UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

UNITED STATES OF AMERICA, and STATE OF INDIANA,	)	
Plaintiffs,	)	
	)	**Case No.**
v.	)	
CITY OF SOUTH BEND, INDIANA,	)	
Defendant.	)	

CONSENT DECREE

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APPENDICES

A. LONG TERM CONTROL PLAN

B. SUPPLEMENTAL ENVIRONMENTAL PROJECT

WHEREAS, Plaintiffs United States of America (United States) on behalf of the United States Environmental Protection Agency (EPA) and the State of Indiana (Indiana) on behalf of the Indiana Department of Environmental Management (IDEM) have filed a Complaint in this case concurrently with the lodging of this Consent Decree alleging that Defendant City of South Bend, Indiana (South Bend) violated Sections 301 and 309 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1321 (Act), the applicable provisions of Title 13 of the Indiana Code and Title 327 of the Indiana Administrative Code, and South Bend's National Pollution Discharge Elimination System (NPDES) Permits by discharges from Combined Sewer Overflows (CSO) into the waters of the United States and the waters of Indiana, that have violated and continue to violate South Bend's NPDES Permits. The United States and Indiana seek civil penalties and injunctive relief for these violations.

The Parties agree, and the Court by entering this Consent Decree finds, that the parties negotiated this Consent Decree in good faith, that the Consent Decree will avoid complex and protracted litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW THEREFORE, before the taking of any testimony, without the adjudication or admission of any fact or law except as provided in Section I, below, and with the consent of the Parties, the Court ORDERS, JUDGES, and DECREES as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367, and Section 309(b) of the Act, 33 U.S.C. § 1319(b), and over the Parties. Venue lies in this District pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b), 1395(a),

because South Bend is located in this judicial district and the violations alleged in the Complaint are alleged to have occurred in this judicial district. For purposes of this Decree, or any action to enforce this Decree, South Bend consents to the Court's jurisdiction over this Decree or such action and over South Bend, and consents to venue in this judicial district.

2. For purposes of this Consent Decree, South Bend agrees that the Complaint states claims on which relief may be granted pursuant to Section 309 of the Act, 33 U.S.C. § 1319, and Title 327 of the Indiana Administrative Code.

II. APPLICABILITY

3. The obligations established in this Consent Decree apply to and are binding on the United States and Indiana, and on South Bend and any successor or other entities or persons otherwise bound by law.

4. Any transfer of the ownership or operation of all or any part of the Facility to any other person or entity must be conditioned on the transferee's agreement to undertake the obligations required by this Decree, as provided in a written agreement between South Bend and the proposed transferee, enforceable by the United States and Indiana as third party beneficiaries of such agreement. At least 30 Days prior to such transfer, South Bend shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement to EPA Region 5, the United States Attorney for the Northern District of Indiana, and the United States Department of Justice, in accordance with Section XVI of this Decree (Notices). Any attempt to transfer ownership or

operation of the Facility without complying with this Paragraph constitutes a violation of this Decree. No transfer of ownership or operation of the Facility, whether in compliance with this Paragraph or otherwise, shall relieve South Bend of its obligation to ensure that the terms of the Decree are implemented.

5. South Bend shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties reasonably might include compliance with any provision of this Decree, and any contractor retained to perform work required pursuant to this Consent Decree. South Bend shall condition any such contract on performance of the work in compliance with the terms of this Consent Decree.

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

III. OBJECTIVES

7. The objectives of this Consent Decree include:

   a. the objectives stated in Section 101(a) of the Act, 33 U.S.C. § 1251;

   b. causing South Bend to come into and remain in compliance with the Clean Water Act;

   c. causing South Bend to come into and remain in compliance with State Law; and

   d. causing South Bend to come into and remain in compliance with South Bend's NPDES Permits.

IV. DEFINITIONS

8. Terms used in this Consent Decree, including attached appendices, that are defined in the Act or in regulations promulgated pursuant to the Act or in South Bend's NPDES Permits shall have the meanings assigned to them in the Act or such regulations or South Bend's NPDES Permits, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, including attached appendices, the following definitions shall apply:

   a. "ACS" shall mean American Community Survey data collected and analyzed by the United States Census Bureau;

   b. "Appendix A" shall mean Appendix A, Long Term Control Plan, referenced in Paragraph 10 of this Decree, which is attached to, and incorporated into this Decree;

   c. "Appendix B" shall mean Appendix B: Supplemental Environmental Project, referenced in Paragraph 16 of this Decree, which is attached to, and incorporated into this Decree;

   d. "Bowman Creek" shall mean a tributary to the St. Joseph River in St. Joseph County traversing through the City of South Bend in a northeasterly direction from the southwest portion of the City. Bowman Creek's headwaters are at the confluence of Eberly and Auten Ditch located near Locust and Johnson Roads. Philips Ditch is a tributary to Bowman Creek from the southeast. Approximately three miles of Bowman Creek is located within the City limits. The Creek is a combination of open waters and closed conduits through the City and County;

e. “Bypass,” “Bypasses,” or “Bypassed” shall mean the intentional diversion of waste streams from any portion of the treatment facility located at 3113 Riverside Drive in South Bend, Indiana;

f. “CAFR” shall mean the Comprehensive Annual Financial Report or similar document that South Bend prepares in the normal course of its financial reporting each year;

g. “Clean Water Act” or “Act” shall mean the Clean Water Act, which is currently codified at 33 U.S.C. §§ 1251-1387, and all regulations promulgated thereunder, in effect at the time in question;

h. “Collection System Model” shall mean the Storm Water Management Model produced by XP Software, Incorporated that South Bend used while developing its Long Term Control Plan to simulate flow in South Bend’s sewer collection and conveyance system;

i. “Complaint” shall mean the complaint filed by Plaintiffs in this case;

j. “Conduit” shall mean the storage conduit for CSOs 029, 028, 027, 026, and 025 that South Bend is required to construct and put into service pursuant to Table 1 of Appendix A;

k. “Consent Decree” or “Decree” shall mean this Consent Decree and all attached appendices (listed in Section XXIX);

l. “CSO” shall mean Combined Sewer Overflow;

m. “CSO Control Measure(s)” shall mean the structural measures designed to eliminate, reduce, or mitigate the volume, frequency, or pollutant levels in the CSOs described in Table 1 of Appendix A;

n. “CSO Control Policy” shall mean EPA’s “Combined Sewer Overflow (CSO) Control Policy,” which was published in the Federal Register on April 19, 1994 (59 Fed. Reg. 18688);

o. “CSO Discharge” shall mean any discharge from any CSO Outfall identified in South Bend’s NPDES Permits;

p. “CSOnet Measures” shall mean using the sensor-actuator network in South Bend’s sewer collection and conveyance system as a means of maximizing use of that system for storage and conveyance of wet weather flows, thereby reducing the volume of wet weather flows that otherwise would need to be stored by Storage Tanks, the Conduit, or the Parallel Interceptor, that South Bend is required to construct and put into service pursuant to Table 1 of Appendix A;

q. “CSO Outfall” shall mean any point source that is specifically identified in South Bend’s NPDES Permits as a Combined Sewer Overflow or CSO Outfall;

r. “Day” shall mean a calendar day unless expressly stated to be a Working Day. To compute any period of time pursuant to this Consent Decree in which the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day;

s. “Design Criteria” shall mean the Design Criteria described in Table 1 of Appendix A;

t. "Discharge Monitoring Report" shall mean any discharge monitoring report or monthly report of operations that South Bend is required to submit to IDEM on a monthly basis pursuant to South Bend's NPDES Permits or State Law;

u. "Effective Date" shall mean the date of entry of this Consent Decree by the Court after satisfaction of the public notice and comment procedures of 28 C.F.R. § 50.7;

v. "End Date" as used in a column heading to Table 1 of Appendix A shall mean the date that construction is completed on all facilities within the relevant grouping and they are operating as designed;

w. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States;

x. "EPA's Financial Capability Assessment Guidance" shall mean EPA's February 1997 publication number EPA 832-B-97-004, entitled "Combined Sewer Overflows–Guidance for Financial Capability Assessment and Schedule Development;"

y. "Facility" shall mean and include:

