants.

XIII. WATER-IN-BASEMENT PROGRAM

Defendants shall implement the Water-in-Basement Program components set forth in Paragraphs XIII.A, XIII.B, and XIII.C, below, and Exhibits 6, 7, and 8, until the Consent Decree terminates in accordance with Section XXXIII.

A. Prevention of Water-in-Basement

Defendants shall implement, in accordance with the requirements and schedules therein, the Water-in-Basement (WIB) Prevention Program, attached to this Consent Decree as Exhibit 6. The WIB Prevention Program shall utilize a variety of remedial

measures to address WIBs, including but not limited to, installation of grinder pump systems, and property purchase.

B. Water-in-Basement Customer Service Program

1. Defendants shall implement, in accordance with the requirements and schedules therein, the Water-In-Basement Customer Service Program Plan, attached to this Consent Decree as Exhibit 7, to promptly clean up WIB and to otherwise assist customers who experience WIB with cleanup activities.

2. Defendants shall initially fund the Water-in-Basement Customer Service Program from the monies currently accumulated in the Environmental Security Account established pursuant to Section XVIII of the Consent Order dated August 16, 1985 in Civil Action C-1-85-0693. When those funds are depleted, Defendants shall continue to implement the program in accordance with the requirements and schedules in Exhibit 7.

C. Water-in-Basement Claims Program

Defendants shall implement, in accordance with the requirements and schedules therein, the Water-in-Basement Claims Process Plan, attached to this Consent Decree as Exhibit 8, to compensate customers who experience WIB for real or personal property losses or expenses. Such losses may include, inter alia, building restoration costs, and loss of furniture and/or property stored in the flooded areas.

D. Adequate Capacity

Defendants shall implement remedial measures, including the WIB Prevention Program, to ensure that upon completion of implementation of the remedial measures required by the CAPP and the Long Term Control Plan Update, 1) Defendants' Sanitary Sewer System has adequate capacity to meet the requirements of Paragraph VIII.A of this Consent Decree, which includes not having any capacity-related SSOs under current and projected future conditions; and 2) Defendants' Combined Sewer System shall have capacity that is consistent with appropriate design standards or be equipped with other measures so as to prevent capacity-related WIBs. Such "other measures" shall be consistent with the WIB Prevention Plan (Exhibit 6) and shall specifically not preclude continued discharge to Defendants' Sewer System by "WIB properties" during frequently encountered wet weather conditions.

XIV. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

A. Defendants shall complete Supplemental Environmental Projects ("SEPs"), in accordance with the Supplemental Environmental Project Plan ("SEP Plan") attached to this Consent Decree as Exhibit 9, which the parties agree are intended to secure significant environmental protection and improvements that are not otherwise required by law.

EXHIBIT 6

WATER IN BASEMENT PREVENTION PROGRAM PLAN

I. Introduction

The Water in Basement ("WIB") Prevention Program is the component of the Metropolitan Sewer District of Greater Cincinnati's ("MSD") WIB Program designed to preclude the occurrence of building backups. Subject to the requirements of this Plan, eligible property owners whose property experiences the backup of wastewater into buildings due to inadequate capacity in MSD's Sewer System (both the combined and the sanitary portions) can receive, at no cost to the property owner, the installation of systems or devices to prevent the backup of wastewater in the future. The Prevention Program is not intended to address water in buildings caused by: 1) overland flooding not emanating from MSD's Sewer System; or 2) blockages in lateral or public sewer lines. Blockages, whether in lateral or public sewer lines, generally are temporary conditions that are better addressed by rodding and other measures that are less permanent than the systems and devices offered by this Plan.

This WIB Prevention Plan will become effective on January 1, 2004. MSD will provide WIB Prevention services to eligible buildings in a manner that is as expeditious as practicable. It is important to recognize that the speed with which MSD can implement the Prevention Program will be affected by a "ramp-up" time at the outset of this effort as MSD refines the logistics of this Program. Preliminary estimates indicate that more than 1000 properties (an amount that is less than 1% of the total connections to the system), may be eligible for this Program, but until the Program is implemented, MSD will not know for certain.

II. Public Notification regarding WIB Prevention Program

MSD will notify the public regarding the key elements of the WIB Prevention Program in the various public notices issued regarding the WIB Customer Service Program under Section II of the WIB Customer Service Program Plan attached as Exhibit 7 to the Consent Decree. The information provided will include a brief description of the Prevention Program, information about eligibility for the Program, and contact information about participation in the Program.

III. Program Initiation

There are two ways for properties to become part of the WIB Prevention Program.

First, MSD, on its own initiative, will contact property owners who, in the last five years, have experienced multiple backups of wastewater in buildings on their property as a result of inadequate capacity in MSD's Sewer System. MSD will identify the properties to be contacted by a review of its database of WIB complaints. MSD will contact property owners on a prioritized "worst first" basis.

Second, property owners wishing to explore participation in the WIB Prevention Program can call MSD to review their eligibility for the Program by calling (513) 352-4900. MSD will begin to investigate the eligibility of property owners making such requests within 30 days of the owner's call.

IV. Program Eligibility

The following guidelines will govern the eligibility of properties for participation in the WIB Prevention Program.

A. Type of WIBs Covered:

- ▶ The WIB Prevention Program only applies to buildings that have experienced the backup of wastewater due to inadequate capacity in MSD's sewer system or relative local hydraulic gradient.
- ▶ The WIB Prevention Program does not apply to building backups caused by:
 - overland flooding not emanating from MSD's Sewer System;
 - blockages in lateral or public sewer lines.

Blockages, whether in lateral or public sewer lines, generally are temporary conditions that are better addressed by rodding and other measures that are less permanent than the systems and devices offered by this Program.

B. Frequency of WIBs Covered: The WIB Prevention Program will apply to buildings that have suffered multiple reported capacity-related building back-ups in the five years immediately preceding the assessment of that building's eligibility.

C. Assessment of Eligibility: MSD will exercise its good faith reasonable engineering judgment to determine whether a property has suffered capacity-related building backups such that it is eligible for the Program. This determination will be based on a consideration of a variety of factors, which can include:

- property WIB history;
- condition of sewer system in neighborhood;
- results of a visual inspection of the neighborhood to look for signs of overland flooding;
- neighborhood WIB history;
- capacity of nearby public sewer lines; and
- topography.

Depending on the circumstances, the determination may also be based on an inspection of the private lateral and/or inspection of nearby public lines.