1. any wastewater collection and conveyance system owned or operated by South Bend that is designed to collect and convey domestic, commercial, and industrial sewage to a wastewater treatment plant or to a combined sewer overflow structure;

2. any wastewater treatment plant owned or operated by South Bend;

3. any combined sewer overflow structure owned or operated by South Bend;

and

4. any combined sewer overflow structure to which South Bend directs or conveys the flow of domestic, commercial, and industrial sewage or at which such sewage from South Bend users comes to be found;

z. "Federal Census" shall mean census data and analysis published by the United States Census Bureau every 10 years;

aa. "GPS" shall mean global positioning system;

bb. "Green Infrastructure Measures" shall mean the range of stormwater control measures that use plant systems, soil systems, permeable pavement, or stormwater management, harvest and reuse, to store, infiltrate, evapotranspirate, or reuse stormwater and reduce flows to the combined sewer system, thereby reducing the volume of wet weather flows that otherwise would need to be stored in Storage Tanks, the Conduit, or the Parallel Interceptor that South Bend is required to construct and put into service pursuant to Table 1 of Appendix A. Green Infrastructure Measures may include without limitation extended detention wetland areas, green roofs, and cisterns;

cc. "IDEM" shall mean the State of Indiana Department of Environmental Management;

dd. "Indiana" shall mean the State of Indiana;

ee. "Interest" shall mean interest calculated at the rated established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961;

ff. “Long Term Control Plan” and “LTCP” shall mean Appendix A, Long Term Control Plan, referenced in Paragraph 10 of this Decree, which is attached to, and incorporated into this Decree;

gg. “MG” shall mean million gallons;

hh. “MGD” shall mean millions of gallons per day;

ii. “MHI” shall mean median household income;

jj. “NPDES Permits” shall mean South Bend’s National Pollution Discharge Elimination System (NPDES) Permit No. IN0024520 issued for South Bend’s publicly owned treatment works and the separate NPDES Permit No. INMO24520, issued for South Bend’s CSO Discharges and CSO Outfalls, and any such permits that succeed those permits in effect at a particular time in question;

kk. “Nine Minimum Controls” shall mean the Nine Minimum Controls set forth in the CSO Control Policy and discussed in EPA’s May, 1995 publication entitled “Combined Sewer Overflows; Guide for Nine Minimum Controls;”

ll. “Overflow Event” shall mean one or more overflows from the combined sewer system resulting from a single precipitation event. If multiple outfall pipes overflow during a single precipitation event, those overflows constitute one Overflow Event;

mm. “Paragraph” shall mean a portion of this Decree identified by an arabic numeral;

nn. “Parallel Interceptor” shall mean the parallel interceptor for storage and conveyance for CSOs 006, 002, 001, 044, and 045 that South Bend is required to construct and put into service pursuant to Table 1 of Appendix A;

oo. “Party” or “Parties” shall mean the United States, Indiana, and South Bend, or any of them;

pp. “Performance Criteria” shall mean the Performance Criteria described in Table 1 of Appendix A;

qq. “Plaintiffs” shall mean the United States and Indiana;

rr. “Residential Indicator” shall mean the Residential Indicator described in Section III of EPA’s Financial Capability Assessment Guidance;

ss. “Section” shall mean a portion of this Decree identified by a roman numeral;

tt. “SEP” shall mean the Supplemental Environmental Project referenced in Paragraph 16 of this Decree and described in Appendix B, which is attached to, and incorporated into this Decree;

uu. “South Bend” shall mean the City of South Bend, Indiana;

vv. “Start Date” as used in a column heading to Table 1 of Appendix A shall mean the date that South Bend has an engineer under contract to design the initial facility within the relevant grouping;

ww. “State Law” shall mean the applicable provisions of Title 13 of the Indiana Code and Title 327 of the Indiana Administrative Code;

xx. “St. Joseph River WISE Sampling Program” shall mean the St. Joseph River Watershed Initiative for a Safer Environment Sampling Program, the data from

which is available on a website maintained by the Water Environment Foundation;

yy. "St. Joseph River Model" shall mean the Branched Lagrangian Transport Model used to model water quality in the St. Joseph River;

zz. "Storage Tanks" shall mean the Memorial Park Storage Tank, Old Fire Station Storage Tank, Ice Rink Parking Lot Storage Tank, Randolph and Sampson Storage Tank, Nuner School Storage Tank, Leeper Park Storage Tank, and Brownsfield Park Storage Tank that South Bend is required to construct and put into service pursuant to Table 1 of Appendix A;

aaa. "STORET" shall mean EPA's storage and retrieval database;

bbb. "Submit," "Submits,"or "Submitted" shall mean any of the following: (1) place in certified mail in a properly addressed envelope with sufficient postage for first class delivery; (2) tender to an overnight courier in a properly addressed envelope and prepay the delivery fees; or (3) hand-deliver and obtain the signature of the recipient;

ccc. "Subparagraph" shall mean a portion of this Consent Decree and appendices identified by a lower case letter;

ddd. "Ten State Standards" shall mean Recommended Standards for Wastewater Facilities; Policies for the Design, Review, and Approval of Plans and Specifications for Wastewater Collection and Treatment Facilities, A Report of the Wastewater Committee of the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers (Wastewater

Committee) published by Health Research Incorporated, Health Education Services Division, Post Office Box 7126, Albany, New York 12224. As of 2004, the Wastewater Committee was comprised of the following member states and province: Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, New York, Ohio, Ontario, Pennsylvania, and Wisconsin;

eee. "Typical Year" shall mean the amount, intensity, and frequency of rainfall or other precipitation, and the St. Joseph River flow rates, that occurred during 1992;

fff. "Unlisted Discharge" shall mean any discharge to waters of Indiana or waters of the United States from the Facility, from or through any point source that is not specifically identified in the NPDES Permits as a Combined Sewer Overflow or CSO outfall;

ggg. "United States" shall mean the United States of America acting on behalf of EPA;

hhh. "USGS" shall mean the United States Geological Survey;

iii. "UV Disinfection" shall mean a system that uses ultraviolet light to disinfect water;

jjj. "Water Quality Based Requirements" shall mean numeric and narrative effluent limitations for CSO Discharges in South Bend's NPDES Permits that are based on, derived from, or implement federally-approved WQS for the States of Indiana and Michigan, as applicable;

kkk. "Working Day" shall mean a day other than a Saturday, Sunday, or federal holiday;

lll. "WQS" shall mean applicable water quality standards in effect at a particular time, and in a particular location, in question; and

mmm. "WWTP" shall mean South Bend's Wastewater Treatment Plant.