D. Owner Permission

- ▶ The owner of a property applying for the WIB Prevention Program will be required to give MSD written permission and approval to install building backup prevention devices on the property.
- ▶ The owner of a property applying for the WIB Prevention Program will also be required to execute an access agreement that allows MSD and its contractors to enter the property to assess the viability of, design and install backup prevention devices.

- ▶ If property owners refuse to grant MSD access to their property in connection with the WIB Prevention Program or refuse the installation of backup prevention equipment proposed by MSD based on MSD's good faith engineering judgment and an assessment conducted in accordance with Sections IV.C and V of this Plan, and subsequently experience a building backup, such refusal may be considered a failure to undertake reasonable mitigation measures under the WIB Claims Program set out in Exhibit 8 to the Consent Decree.

E. Inflow Prevention: In connection with the installation of backup prevention measures under the Program:

- properties in sanitary-only service areas must remove downspouts and storm connections from the sanitary sewer lateral completely; and
- properties in combined service areas must reroute downspouts to the discharge side of the device or system installed under this Program.

V. Prioritization of Program Candidates

Every building and every backup situation is different. Accordingly, the solution to every backup situation will be different. MSD will exercise its good faith reasonable engineering judgment to prioritize candidate properties within the Prevention Program. MSD will provide WIB Prevention services to eligible buildings in a manner that is as expeditious as practicable. It is important to recognize that the speed with which MSD can implement the Prevention Program will be affected by a "ramp-up" time at the outset of this effort as MSD refines the logistics of this Program. Prioritization determinations will be based on an assessment comprised of a variety of components, which can include:

- review of the MSD WIB database for information about backup history at the subject property and the surrounding area;
- field investigations, potentially including inspection of the private lateral and/or inspection of nearby public lines;
- consideration of simple engineering practices, such as backflow prevention devices;
- collection of information on properties in the area affected by the backups;
- interviews with property residents and/or the property owner;
- consideration of potential for and timing of proposed sewer system capacity capital improvements in the area; and
- consideration of the complexity of the WIB prevention methodology identified by MSD.

VI. Building Backup Prevention Solutions

Under the WIB Prevention Program, MSD will undertake to purchase and install, at its own cost, a variety of technologies designed to prevent future basement backups at eligible properties arising from inadequate capacity in MSD's Sewer System. Since no two buildings or building backup situations are the same, there is no single approach to preventing building backups. MSD

will exercise its reasonable good faith engineering judgment to determine the appropriate approach to building backup prevention at any particular property. This determination will be based on consideration of the various factors described in the assessments set out in Sections IV and V above, as well as consideration of the building backup technologies available on the market.

It is anticipated that the number of technologies available to MSD to address building backups will expand and change over time. MSD will consider technologies currently available at the time it performs its analysis of a particular property and select the technology that will be the most appropriate level of protection to the building backup at issue.

The technologies to be offered under this program will include backflow preventers and pumping systems. The particular technology offered at any property will depend on the assessment discussed above.

A. Backflow Preventers: MSD will purchase and install, at its own cost, backflow preventers in buildings where it is determined, in MSD's reasonable engineering judgment that backflow preventers are the appropriate solution to an eligible building backup situation. A backflow preventer is a mechanical device, installed in the lateral line, either inside the building or between the building and the main sewer that prevents water in the sewer from backing up into the building.

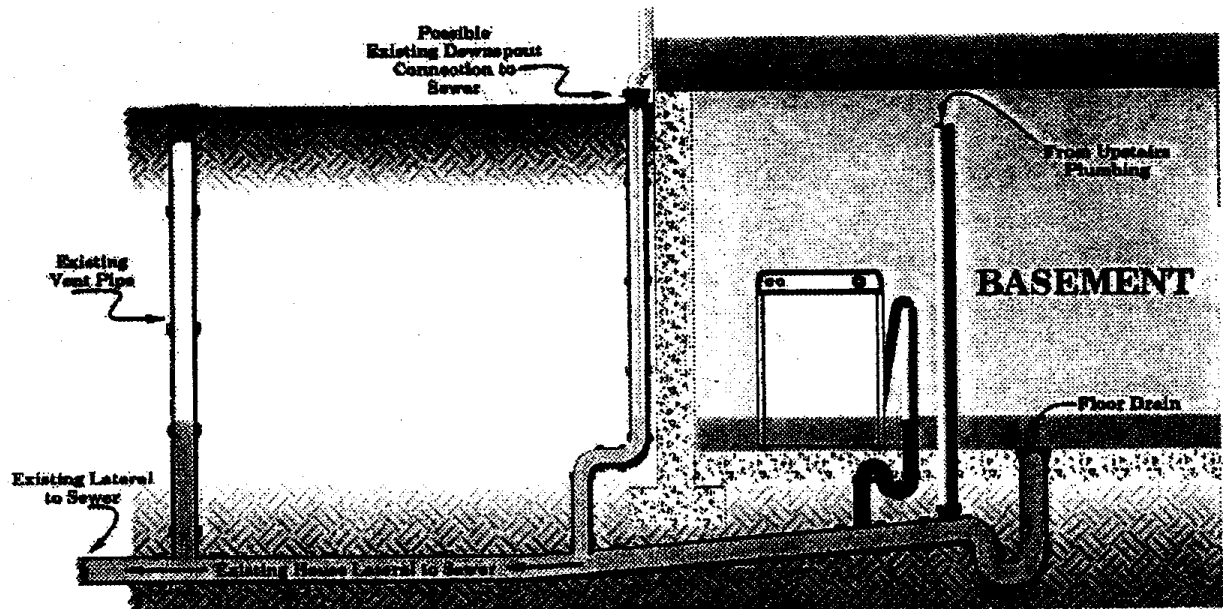
B. Pumping Systems: MSD will purchase and install, at its own cost, pumping systems in buildings where it is determined, in MSD's reasonable engineering judgment, that pumping systems are the appropriate solution to an eligible building backup situation. In general, a pumping system is installed in the lateral line and separates a building interior from the mainline sewer. In doing so, the building is isolated from the main line sewer. The wastewater generated inside the building is pumped into the mainline by the use of a motorized pump to convey wastewater into the Sewer System. Examples of the general types of pumping systems that will be offered in the WIB Prevention Program are shown in Attachment A to this Plan. The precise type and model pump to be installed will depend on MSD's reasonable good faith engineering judgment regarding the circumstances at an individual building.

C. Property Purchase: As a last resort and where a property owner is amenable, MSD will consider the purchase of properties where no feasible cost-effective alternative exists to a building backup situation. MSD does not intend for property purchases to be the remedy at a significant portion of the properties serviced by this Program.