V. COMPLIANCE REQUIREMENTS

A. NINE MINIMUM CONTROLS

9. South Bend shall comply with the provisions in the NPDES Permits pertaining to the Nine Minimum Controls including without limitation provisions pertaining to implementation of South Bend's CSO Operational Plan (Operational Plan) and any revisions to the Operational Plan.

B. LONG TERM CONTROL PLAN

10. South Bend shall comply with the requirements of Appendix A, Long Term Control Plan.

11. Requirements After Completing the Long Term Control Plan. After completing all requirements of the Long Term Control Plan:

    a. South Bend shall properly operate and maintain the Facility including all improvements and other CSO Control Measures implemented pursuant to the Long Term Control Plan;

    b. South Bend shall have no Unlisted Discharges;

    c. South Bend's remaining CSO Discharges, if any, shall comply with the Clean Water Act, State Law, and South Bend's NPDES Permits; and

    d. South Bend shall have eliminated Bypasses or, to the extent South Bend demonstrates that there are no feasible alternatives for eliminating Bypasses, any remaining Bypasses shall meet the conditions governing Bypass in South Bend's

NPDES Permits and any discharges of Bypassed flow shall meet all applicable narrative and numeric effluent limitations in South Bend's NPDES Permits.

C. OTHER PROVISIONS

1. Permits

12. If any compliance obligation under this Decree requires South Bend to obtain a federal, state, or local permit or approval, South Bend shall submit timely and complete applications and make best efforts to obtain all such permits or approvals. South Bend may seek relief under the provisions of Section XI (Force Majeure) of this Consent Decree for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if South Bend has Submitted timely and complete applications and has made best efforts to obtain all such permits or approvals.

13. Subject to South Bend's right to seek relief pursuant to the provisions of Paragraph 12 and Section XI (Force Majeure) of this Decree, the pendency or outcome of any proceeding concerning issuance, reissuance, or modification of any NPDES permit shall not affect or postpone South Bend's responsibilities under this Decree.

2. Funding and Other Delays

14. South Bend's compliance with the requirements of this Consent Decree is not conditioned on the receipt of federal or state grant funds. Additionally, a failure to comply with, or a delay in complying with, any requirement of this Consent Decree shall not be excused by the lack of federal or state grant funds including without limitation construction grants and State Revolving Loan Funds, or any other grants or loans, or by

any delay in processing any applications for such funds, subject to South Bend's right to seek relief pursuant to the provisions of Section XI (Force Majeure) of this Decree.

15. Delays caused by inadequate facility planning or plans and specifications on the part of South Bend shall not be cause for extension of any required compliance date in this Consent Decree.

VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT

16. South Bend shall perform a SEP in accordance with all requirements of Appendix B: Supplemental Environmental Project, which is attached to, and incorporated into this Decree. When performing the SEP, South Bend shall spend not less than $75,000 in eligible SEP costs. Eligible SEP costs include the cost of planning and implementing the SEP, but do not include overhead, depreciation or wear and tear of equipment owned by South Bend used to perform the SEP, administrative expenses, legal fees, and contractor oversight expenses.

17. South Bend is responsible for satisfactorily completing the SEP in accordance with the requirements of this Decree, including Appendix B. South Bend may use contractors or consultants to plan or perform the SEP.

18. Regarding the SEP, South Bend certifies the truth of each of the following:

    a. as of the date that South Bend executes this Decree, South Bend is not required to perform or develop the SEP by any federal, state, or local law or regulation, nor is South Bend required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

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

c. South Bend has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action; and

d. South Bend will not receive any reimbursement for any portion of the SEP from any other person.

19. SEP Completion Report. Within 30 days of the deadline for completing the SEP established pursuant to Paragraphs 4-6 of Appendix B, South Bend shall submit a SEP Completion Report to the United States and Indiana in accordance with Section XVI of this Decree (Notices). The SEP Completion Report shall contain the following information:

a. a detailed description of the SEP as implemented;

b. a description of any problems encountered in completing the SEP and the solutions to those problems;

c. an itemized list of all eligible SEP costs;

d. certification that South Bend fully implemented the SEP pursuant to the provisions of this Decree, including Appendix B; and

e. a description of the environmental and public health benefits resulting from performance of the SEP with a quantification of the benefits and pollutant reductions if feasible.

20. In addition to the information described in the preceding Paragraph, either the United States or Indiana, in their sole discretion, may require South Bend to submit additional information to determine the adequacy of SEP completion or eligibility of SEP costs.

21. After receiving the SEP Completion Report, the United States and Indiana shall give South Bend written notification regarding whether South Bend has completed the SEP as required by this Consent Decree, including Appendix B. If South Bend has not completed the SEP in accordance with all requirements, deadlines, and schedules in this Section and Appendix B, or if the amount that South Bend spent to perform the SEP is less than $75,000, the United States or Indiana may seek stipulated penalties pursuant to Paragraphs 34 and 38 of this Decree.

22. Disputes concerning the satisfactory performance of the SEP; the amount of eligible SEP costs; or the potential disputes described in Paragraph 6 of Appendix B may be resolved pursuant to Section XII (Dispute Resolution) of this Decree. No other disputes arising under this Section shall be subject to Dispute Resolution.

23. Each submission required under this Section or Appendix B shall be signed by a South Bend official with knowledge of the SEP and shall bear the certification language in Paragraph 30 of this Decree.

24. Any public statement, oral or written, in print, film, or other media, made by South Bend or its representatives making reference to the SEP required by this Decree shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action, *United States and the State of Indiana v. City of South Bend,*

Indiana, taken on behalf of the United States Environmental Protection Agency and the Indiana Department of Environmental Management pursuant to the Clean Water Act."

VII. CIVIL PENALTIES

25. Within 30 Days after the Effective Date of this Consent Decree, South Bend shall pay the United States the sum of $44,100 as a civil penalty in the manner specified in Section X (Payment and Related Matters).

26. Within 30 Days after the Effective Date of this Consent Decree, South Bend shall pay Indiana the sum of $44,100 as a civil penalty in the manner specified in Section X (Payment and Related Matters).