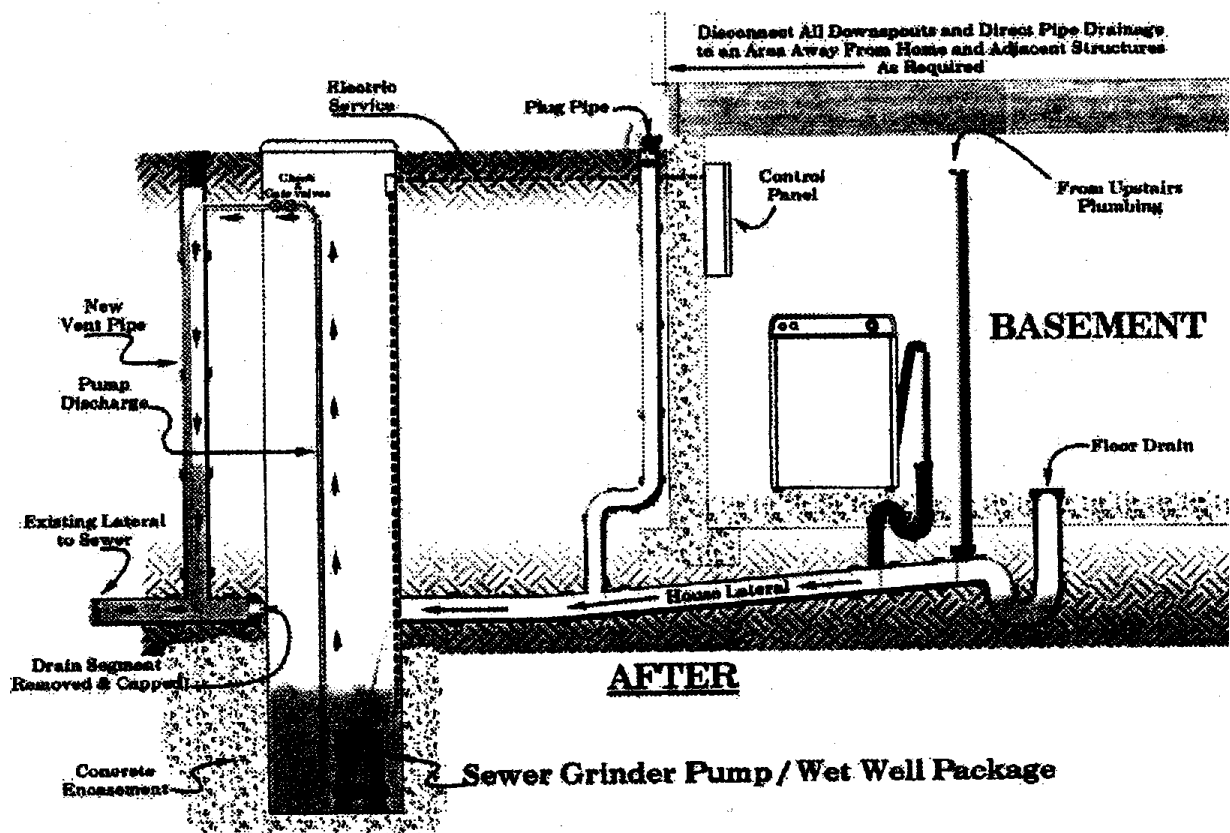
D. New Technologies: As discussed above, it is anticipated that the number of technologies available to MSD to address building backups will expand and change over time. As such, MSD believes that technologies, systems and devices in addition to those discussed above will be offered in the future under this Plan. MSD will consider technologies currently available at the time it performs its analysis of a particular property and select the technology that will be the most appropriate level of protection to the building backup at issue.

EXHIBIT 6

ATTACHMENT A



BEFORE



AFTER

**TYPICAL SEPARATE PLUMBING / GRINDER PUMP
OUTSIDE INSTALLATION**

EXHIBIT 6

ATTACHMENT A

TYPICAL EXTERIOR GRINDER PUMP INSTALLATION

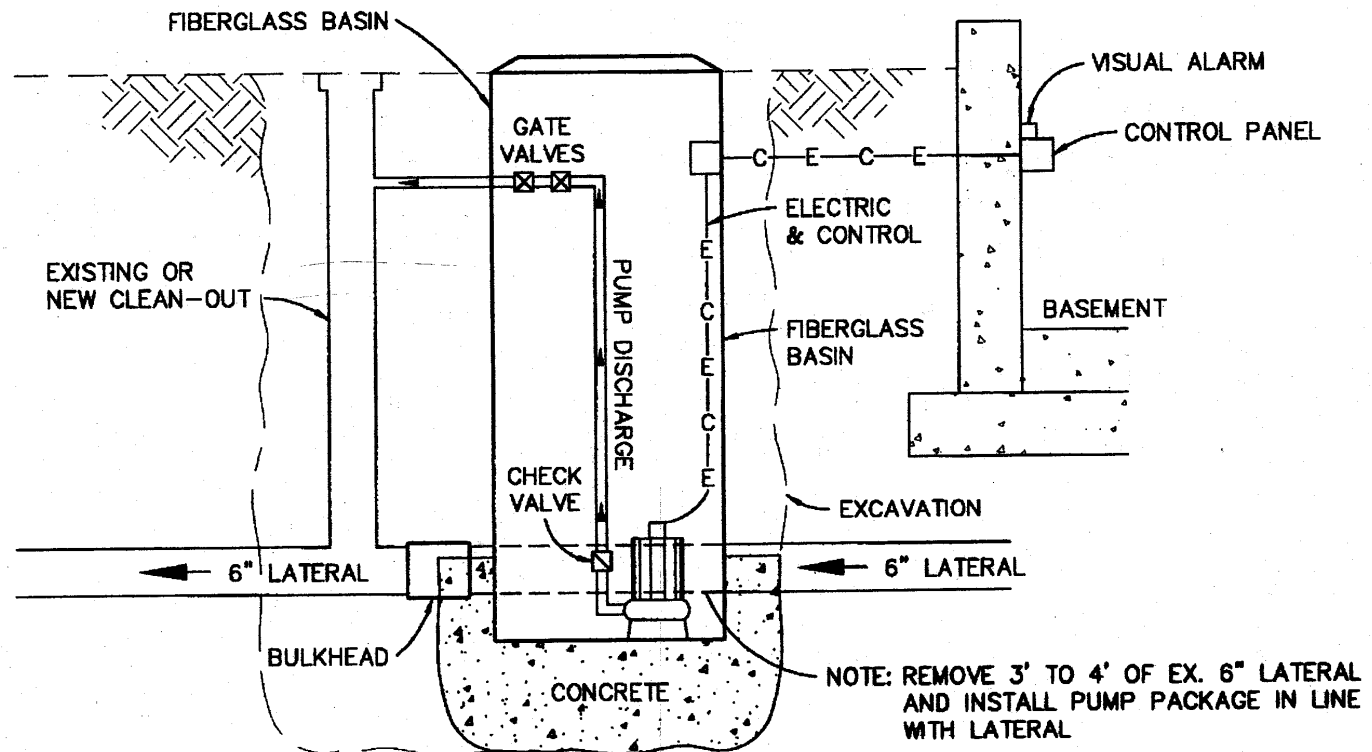


EXHIBIT 6

ATTACHMENT A

TYPICAL INTERIOR GRINDER PUMP INSTALLATION

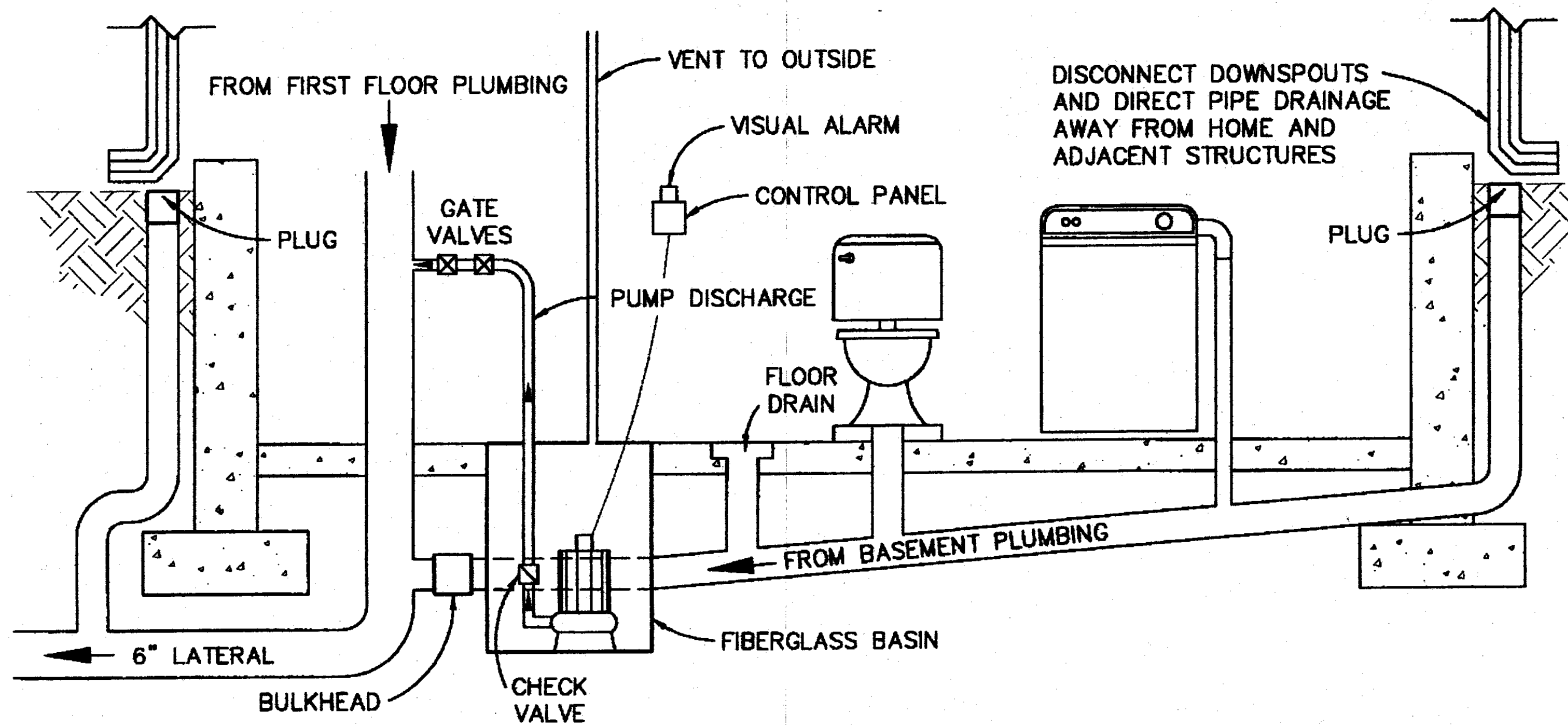


EXHIBIT 6

ATTACHMENT A

TYPICAL INTERIOR NON-CLOG SEWAGE PUMP INSTALLATION

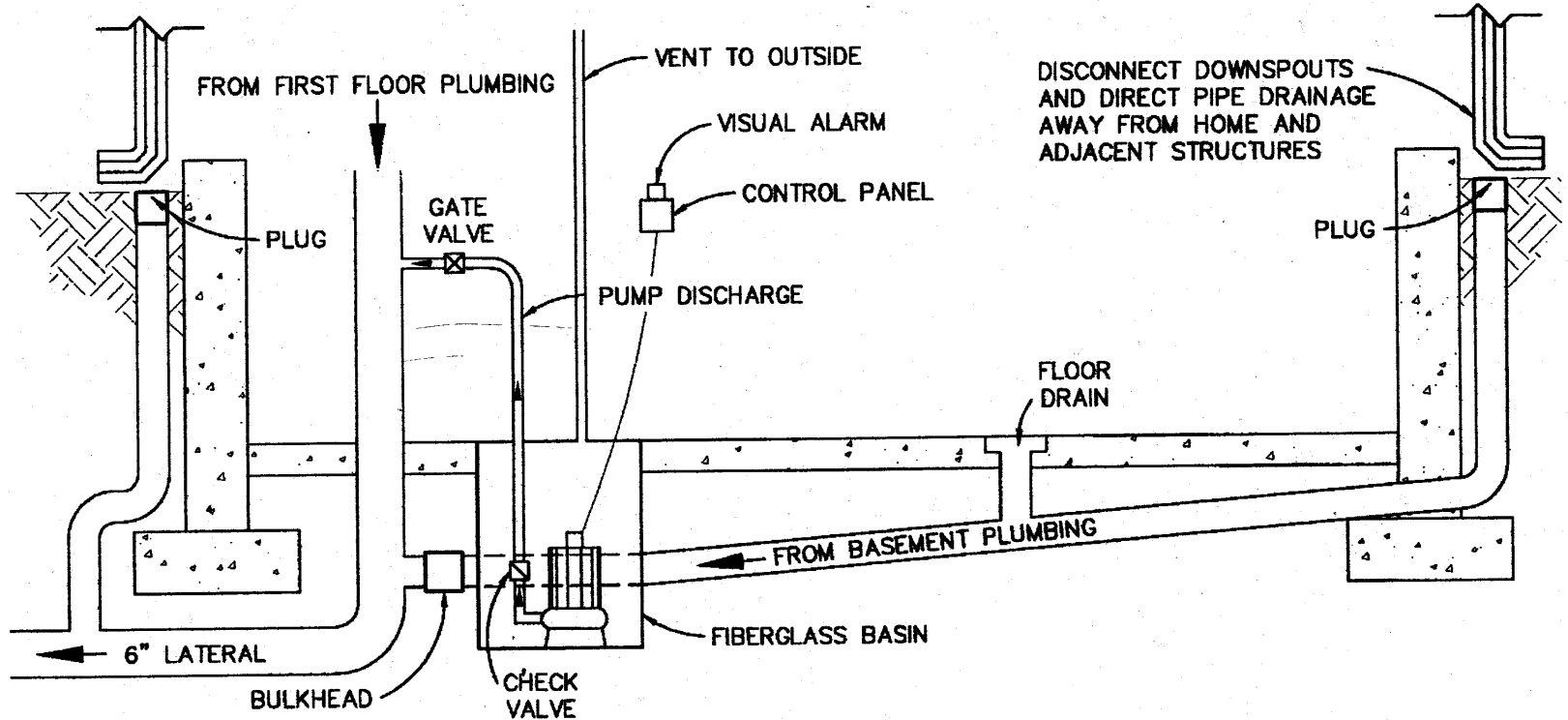


EXHIBIT 7

WATER IN BASEMENT CUSTOMER SERVICE PROGRAM PLAN

I. Introduction

The Water in Basement ("WIB") Customer Service Program is the rapid response and cleanup component of the Metropolitan Sewer District of Greater Cincinnati's ("MSD") WIB Program. The Customer Service Program is designed to clean up the immediate effects of the backup of wastewater from MSD's Sewer System (both the combined and sanitary portions) into buildings; except that the Customer Service Program is not intended to address WIBs caused by: A) overland flooding not emanating from MSD's Sewer System; or B) blockages in private laterals.

MSD intends to implement the Customer Service Program in a proactive, sensitive and customer-focused manner. The Customer Service Program will become effective on January 1, 2004.

II. Public Notification Regarding Customer Service Program

MSD will notify the public of its WIB Customer Service Program through the following means:

- by placing two advertisements each in the *Cincinnati Post* and the *Cincinnati Enquirer*, one within two weeks of the effective date of this Plan and one within three weeks of the effective date of this Plan;
- by highlighting the Program on its web site within two weeks of the effective date of this Plan;
- by issuing two press releases to local print and electronic media – one within five days of the effective date of this Plan and another 30 calendar days later;
- by sending a direct mailing to all of its current customers;
- by a direct mailing to new customers within 30 days of initiating service; and
- by including the MSD Call Center phone number with each sewer bill.

The information in these notices will describe the Program, provide the number to call for assistance and outline the information that the occupant will need to provide to the call taker. These notices will also include a brief description of the key components of the WIB Claims Process implemented in accordance with Section XIII and Exhibit 8 of the Consent Decree.

III. Call Center Operations

Occupants experiencing WIBs can request MSD service by calling the MSD Call Center at (513) 352-4900. The MSD Call Center will be staffed with actual personnel 24 hours a day, seven days a week.

IV. Initial Site Visit and Assessment

Occupants requesting MSD service for WIBs will have a customer service representative on-site within four hours, up to a maximum rate of ten requests per hour, for the first eight hours of a precipitation event, followed by a maximum rate of four requests per hour for the second eight-hour period of a precipitation event, followed by one request per hour for the third eight-hour period of a precipitation event. The rate for the second 24-hour period will be one half of the rate of the first 24-hour period. For requests received at a rate higher than those set out above, requests will be serviced in the order received as soon as practicable.