VIII. REPORTING REQUIREMENTS

27. South Bend shall submit the following reports:

    a. After lodging of this Decree, and until termination of this Decree pursuant to Section XXIV, South Bend shall Submit a Semi-Annual Report by July 31 of each year for the preceding six months between January 1 and June 30; and by January 31 of each year for the preceding six months between July 1 and December 31. The Semi-Annual Reports shall include:

        1. an identification of all deadlines that this Consent Decree required South Bend to meet during the six-month period, a statement regarding whether and to what extent South Bend met those requirements, and the reasons for any noncompliance. Notification to the United States and Indiana of any anticipated delay in meeting a deadline shall not, by itself, excuse the delay;

2. a general description of the work completed within the six-month period, and a projection of work to be performed pursuant to this Consent Decree during the next six-month period;

3. information generated in accordance with the requirements in Appendix A, to the extent that South Bend has generated any such information during the prior six-month period, including without limitation:

   (i) a detailed summary of South Bend's efforts to collect and analyze rainfall, sewer response, and St. Joseph River water quality data pursuant to the requirements of section 2.2 of Appendix A;

   (ii) a detailed summary of monitoring data generated pursuant to the requirements of section 2.2 of Appendix A;

   (iii) a detailed summary of South Bend's Collection System Model calibration and validation efforts conducted pursuant to section 2.3.1 of Appendix A; and

   (iv) a detailed summary of South Bend's efforts to update, calibrate, and validate the St. Joseph River Model pursuant to section 2.4.1 of Appendix A; and

4. copies of all Discharge Monitoring Reports and other reports pertaining to CSO Discharges and Bypasses that South Bend Submitted to IDEM in accordance with South Bend's NPDES Permits during the six-month period; and

b. If South Bend violates any requirement of this Consent Decree, South Bend shall Submit written notice to the United States and Indiana of such violation and its likely duration within ten Working Days of the day South Bend first became aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or planned, to prevent or minimize the violation. If the cause of the violation cannot be fully explained at the time the notice is due, South Bend shall include a statement to that effect in the notice. South Bend shall investigate to determine the cause of the violation and then shall submit an amendment to the notice, including a full explanation of the cause of the violation, within 30 Days of the day South Bend becomes aware of the cause of the violation. Nothing in this Paragraph 27 or Paragraph 28 of this Consent Decree relieves South Bend of its obligation to provide the requisite notice for purposes of Section XI (Force Majeure).

28. In the case of any violation or other event that may pose an immediate threat to the public health or welfare or the environment, South Bend shall notify EPA and Indiana orally or by electronic or facsimile transmission as soon as possible, but not later than 24 hours after South Bend first knew of, or by the exercise of due diligence, should have known of, the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

29. South Bend shall Submit all notices to the persons designated in Section XVI of this Consent Decree (Notices).

30. Each report that South Bend Submits pursuant to Section VI (Supplemental Environmental Project) or Paragraph 27 of this Decree shall be signed by an appropriate South Bend official and include the following certification:

> I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gathered and presented the information contained therein. I further certify, based on my personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing and willful submission of materially false statements.

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

32. The United States and Indiana may use any information generated or provided pursuant to this Consent Decree in any proceeding to enforce the provisions of this Consent Decree, in any proceeding pursuant to Section XII (Dispute Resolution) of this Decree, and as otherwise permitted by law. South Bend shall not object to the admissibility into evidence of information submitted by South Bend or its agents in any of the proceedings described in the preceding sentence.

IX. STIPULATED PENALTIES

33. If South Bend fails to pay the penalties required pursuant to Section VII of this Decree (Civil Penalties) when due, South Bend shall pay, in the manner specified in Section X

(Payment and Related Matters), a stipulated penalty of $2,000 per day for each day that the payment is late.

34. SEP Compliance.

a. In all cases, after completing the SEP required by Paragraph 16 and Appendix B of this Decree, if South Bend has spent less than $75,000 in eligible SEP costs, South Bend shall pay a stipulated penalty equal to the difference between the amount of total eligible SEP costs incurred by South Bend and $75,000.

b. If South Bend Submits a SEP Completion Report to the United States and Indiana pursuant to Paragraph 19 of this Consent Decree, but does not complete the SEP as required by this Consent Decree, including Appendix B, South Bend shall pay a stipulated penalty of $7,500 in addition to any stipulated penalty required by Subparagraph a of this Paragraph;

c. If South Bend halts or abandons work on the SEP, South Bend shall pay a stipulated penalty of $15,000 in addition to any penalty required by Subparagraph a of this Paragraph;

d. If South Bend fails to comply with the required schedule for completing the SEP established pursuant to Paragraphs 4-6 of Appendix B or the deadline for submitting a SEP Completion Report pursuant to Paragraph 19 of this Decree,

South Bend shall pay stipulated penalties for each failure to meet an applicable deadline as follows:

Penalty Per Violation Per Day	Period of Noncompliance
$500	1st through 30th day
$2,000	31st through 59th day
$4,000	60th day and beyond

Such penalties shall accrue from the date that South Bend failed to meet an applicable deadline, until compliance with the requirement is achieved.

35. South Bend shall be liable for Stipulated Penalties to be paid to the United States and Indiana as specified below, unless excused under Section XI (Force Majeure) of this Decree. A violation includes failing to perform any obligation required by this Decree, including the Nine Minimum Controls Compliance Plan, Long Term Control Plan, or any Supplemental Compliance Plan required by this Decree, and any schedules in those plans, according to all applicable requirements of this Decree and within the specified schedules established by, or approved pursuant to this Decree.

36. Reporting Requirements and Other Requirements.

The following Stipulated Penalties shall accrue per violation per day for each violation of

the requirements of this Consent Decree identified in Subparagraphs a and b of this Paragraph:

Penalty Per Violation Per Day	Period of Noncompliance
$500	1st through 30th day
$1,000	31st through 59th day
$2,000	60th day and beyond

a. Violation of any provision in Section VIII (Reporting Requirements) of this Consent Decree; and

b. Violation of any provision of this Consent Decree not specified in Paragraph 33, Paragraph 34, or the next Paragraph of this Decree.

37. Substantive Requirements.

The following Stipulated Penalties shall accrue per violation per day for each violation of the requirements of Section V (Compliance Requirements) of this Consent Decree but stipulated penalties for violations of Paragraph 11 of this Decree shall not begin to accrue less than six months after South Bend completes construction of the CSO Control Measures required by Section 1 of Appendix A:

Penalty Per Violation Per Day	Period of Noncompliance
$1,000	1st through 14th day
$2,000	15th through 30th day
$4,000	31st day and beyond

38. Stipulated Penalties pursuant to this Section shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall

continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated Penalties shall accrue simultaneously for separate violations of this Consent Decree. Within 30 Days of receiving a written demand from either the United States or Indiana, South Bend either shall pay any stipulated penalties in the manner specified in Section X (Payment and Related Matters), or Submit a written Notice of Dispute to the United States and Indiana pursuant to Paragraph 50 of this Decree. If South Bend fails to Submit a written Notice of Dispute within the time required by this Paragraph, South Bend shall thereafter be forever barred from disputing the stipulated penalties specified in the written demand from the United States or Indiana. The United States, or Indiana, or both may seek Stipulated Penalties under this Section. Either sovereign may waive Stipulated Penalties, or reduce the amount of Stipulated Penalties sought, in the exercise of their unreviewable discretion, and in accordance with this Paragraph. Where both sovereigns seek Stipulated Penalties for the same violation of this Consent Decree, South Bend shall pay 50 percent to the United States and 50 percent to Indiana. Where only one sovereign demands Stipulated Penalties for a violation, and the other sovereign does not join in the demand within ten Working Days of receiving the demand, or timely joins in the demand but subsequently elects to waive or reduce Stipulated Penalties for that violation, South Bend shall pay the Stipulated Penalties due for the violation to the sovereign making the initial demand, less any amount paid to the other sovereign. The determination of one sovereign not to seek Stipulated Penalties, or subsequently to waive or reduce the amount sought, shall not preclude the other sovereign from seeking Stipulated Penalties.

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

a. if the dispute is resolved by a written agreement, South Bend shall pay accrued penalties determined to be owing within 30 Days of the date that South Bend signs the written agreement;

b. if the dispute is resolved because the position that South Bend advocated in a Notice of Dispute Submitted to Plaintiffs during informal dispute resolution is deemed to be rejected by Plaintiffs pursuant to Paragraph 50 of this Decree, and South Bend does not seek judicial review within the time provided in Paragraph 51 of this Decree, South Bend shall pay accrued penalties determined to be owing within 51 Days of the date that South Bend Submitted the Notice of Dispute to Plaintiffs;

c. if South Bend seeks judicial review pursuant to Paragraph 51 of this Decree and either the United States or Indiana prevails in whole or in part, South Bend shall pay all accrued penalties that the court determines to be owing within 60 Days of the date of the court's decision or order, except as provided in Subparagraph d of this Paragraph; or

d. if any Party appeals the district court's decision, South Bend shall pay, within 20 Days of the date of the final appellate court decision, all accrued penalties that the appellate court determines to be owing.

40. If South Bend receives a written demand for stipulated penalties from either the United States or Indiana between the date of lodging and the Effective Date of this Consent

Decree, South Bend shall pay the stipulated penalties within 30 Days of the Effective Date of this Decree in the manner specified in Section X (Payment and Related Matters).

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

X. PAYMENT AND RELATED MATTERS

42. South Bend shall make the payments to the United States required by Section VII (Civil Penalties) and Section IX (Stipulated Penalties) by FedWire Electronic Funds Transfer to the United States Department of Justice (DOJ) in accordance with instructions to be provided to South Bend by the Financial Litigation Unit of the United States Attorney's Office for the Northern District of Indiana. At the time of payment, South Bend simultaneously shall Submit written notice of payment and a copy of any transmittal documentation (which should reference United States Attorney's Office File Number 2003V00803; United States Department of Justice Reference Number 90-5-1-1-08182; the case number that the Court assigns to the case; and state that the payment is for either a Civil Penalty or Stipulated Penalties) to the United States in accordance with Section XVI of this Decree (Notices).

43. South Bend shall make the payments to Indiana required by Section VII (Civil Penalties) and Section IX (Stipulated Penalties) by certified check payable to the "Indiana Department of Environmental Management Special Fund" and Submitted to:

Cashier
Indiana Department of Environmental Management
Post Office Box 7060
Indianapolis, Indiana 46207-7060

At the time of payment, South Bend simultaneously shall Submit a copy of the check and any transmittal documentation (which should reference United States Attorney's Office File Number 2003V00803; the case number that the Court assigns to the case; and state that the payment is for either a Civil Penalty or Stipulated Penalties) to Indiana in accordance with Section XVI of this Decree (Notices).

44. If South Bend fails to pay Stipulated Penalties according to the terms of this Consent Decree, South Bend shall be liable for Interest on such penalties accruing as of the date payment became due. If South Bend invokes Dispute Resolution regarding a written demand for stipulated penalties in the manner specified, and by the deadline specified in Paragraph 38 of this Consent Decree, however, South Bend shall not be liable for Interest from the date that South Bend invokes Dispute Resolution through the date that any payment becomes due pursuant to Section XII (Dispute Resolution) of this Decree.

XI. FORCE MAJEURE

45. A "force majeure event" is any event beyond the control of South Bend, its contractors, or any entity controlled by South Bend that delays the performance of any obligation under this Consent Decree despite South Bend's best efforts to fulfill the obligation. "Best

efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include South Bend's financial inability to perform any obligation under this Consent Decree.

46. South Bend shall provide notice orally or by electronic or facsimile transmission to EPA and Indiana as soon as possible but not later than 72 hours after the time South Bend first knew of, or by the exercise of due diligence, should have known of, a claimed force majeure event. South Bend also shall provide written notice to the United States and Indiana, as provided in Section XVI of this Consent Decree (Notices), within seven Days after the time South Bend first knew of, or by the exercise of due diligence, should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); South Bend's past and proposed actions to prevent or minimize any delay; a proposed schedule for carrying out those actions; and South Bend's rationale for attributing any delay to a force majeure event. Failure to provide oral and written notice as required by this Paragraph shall preclude South Bend from asserting any claim of force majeure.

47. If Plaintiffs agree that a force majeure event has occurred, the United States and Indiana may agree to extend the time for South Bend to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. If Plaintiffs agree to an extension of time, the appropriate

modification shall be made pursuant to Section XIX of this Consent Decree (Modification).

48. If Plaintiffs do not agree that a force majeure event has occurred, or does not agree to the extension of time sought by South Bend, the position of the United States shall control unless South Bend invokes Dispute Resolution under Section XII of this Consent Decree. In any such dispute, South Bend bears the burden of proving, by a preponderance of the evidence, that:

a. each claimed force majeure event is a force majeure event;

b. South Bend gave the notice required by Paragraph 46;

c. the force majeure event caused any delay that South Bend claims was attributable to that event; and

d. South Bend exercised best efforts to prevent or minimize any delay caused by the event.

XII. DISPUTE RESOLUTION

49. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Such procedures, however, shall not apply to actions by the United States and Indiana to enforce obligations of South Bend that have not been disputed in accordance with this Section.

50. Informal Dispute Resolution. Any dispute subject to dispute resolution under this Consent Decree first shall be the subject of informal negotiations. The dispute shall be considered to have arisen when South Bend Submits a written Notice of Dispute to the

United States and Indiana. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 21 Days from the date the dispute arises, unless the period is modified by written agreement. During the informal negotiation period, or any agreed extension of that period pursuant to this Paragraph, if the Parties do not resolve the issues raised in the Notice of Dispute with a written agreement, the position that South Bend advocated in the Notice of Dispute shall be deemed to be rejected by Plaintiffs. Such resolution of the dispute shall be binding unless South Bend seeks judicial review in the manner prescribed by Paragraph of 51 this Decree within 30 Days after the conclusion of the informal negotiation period.

51. South Bend may seek judicial review of a dispute by filing with the Court and serving on Plaintiffs, in accordance with Section XVI of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 30 Days of the conclusion of the informal negotiation period as defined in the preceding Paragraph. The motion shall contain a written statement of South Bend's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documents, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

52. Plaintiffs shall respond to South Bend's motion within the time period allowed by the Local Rules of this Court, or any extension of time to which the parties agree or the Court orders. South Bend may file a reply memorandum within the time period allowed by the Local Rules of this Court, or any extension of time to which the parties agree, or the Court orders.

53. In any motion for judicial review, South Bend shall bear the burden of demonstrating that its position clearly complies with and furthers the objectives of this Consent Decree and the Clean Water Act, and that South Bend is entitled to relief under applicable law.

54. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of South Bend under this Consent Decree unless and until final resolution of the dispute so provides. Stipulated Penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 39 of this Consent Decree. If South Bend does not prevail on the disputed issue, Stipulated Penalties shall be assessed and paid as provided in Section IX (Stipulated Penalties).

XIII. INFORMATION COLLECTION AND RETENTION

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

a. monitor the progress of activities required under this Consent Decree;

b. verify any data or information Submitted to the United States or Indiana in accordance with this Consent Decree, NPDES Permits, the Clean Water Act, or State Law;

c. obtain samples and, upon request, splits of any samples taken by South Bend or its representatives, contractors, or consultants;

d. obtain documentary evidence, including photographs and similar data; and

e. assess South Bend's compliance with this Consent Decree, NPDES Permits, the Clean Water Act, or State Law.