Upon arriving at the affected property, the MSD customer service representative will conduct an assessment with the occupant or property owner in an effort to determine the cause of the WIB. MSD will exercise its good faith reasonable engineering judgment to determine the cause of a WIB. This determination will be based on a consideration of a variety of factors, which can include:

- amount of precipitation;
- property WIB history;
- condition of sewer system in neighborhood;
- neighborhood WIB history;
- capacity of nearby public sewer lines;
- visual inspection of the neighborhood or property to look for evidence of overland flooding; and
- topography.

Depending on the circumstances, the determination may also be based on an inspection of the private lateral and/or inspection of nearby public lines.

If the WIB is obviously the result of overland flooding not emanating from the MSD Sewer System or the result of blockage in the occupant's lateral line, MSD will provide the owner or occupant with instructions for a safe cleanup, general preventative information, referral to the local agency responsible for overland flooding issues, and further contact information should there be questions. An example of the type of information that will be left with occupants in this situation is attached as Appendix A to this Plan. The content and form of this notice may evolve over time. Because MSD does not control overland flooding not emanating from the MSD Sewer System or control private lateral lines, MSD cannot take further action with respect to WIBs caused by such flooding.

At locations that have experienced a building backup due to inadequate capacity within the previous two years and at which MSD has not resolved the capacity issue, MSD will treat the backup as MSD's responsibility and dispense with the preliminary assessment phase of the Program. In such cases, MSD will immediately engage a contractor to proceed with cleanup of the affected building in accordance with Section V below.

At locations that have experienced building backups caused by blockages in public sewer lines, MSD will presume that the backup is MSD's responsibility and dispense with the preliminary assessment phase of the Program. In such cases, MSD will immediately engage a contractor to proceed with cleanup of the affected building in accordance with Section V below.

V. Cleanup by MSD

MSD will assist with the cleanup of the property at no charge to the occupant unless the WIB was caused by overland flow not emanating from MSD's Sewer System or a blockage in the private lateral. The determination of the cause of the WIB will be made based on the factors and assessment described in Section IV above.

The MSD customer service representative will inform the occupant of services that are available to clean up the effects of the backup and make arrangements for MSD contractors to provide such no-cost services on an expedited basis. The cleanup contractors will bill MSD directly for the services provided under this Plan.

MSD will have a cleanup contractor on-site at the affected location as soon as practicable after making arrangements with the occupant.