56. Splits of Samples.

a. Upon prior request, South Bend shall provide EPA and Indiana or their authorized representatives splits of any samples taken by South Bend. Absent a prior request, upon timely request South Bend shall provide EPA and Indiana or their authorized representatives splits of any extant samples taken by South Bend. A request made after the holding time has expired shall not be considered timely.

b. Upon prior request, EPA or Indiana shall provide South Bend or its authorized representatives splits of any samples taken by EPA or Indiana. Absent a prior request, upon timely request EPA or Indiana shall provide South Bend or its authorized representatives splits of any extant samples taken by South Bend. A request made after the holding time has expired shall not be considered timely.

57. Until five years after termination of this Consent Decree, South Bend shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all records and documents (including records or documents in electronic form) in South Bend's possession, custody, or control, or that come into the possession, custody, or control of South Bend or its contractors or agents, and that relate in any manner to South Bend's performance of its obligations pursuant to this Consent Decree. This record retention requirement shall apply regardless of any corporate or institutional document-retention policy to the contrary. At any time during this record-retention period, the United States or Indiana may request copies of any documents or records required to be maintained

under this Paragraph. Within 30 Days of the date of such a request, South Bend shall provide to the requesting Plaintiff all documents responsive to the request. If South Bend asserts that any of the requested documents are privileged, in lieu of producing the document(s) regarding which South Bend asserts a privilege, South Bend may, within 30 Days of the date of the request, provide to the requesting Plaintiff a privilege log containing the information required by the following Paragraph.

58. South Bend may assert that certain documents or records are privileged under the attorney-client privilege or any other privilege recognized by federal law. For each document regarding which South Bend asserts such a privilege, South Bend shall include the following information on a privilege log:

a. the title of the document or record;

b. the date of the document or record;

c. the name and title of the author of the document or record;

d. the name and title of each addressee or recipient;

e. a description of the subject of the document or record; and

f. the privilege asserted by South Bend.

Nevertheless, South Bend shall not withhold on the grounds that they are privileged any documents or records created or generated pursuant to the requirements of this Consent Decree.

59. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information or documents, held by the United States or Indiana pursuant to applicable federal or state laws, regulations, or permits, nor does this Decree limit or

affect any duty or obligation of South Bend to maintain documents, records, or information imposed by applicable federal or state laws, regulations, or permits.

XIV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

60. This Consent Decree resolves the civil claims of the United States and Indiana for the violations alleged in the Complaint filed in this case through the date of lodging.

61. This Consent Decree shall not be construed to prevent or limit the rights of the United States or Indiana to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in this Consent Decree.

62. South Bend is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and South Bend's compliance with this Consent Decree shall be no defense to any action commenced pursuant to those laws, regulations, or permits. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The United States and Indiana do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that South Bend's compliance with any aspect of this Consent Decree will result in compliance with any provisions of the Clean Water Act, State Law, or South Bend's NPDES Permits.

63. Nothing in this Consent Decree including the Appendix, which is attached to and incorporated into this Decree, or Plaintiffs' review or approval of any Nine Minimum Controls Compliance Plan, Post-Construction Monitoring Study Work Plan, Supplemental Compliance Plan, or other plan, Semi-Annual Report, Post-Construction

Monitoring Report, or other report, or document pursuant to this Decree, shall be construed as relieving South Bend of the obligation to comply with the Clean Water Act, State Law, or South Bend's NPDES Permits.

64. This Consent Decree does not limit or affect the rights of any Party against any third parties, not party to this Consent Decree, nor does this Decree limit the rights of third parties, not party to this Consent Decree, against South Bend, except as otherwise provided by law.

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

66. The United States and Indiana reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in this Decree.

67. In any subsequent administrative or judicial proceeding initiated by the United States or Indiana for injunctive relief, civil penalties, or other appropriate relief relating to the Facility, South Bend shall not assert, and may not maintain, any defense or claim based on the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based on any contention that the claims raised by the United States or Indiana in the subsequent proceeding were or should have been brought in this case, except with respect to claims that specifically were resolved pursuant to Paragraph 60 of this Decree.

XV. COSTS

68. The parties shall bear their own costs and attorneys' fees in this case and all other matters related to this Consent Decree, except that the United States and Indiana shall be entitled

to collect the costs and attorneys' fees incurred in any action necessary to collect any portion of the civil penalties or any portion of any Stipulated Penalties due, as specified in Paragraph 38, but not paid by South Bend.

XVI. NOTICES

69. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing, sent by either First Class United States mail or Courier, and addressed as follows:

<u>If required to be sent to the United States</u>:

<u>If sent by United States Mail</u>

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
Post Office Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-1-1-08182

and

United States Attorney
Northern District of Indiana
5400 Federal Plaza, Suite 1500
Hammond, Indiana 46320
Re: USAO File No. 2003V00803

and

Chief
Water Enforcement and Compliance Assurance Branch
Water Division
United States Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

If sent by Courier

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
601 D Street, N.W.
ENRD Mailroom, Room 2121
Washington, D.C. 20004
Re: DOJ No. 90-5-1-1-08182

and

United States Attorney
Northern District of Indiana
5400 Federal Plaza, Suite 1500
Hammond, Indiana 46320
Re: USAO File No. 2003V00803

and

Chief
Water Enforcement and Compliance Assurance Branch
Water Division
United States Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

If required to be sent to EPA:

Chief
Water Enforcement and Compliance Assurance Branch
Water Division
United States Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

If required to be sent to Indiana:

Chief, Compliance Branch
Office of Water Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Post Office Box 6015
Indianapolis, Indiana 46206

and

Chief, Enforcement Section
Office of Legal Counsel
Indiana Department of Environmental Management
100 North Senate Avenue
Post Office Box 6015
Indianapolis, Indiana 46206

If required to be sent to South Bend

John J. Dillon, Ph.D.
Director, LTCP Management
City of South Bend
227 West Jefferson Boulevard
1316 County-City Building
South Bend, Indiana 46601

and

Fredric P. Andes
Barnes & Thornburg LLP
One North Wacker Drive, Suite 4400
Chicago, Illinois 60606

70. Any Party may, by written notice to the other Parties change its designated notice recipients or notice addresses provided above.

XVII. EFFECTIVE DATE

71. The Effective Date of this Consent Decree shall be the date on which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XVIII. RETENTION OF JURISDICTION

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

XIX. MODIFICATION

73. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties. If the modification constitutes a material change to any term of this Decree, the modification only shall be effective after approval by the Court. The terms and schedules contained in Appendix A of this Decree may be modified upon written agreement of the Parties without Court approval, unless any such modification effects a material change to the terms of this Consent Decree or materially affects South Bend's ability to meet the requirements or objectives of this Decree.