Specifically, the basic cleanup services to be provided by MSD's response contractors at no cost to occupants will include:

- wet vacuuming or other removal of spillage;
- mopping bare floors with cleaning solution and disinfectant;
- wiping walls with cleaning solution and disinfectant;
- flushing out and disinfecting plumbing fixtures; and
- basic carpet cleaning.

No two building backups are exactly alike. As such, MSD's response may include additional reasonably appropriate cleanup measures beyond those listed above that are appropriate to a particular situation.

In arranging to have a contractor clean up the impacts of a building backup, MSD will provide to

the affected occupant a telephone number to call with questions or complaints about the implementation of the cleanup. Such questions and/or complaints will be fielded by the MSD WIB Program Complaint Ombudsman, under the direct supervision of the MSD Director.

At the occupant's request, with the occupant's written authorization and in the occupant's presence, MSD will remove affected personal property items from the building. MSD will also arrange for any items it removes from the building to be disposed of by an authorized sanitation company at MSD's expense. MSD cannot arrange for the disposal of hazardous waste, however. Any materials damaged and removed from the building may be cataloged and photographed to document the loss.

MSD will also provide information to occupants on how to minimize future losses until system modifications can be completed to mitigate the potential for building backups caused by inadequate capacity in the Sewer System. An example of the type of information that would be provided is attached at Appendix B to this Plan. The form and content of this information sheet may evolve over time.

Prior to authorizing its contractors to begin expedited, no-cost cleanup of the effects of a basement backup, MSD's response team will review with the occupant and require the occupant to execute an access agreement that allows MSD and its contractors to enter the property and provide cleanup services.

VI. Claims Process Information

In addition, MSD's customer service representatives will provide to occupants information relating to the Water In Basement Claims Program administered by the City Solicitor's Office to pay damages to real or personal property that result from a building backup. The details of the claims process are contained in the Water In Basement Claims Program Plan found at Exhibit 8 to the Consent Decree.

An occupant's acceptance of MSD's cleanup services under this program does not constitute a release or waiver of any claims that the occupant may have against MSD for real or personal property damage caused by the basement backup. Likewise, MSD's provision of cleanup services under this program does not constitute an admission of any liability by MSD with regard to any claims that the occupant may have against MSD for real or personal property damage caused by the building backup.

EXHIBIT 7--APPENDIX A:

The following is presented as sample narrative for a customer service brochure. The content and form of the information presented may evolve over time.

Overland/Surface Water Flooding

Heavy storms can result in water in basements and other areas of buildings because of overland and surface flooding or seepage of water through wall. There is often little or no structural damage from the water, because the water inside braces the walls against the pressure of the outside water and waterlogged soil.

What should I do after the flood?

- Before entering a building, check for structural damage. Don't go in if there is any chance of the building collapsing.
- Upon entering the building, do not use matches, cigarette lighter or any other open flame since gas may be trapped inside. Instead, use a flashlight to light your way.
- Keep the power off until an electrician has inspected your system for safety.
- Flood waters can pick up sewage and chemicals from roads, farms and factories. If your home has been flooded, protect your family's health by cleaning up your house immediately; throw out foods and medicines that may have come into contact with flood water.
- Be careful walking around. After a flood, steps and floors are often slippery with mud and covered with debris, including nails and broken glass.
- Inspect foundations for cracks or other damage.
- Stay out of buildings if flood waters remain around the building.
- Do not wash mud down into the basement floor drain. Shovel mud from the basement as soon as all water has drained or has been pumped out to allow floors and walls to dry.

How and when do I pump the water out?

- Do not drain water inside the basement until most of the water on the outside of the walls has gone down. This will prevent the walls from being pushed in or the floors from heaving.
- If you have a large amount of water in your basement or if there is no basement drain, you may need to buy or rent a sump pump to get rid of the water.
- If your electrical panel is located in an area of your home that has been flooded, you will be unable to use an electric sump pump unless you use a pump driven by a 12-volt auto battery. A gasoline engine pump may be used if exhaust can be vented to the outside.

- Start pumping water out of your basement if the water inside is higher than the flood water level outside. You may need a measure to determine this.
- Stop pumping when the two water levels become equal.
- Service damaged septic tanks, cesspools, pits, and leaching systems as soon as possible. Damaged sewage systems are health hazards.

The safety of you and your family should come first.

- Turn on a battery-powered radio or television to get the latest weather forecasts and flash flood warning. Listen for warnings and emergency instructions.
- Get your preassembled emergency supplies.
- Avoid walking through any flood waters. If it is moving swiftly, even water six inches deep can sweep you off your feet.
- Protect yourself when removing water and cleaning your basement by wearing rubber boots and gloves.
- Wash clothes and other items that come into contact with the backup water with soap and water.
- Wash your hands with soap and water.

Use caution when entering the building.

- Wear sturdy shoes and use battery-powered lanterns or flashlights when examining the building.
- Examine wall, floors, doors, and windows to make sure that the building is not in danger of collapsing.
- Watch out for animals, and snakes, that may have come into your home with the flood waters. Use a stick to poke through debris.
- Flood waters may contain flammable or explosive materials coming from upstream. If you think there may be flammable or explosive materials in the structure vacate the structure and call 911.

Take pictures of the damage.

- Take pictures of the basement and other areas affected.
- Take pictures of the contents for damage and insurance claims.

Inspecting utilities.

- **Check for gas leaks** – If you smell gas or hear a blowing or hissing noise, open a window and quickly leave the building. Turn off the gas at the outside main valve if you can and call the gas company from a neighbor's home. If you turn off the gas for any reason, it must be turned back on by a professional.
- **Look for electrical system damage** – If you see sparks or broken or frayed wires, or if you smell hot insulation, turn off the electricity at the main fuse box or circuit breaker. If you have to step in water to get to the fuse box or circuit breaker, call the electric company or an electrician.

- **Check for sewage and water line damage** – If you suspect that the house's plumbing has been damaged, avoid using the toilets and call a plumber. If water pipes are damaged, contact the water company and avoid using water from the tap. You can obtain safe water by melting ice cubes.

How do I avoid shock hazards?

- Be careful before using any electric appliance in a house that has been flooded.
- Never turn on wet electric appliances because they may cause an electric shock, overheat, or start a fire.

Flood mitigation actions check list.

The following are actions that you can take to mitigate the damage caused by flooding.