XX. RECONSIDERATION OF TANK, CONDUIT, AND PARALLEL INTERCEPTOR SIZES

74. On a maximum of two occasions on or before December 31, 2020, South Bend may Submit to the United States and Indiana, a request for consideration of a smaller tank, conduit, or interceptor size requirement for any or all of the Storage Tanks, Conduit, or

Parallel Interceptor that South Bend is required to construct and put into service pursuant to Table 1 of Appendix A. The size reconsideration request must include evidence demonstrating that, before the date of the reconsideration request, (1) South Bend has implemented Green Infrastructure Measures or CSOnet Measures that resulted in a reduction of wet weather flows of an amount that otherwise would have entered the Storage Tanks, Conduit, or Interceptor; (2) during future wet weather events South Bend will continue to achieve the flow reductions that South Bend has achieved as a result of the Green Infrastructure Measures or CSOnet Measures; and (3) as a result of the flow reductions achieved as a result of South Bend's implementation of Green Infrastructure Measures or CSOnet Measures South Bend will achieve the Performance Criteria of no more than four Overflow Events during a Typical Year even with the proposed smaller tank, conduit, or interceptor size(s). In no event may South Bend propose smaller tank, conduit, or interceptor sizes than the minimum size specified in Table 1 of Appendix A.

75. If, pursuant to this Section, the United States and Indiana grant South Bend's request for a smaller tank size requirement for any or all of the Storage Tanks, Conduit, or Interceptor, the Parties shall reduce the agreement to a writing signed by an authorized representative of each Party. Such an agreement shall be considered a minor modification to this Consent Decree and shall not require further approval of the Court.

76. If, pursuant to this Section, either the United States or Indiana denies in writing South Bend's size reconsideration request, in whole or in part, or if more than 90 Days elapses from the date that South Bend Submits its size reconsideration request to the United States and Indiana and South Bend does not either: (1) receive a written denial of

South Bend's size reconsideration request from either the United States or Indiana; or (2) enter into a written agreement pursuant to the preceding Paragraph, South Bend may seek judicial review of the dispute pursuant to Paragraphs 51-53 of this Consent Decree. South Bend must file a motion seeking the judicial review referenced in Paragraph 51 of this Consent Decree no later than 30 Days after the date of the earliest written communication, if any, in which either the United States or Indiana denies South Bend's tank size reconsideration request in whole or in part.

77. If South Bend seeks judicial review of a dispute pursuant to the preceding Paragraph, the Court may, in its discretion, grant South Bend's size reconsideration request, in whole or in part, but only if South Bend proves that:

a. South Bend has complied with the requirements and limitations for the size reconsideration request described in Paragraph 74 of this Section; and

b. The United States or Indiana has denied in writing South Bend's size reconsideration request, and South Bend filed a motion seeking judicial review of the dispute no later than 30 days after the date of the earliest written communication in which either the United States or Indiana denied South Bend's size reconsideration request; or

c. Neither the United States nor Indiana Submitted to South Bend a written decision regarding South Bend's size reconsideration request within 90 Days of the date that South Bend Submitted its size reconsideration request to the United States and Indiana.

78. If South Bend invokes dispute resolution procedures pursuant to Paragraph 76 of this Section for a denial of a tank size reconsideration request, the invocation of dispute resolution procedures shall not extend, postpone, or affect in any way any of South Bend's obligations pursuant to this Consent Decree unless and until final resolution of the dispute so provides.

XXI. RECONSIDERATION OF STORAGE TANK CONFIGURATION

79. On a maximum of two occasions on or before December 31, 2020, South Bend may Submit to the United States and Indiana a request for elimination of any requirement in Table 1 of Appendix A to construct and put into service a Storage Tank through consolidation with another Storage Tank that South Bend is required to construct and put into service pursuant to Table 1 of Appendix A. The tank reconfiguration request must include evidence demonstrating that:

a. The total storage capacity provided by the remaining Storage Tanks will be equal to or greater than either:

1. The sum of all of the Storage Tank maximum sizes specified in Table 1 of Attachment A; or

2. If the Storage Tank size requirements have been modified in accordance with Section XX (Reconsideration of Tank, Conduit, And Parallel Interceptor Sizes), the sum of all of the Storage Tank sizes that are required to be constructed under this Decree and Table 1 of Attachment A, as modified in accordance with Section XX;

b. South Bend will achieve the Performance Criteria of no more than four Overflow Events during a Typical Year even with the proposed reconfiguration; and

c. South Bend will complete construction of any proposed consolidated tank by the earliest End Date of the tanks that are the subject of the tank reconfiguration request.

80. If, pursuant to this Section, the United States and Indiana grant South Bend's request for a storage tank reconfiguration, the Parties shall reduce the agreement to a writing signed by an authorized representative of each Party. Such an agreement shall be considered a minor modification to this Consent Decree and shall not require further approval of the Court.

81. If, pursuant to this Section, either the United States or Indiana denies in writing South Bend's storage tank reconfiguration request, in whole or in part, or if more than 90 Days elapses from the date that South Bend Submits its storage tank reconfiguration request to the United States and Indiana and South Bend does not either (1) receive a written denial of South Bend's storage tank reconfiguration request from either the United States or Indiana; or (2) enter into a written agreement pursuant to the preceding Paragraph, South Bend may seek judicial review of the dispute pursuant to Paragraphs 51-53 of this Consent Decree. South Bend must file any motion seeking judicial review referenced in Paragraph 51 of this Consent Decree no later than 30 Days after the date of the earliest written communication, if any, in which either the United States or Indiana denies South Bend's storage tank reconfiguration request in whole or in part.

82. If South Bend seeks judicial review of a dispute pursuant to the preceding Paragraph, the Court may, in its discretion, grant South Bend's storage tank reconfiguration request, in whole or in part, but only if South Bend proves that:

a. South Bend meets the minimum threshold requirements for the reconfiguration n request described in Paragraph 79 of this Section; and

b. The United States or Indiana denied in writing South Bend's storage tank reconfiguration request, and South Bend filed a motion seeking judicial review of the dispute no later than 30 days after the date of the earliest written communication in which either the United States or Indiana denied South Bend's storage tank reconfiguration request; or

c. Neither the United States nor Indiana Submitted to South Bend a written decision regarding South Bend's storage tank reconfiguration request within 90 Days of the date that South Bend Submitted its storage tank reconfiguration request to the United States and Indiana.

83. If South Bend invokes dispute resolution procedures pursuant to Paragraph 81 of this Section for a denial of a storage tank reconfiguration request, the invocation of dispute resolution procedures shall not extend, postpone, or affect in any way any of South Bend's obligations pursuant to this Consent Decree unless and until final resolution of the dispute so provides.

XXII. RECONSIDERATION OF PERFORMANCE CRITERIA FOR *E. COLI*

84. South Bend may Submit to the United States and Indiana, requests for consideration of modified Performance Criteria for *E. Coli*. South Bend shall include in any request for

consideration of modified Performance Criteria for *E. Coli* evidence demonstrating that the proposed modified Performance Criteria will be sufficient to ensure that South Bend meets any Water Quality Based Requirements that are based on, derived from, or implement the State of Michigan's federally-approved WQS.

85. If, pursuant to this Section, the United States and Indiana grant South Bend's request for modified Performance Criteria for *E. coli*, the Parties shall reduce the agreement to a writing signed by an authorized representative of each Party.

86. If, pursuant to this Section, either the United States or Indiana deny in writing South Bend's request for modified Performance Criteria for *E. coli*, in whole or in part, or if more than 90 Days elapse from the date that South Bend Submits its request to the United States and Indiana and South Bend does not either (1) receive a written denial of South Bend's request from either the United States or Indiana; or (2) enter into a written agreement pursuant to the preceding Paragraph, South Bend may seek judicial review of the dispute pursuant to Paragraphs 51-53 of this Consent Decree. South Bend must file any motion seeking judicial review referenced in Paragraph 51 of this Consent Decree no later than 30 Days after the date of the earliest written communication, if any, in which either the United States or Indiana deny South Bend's request in whole or in part.