- Store important documents and irreplaceable personal objects (such as photographs) where they will not get damaged.
- Elevate or relocate furnaces, hot water heaters and electrical panels above the level of potential flooding.
- Provide openings in foundation walls that allow flood waters in and out, thus avoiding structural collapse.
- For drains, toilets, and other sewer connections, install backflow valves or plugs to prevent flood waters from entering the building.
- Buy and install sump pumps with backup power.
- Move business inventory that may be flooded; reduce inventory that may be flooded, if possible elevate, relocate, and otherwise protect equipment that can be flooded.
- Throw away food – including canned goods – that has come in contact with flood waters.
- Identify stored hazardous materials or other chemicals that could be flooded; and relocated or elevate these.

Please note that cleanup from overland/surface water flooding not coming from the Metropolitan Sewer District's collection system is not the responsibility of the Metropolitan Sewer District; it is the responsibility of the property owner or resident. If you have any questions or need more information on cleanup: 1) if you live in the City of Cincinnati, you may call the City of Cincinnati Health Department staff at 357-7392 during office hours; 357-7435 after 5:00 p.m. or weekends; 2) if you live in Hamilton County, you may call the Hamilton County Board of Health at 946-7840 during office hours; 946-7878 after 4:30 p.m. or weekends.

If you have questions about the sewer system, you may contact the Wastewater Collection Division at 352-4900, between 7:30 a.m. and 4:00 p.m., Monday through Friday. If you have an emergency situation, after hours on a weekday or weekend, call 244-5500 or 911.

Source: King County (Seattle), American Red Cross, Federal Emergency Management Agency and MSD.

EXHIBIT 7--APPENDIX B:

The following is presented as sample narrative for a customer service brochure. The content and form of the information presented may evolve over time.

Water In Basements (WIBs)

Heavy storms, blockages or breakdowns in sewer pipes, and other events can cause sewage to backup into basements. The water contains sewage, even when diluted by storm water. Children and pets should be kept out of the flooded areas until the areas have been cleaned.

Sewage has the potential of carrying microorganisms, which may cause diarrhea and other diseases, such as Hepatitis A, Salmonella, and Giardia, all of which can be killed readily with household disinfectants. The sewer odors may be unpleasant, but are not harmful.

Safety First – Please use caution when entering the basement.

- Be careful walking around. Floors and steps are often slippery.
- Protect yourself when removing water and cleaning your basement by wearing rubber boots and gloves.
- Wash clothes and other items which come into contact with the backup water with soap and water.
- Wear sturdy shoes and use battery-powered lanterns or flashlights when examining the basement.
- Wash your hands with soap and water.

Inspect the area for hazards.

- Broken or leaking gas lines.
- Flooded electrical circuits.
- Submerged furnaces or electrical appliances.

Inspecting utilities for damage.

- **Check for gas leaks** – If you smell gas or hear a blowing or hissing noise, open a window and quickly leave the building. Turn off the gas at the outside main valve if you can and call the gas company from a neighbor's home. If you turn off the gas for any reason, it must be turned back on by a professional.
- **Look for electrical system damage** – If you see sparks or broken or frayed wires, or if you smell hot insulation, turn off the electricity at the main fuse box or circuit breaker. If you have to step in water to get to the fuse box or circuit breaker, call the electric company or an electrician.

Take pictures of the damage.

- Take pictures of the basement and other areas affected.
- Take pictures of the contents for damage and insurance claims.

How should I clean the basement?

- Remove silt and dirt stains by rinsing concrete walls and masonry foundation walls with a high-pressure hose.
- If stains remain on the walls, scrub them with a stiff bristle brush and household detergent. Begin at the top and work down. Rinse often with clear water.
- Start drying the basement as quickly as possible in order to minimize wood decay or growth of mold.
- Open all doors and windows to allow the moisture to flow outside.
- Buy or rent a fan or dehumidifier to speed up the drying process.
- If you are sensitive to mold or mildew, wear a mask or respirator containing an appropriate filter.
- Before removing wallboard, paneling and insulation, it is recommended that a professional cleaning contractor be consulted.

How do I clean up and get rid of odors?

- Mop concrete floor and walls with a bleach solution (three-fourths cup of household bleach to a gallon of water) or other household disinfectants.
- Rinse and dry after five minutes.
- Open windows when applying the bleach solution.
- Place a lump of dry charcoal in an open tin/metal container to absorb odors.
- **Do not use ammonia.**
- **It is important to clean thoroughly and rinse a surface before disinfecting.**
- Area should be air dried thoroughly after disinfecting.

Available cleanup service.

MSD has a cleanup program that will assist in the cleanup of the water in your basement unless the backup is caused by a blockage in a private lateral line or is the result of overland flooding not coming from MSD's sewer system. This program is at no charge to the resident.

The MSD customer service representative will provide you with specific information about the service. The customer service representative will make arrangements for MSD contractors to provide the service on an expedited basis. The cleanup contractors will bill MSD directly for the services provided under this Plan.

Specifically, the basic cleanup services to be provided by the MSD's response contractors will include:

- wet vacuuming or other removal of spillage;
- mopping bare floors with cleaning solution and disinfectant;

- wiping walls with cleaning solution and disinfectant;
- flushing out and disinfecting plumbing fixtures; and
- basic carpet cleaning.

No two basement backups are exactly alike. Additional service will be evaluated on a case by case basis.

At the resident's request and with the resident's written authorization, MSD:

- Will remove affected personal property items from the basement.
- Will also arrange for any items it removes from the basement to be disposed of by an authorized sanitation company at MSD's expense.
- MSD cannot arrange for the disposal of hazardous waste, however.

The resident should take pictures, list and describe items removed from the basement.

Prior to authorizing its contractors to begin expedited, no-cost cleanup of the effects of a basement backup, MSD's customer service representative will review with the resident the necessary access agreement required to allow MSD and its contractors to enter the property and provide cleanup services.

Claims assistance

In addition, MSD's customer service representatives will assist residents in filing claims with the City Solicitor's office for damages to real or personal property which resulted from a basement backup.

Flood mitigation actions check list.

The following are actions that you can take to mitigate the damage caused by flooding.

- Store important documents and irreplaceable personal objects (such as photographs) where they will not get damaged.
- Elevate or relocate furnaces, hot water heaters and electrical panels above the level of potential flooding.
- For drains, toilets, and other sewer connections, install backflow valves or plugs to prevent flood waters from entering the building.
- Buy and install sump pumps with backup power.
- Move business inventory that may be flooded; reduce inventory that may be flooded, if possible elevate, relocate, and otherwise protect equipment that can be flooded.
- Throw away food – including canned goods – that has come in contact with flood waters.
- Identify stored hazardous materials or other chemicals that could be flooded; and relocated or elevate these.

If you have any questions or need more information on cleanup:
1) if you live in the City of Cincinnati, you may call the City of

Cincinnati Health Department staff at 357-7392 during office hours; 357-7435 after 5:00 p.m. or weekends; or 2) if you live in Hamilton County, you may call the Hamilton County Board of Health at 946-7840 during office hours; 946-7878 after 4:30 p.m. or weekends.

If you have questions about the sewer system, you may contact the Wastewater Collection Division at 352-4900, between 7:30 a.m. and 4:00 p.m., Monday through Friday. If you have an emergency situation, after hours on a weekday or weekend, call 244-5500 or 911.

Source: King County (Seattle), American Red Cross, Federal Emergency Management Agency and MSD.

EXHIBIT 8

WATER IN BASEMENT CLAIMS PROCESS PLAN

I. Introduction

The Water in Basement ("WIB") Claims Process is the damages reimbursement component of the Metropolitan Sewer District of Greater Cincinnati's ("MSD") WIB Program. Subject to the requirements of this Plan, occupants who incur damages as a result of the backup of wastewater into buildings due to inadequate capacity in MSD's Sewer System (both the combined and the sanitary portions) can recover those damages. This plan also provides a means for occupants to recover damages arising from backups that are the result of MSD's negligent maintenance, destruction, operation or upkeep of the Sewer System. The Claims Process is not intended to address water in buildings caused by overland flooding not emanating from MSD's Sewer System or caused by blockages in occupants' own lateral sewer lines.

This WIB Claims Process Plan will become effective on January 1, 2004 for covered backups occurring on or after that date.

II. Public Notification regarding WIB Claims Process

MSD will notify the public regarding the key elements of the WIB Claims Process in the various public notices issued regarding the WIB Customer Service Program under Section II of the WIB Customer Service Program Plan attached as Exhibit 7 to the Consent Decree. The information provided will include a brief description of the Claims Process and information about how to obtain and submit claim forms.

III. Claim Initiation

There are three steps to initiating a claim for reimbursement of damages under this Plan.

First, an occupant who has incurred property damage as a result of a basement backup that it believes is MSD's responsibility under this Plan must notify MSD within 24 hours of the time that the occupant discovers the WIB. Such notification can be made by calling the MSD Call Center at (513) 352-4900. Section III of the WIB Customer Service Program Plan attached at Exhibit 7 of the Consent Decree establishes the operational parameters of the Call Center.

Second, the occupant must allow MSD personnel and/or contractors reasonable access to the affected property to investigate the cause of the WIB.

Third, the occupant must file a claim form. This form will be given to customers who request cleanup assistance under the WIB Customer Service Program implemented under Section XIII

and Exhibit 7 of the Consent Decree. Claim forms will also be provided to occupants who request them from MSD at (513) 352-4900. Additionally, claim forms will be available at MSD's internet site: www.msdbg.org. The content of this form may evolve over time.

IV. Claim Eligibility

The following guidelines will govern the reimbursement of damage claims submitted under this Plan.

A. Scope of WIBs Covered.

1. The Claims Process will only reimburse damages arising from basement backups caused by inadequate capacity in MSD's Sewer System or that are the result of MSD's negligent maintenance, destruction, operation or upkeep of the Sewer System. MSD will not pay claims for damages caused by WIBs arising from blockages in occupants' lateral lines or arising from overland flooding not emanating from MSD's Sewer System.

2. MSD will exercise its good faith reasonable engineering judgment to determine the cause of a WIB. This determination will be based on a consideration of a variety of factors, which can include:

- amount of precipitation;
- property WIB history;
- condition of sewer system in neighborhood;
- results of a visual inspection of the neighborhood to look for signs of overland flooding;
- neighborhood WIB history;
- capacity of nearby public sewer lines; and
- topography.

Depending on the circumstances, the determination may also be based on an inspection of the private lateral and/or inspection of nearby public lines.

3. At locations that have experienced a basement backup due to inadequate capacity within the previous two years and where MSD has not resolved the capacity issue, MSD will treat that backup as MSD's responsibility and dispense with the assessment phase of the Claims Process. In such cases, MSD will pay appropriately documented claims without further investigation as to the cause of the WIB incident. The same presumption and expedited process will apply to locations that experience basement backups caused by blockages in public sewer lines of which MSD had notice and opportunity to clear, but did not clear.

B. Damages will be paid for losses to real and personal property that can be documented. For that reason, claimants must, as a condition to the payment of any claim, cooperate with MSD's efforts to investigate and document the losses that have occurred as a result of a WIB

incident. Claimants will be asked to submit copies of any documents that they may have that substantiate the existence and/or extent of their damages. Among other measures taken to document losses, MSD may: prepare an inventory of damaged items, take photographs of the building or property present there during or after the WIB incident or the cleaning process, request information about the value, type, age or other characteristics of items for which damages are claimed, and require the owner or occupant to submit documentation about damaged items. The property owner or occupant must provide MSD reasonable access to the property for the purpose of documenting losses to personal property.

C. Claimants must notify MSD regarding the WIB within twenty-four hours of the time that the claimant discovers the WIB.

D. Claimants must allow MSD personnel and/or contractors reasonable access to the affected property to investigate the cause of the WIB.

E. Claims will be subject to the limitations on Ohio political subdivision liability imposed by ORC 2744.05.

V. Future Claims Mitigation

MSD may request in writing of occupants whom it has compensated under this Plan to undertake reasonable mitigation measures, which can include:

- A. allowing MSD to install, at MSD's expense, a backflow prevention device and agreeing to maintain such backflow prevention device in working order;
- B. refraining for two years from storing personal property below a previously documented high water line or less than two feet above the basement floor; or
- C. refraining for two years from installing new carpet or drywall below a previously documented high water line or less than two feet above the basement floor.

If MSD makes such a request, and the occupant refuses and a WIB subsequently occurs, the extent to which the occupant complied with the request may be a factor that is considered by the Office of the Solicitor for the City of Cincinnati in determining the amount to pay for any claims pertaining to the subsequent WIB.

VI. Claims Processing

Claims will be made to the Office of the Solicitor for the City of Cincinnati. The Office of the Solicitor will make a final written decision regarding payment of claims made under this Plan within 60 days of receiving such claims. Any decision denying a claim in full or resulting in an offer of payment of an amount less than the full amount of the claim will include pertinent information regarding the process for pursuing the claim in Ohio State court.