87. If South Bend seeks judicial review of a dispute pursuant to the preceding Paragraph, the Court may, in its discretion, grant South Bend's request for modified Performance Criteria for *E. coli*, in whole or in part, but only if South Bend proves that:

a. South Bend meets the requirements for seeking modified Performance Criteria described in Paragraph 84 of this Section; and

b. The United States or Indiana has denied in writing South Bend's request for modified Performance Criteria for *E. coli*, and South Bend filed a motion seeking judicial review of the dispute no later than 30 days after the date of the earliest written communication in which either the United States or Indiana denied South Bend's request; or

c. Neither the United States nor Indiana Submitted to South Bend a written decision regarding South Bend's request for modified Performance Criteria for *E. coli* within 90 Days of the date that South Bend Submitted its request for modified Performance Criteria for *E. coli* to the United States and Indiana.

88. If South Bend invokes dispute resolution procedures pursuant to Paragraph 86 of this Section for a denial of a request for modified Performance Criteria for *E. coli*, the invocation of dispute resolution procedures shall not extend, postpone, or affect in any way any of South Bend's obligations pursuant to this Consent Decree unless and until final resolution of the dispute so provides.

XXIII. SCHEDULE RECONSIDERATION BASED ON FINANCIAL CIRCUMSTANCES

89. No earlier than 5 years after the Effective Date, and on a maximum of one occasion every five years during the pendency of this Consent Decree, South Bend may Submit to the United States and Indiana a request for approval of an extension of up to a maximum of five years, less the length of any prior extension request granted, of the deadlines for

completing any of the remaining requirements of Appendix A. South Bend shall include in any such schedule extension request evidence demonstrating that:

a. South Bend actually has spent at least $98,915,750 in 2007 Dollars complying with the requirements of Appendix A since the Effective Date;

b. The Residential Indicator, when calculated in accordance with EPA's Financial Capability Assessment Guidance as modified by the requirements of Paragraph 90 of this Section and using the inputs described and defined in Paragraph 91 of this Section, and using a reasonable engineering estimate of the remaining costs of completing the requirements in Appendix A expressed in the value of dollars during the year that South Bend submits the schedule extension request, but excluding the cost of the Post-Construction Monitoring Program, exceeds 2.5%;

c. South Bend's Residential Indicator has increased by at least 0.2 percentage points determined by comparing the Residential Indicator on the date of the extension request to one of the following values:

    1. For the first extension request, a Residential Indicator of 2.41%; or

    2. For any subsequent request, South Bend's Residential Indicator as of the date of the most recent previous schedule extension request;

d. A description of each requirement and associated deadline in Appendix A for which South Bend seeks a schedule extension; and

e. Each requested schedule extension is as short as reasonably possible, but in no event would extend the schedule more than five years after the deadline for completing each specified requirement in Appendix A.

90. To determine South Bend's MHI to calculate the Residential Indicator as required by the preceding Paragraph, South Bend shall use MHI data for the most recent year from either the Federal Census or ACS, whichever is the most current. If the most current ACS data includes both a one-year estimate and a three-year estimate of MHI, South Bend shall use the one-year estimate to determine South Bend's MHI.

91. To calculate and determine South Bend's Residential Indicator at the time a schedule extension request is Submitted, South Bend shall use the following inputs:

a. Current wastewater and sewer annual operation and maintenance expenses calculated as total expenses less depreciation in South Bend's CAFR for the most recent year, but only if the CAFR accurately states South Bend's operation and maintenance expenses. If South Bend's CAFR for the most recent year either does not exist or does not accurately state South Bend's operation and maintenance expenses, South Bend shall calculate and determine this input with appropriate accounting records, including source documents, and submit to EPA and Indiana copies of the accounting records and source documents;

b. Current wastewater and sewer annual debt service calculated as the total principal and interest payments on bonds and notes from the financing activities section of the cash flow statement in South Bend's CAFR for the most recent year but only if the CAFR accurately reflects the principal and interest payments. If South Bend's CAFR for the most recent year either does not exist or does not accurately state South Bend's principal and interest payments, South Bend shall calculate and determine this input with appropriate accounting records, including source

documents and shall submit to EPA and Indiana copies of the accounting records and source documents;

c. Reasonable documented engineering estimates projecting the increase in operation and maintenance expenses expected after completing the requirements in Appendix A expressed in the value of dollars for the year during which South Bend submits the schedule extension request;

d. The increased annual capital costs based on the expected financing of a reasonable, documented engineering estimate of the remaining costs of completing the requirements in Appendix A expressed in the value of dollars during the year that South Bend submits the schedule extension request. To support South Bend's calculation of this input, South Bend shall submit to EPA and Indiana an explanation of the basis for, and calculation of, the annual cost estimate and the engineering estimates, accounting records, and source documents on which South Bend relied to calculate this input;

e. When calculating South Bend's residential share of wastewater treatment costs in accordance with EPA's Financial Capability Assessment Guidance, South Bend shall use the most recent year of Federal Census or ACS data and billing data regarding South Bend's customer base unless South Bend can demonstrate changes to its customer base not reflected in such data. South Bend also shall use the same ratio between total wastewater flow and residential infiltration and inflow that South Bend uses for rate setting purposes, if any, to calculate the residential share of wastewater treatment costs.

f. When calculating the total number of households in South Bend's service area, South Bend shall count each single family house, and each unit in multi-family housing structures such as apartment buildings and duplexes, but shall not count households that have onsite sewage disposal systems and are not paying fees to South Bend. To the extent that customer billing data does not accurately reflect the number of units in multi-family housing structures, South Bend shall use ACS data and Federal Census data to more accurately estimate the total number of households in South Bend's service area.

92. If, pursuant to this Section, the United States and Indiana grant South Bend's request for an extension for completing any of the deadlines in Appendix A, the Parties shall reduce the agreement to a writing signed by an authorized representative of each Party.

93. If, pursuant to this Section, either the United States or Indiana denies in writing South Bend's request for an extension for completing any of the deadlines in Appendix A, in whole or in part, or if more than 90 Days elapse from the date that South Bend Submits to the United States and Indiana its request for an extension of deadlines pursuant to this Section, and South Bend does not either: (1) receive a written denial of South Bend's schedule extension request from either the United States or Indiana; or (2) enter into a written agreement pursuant to the preceding Paragraph, South Bend may seek judicial review of the dispute pursuant to Paragraphs 51-53 of this Consent Decree. South Bend must file a motion seeking the judicial review referenced in Paragraph 51 of this Consent Decree no later than 30 Days after the date of the earliest

written communication, if any, in which either the United States or Indiana denies South Bend's schedule extension request in whole or in part.

94. If South Bend seeks judicial review of a dispute pursuant to the preceding Paragraph, the Court may, in its discretion, grant South Bend's request for an extension of the schedule to complete any of the requirements in Appendix A, in whole or in part, but only if South Bend proves that:

a. South Bend meets the minimum threshold requirements for seeking a schedule extension described in Paragraph 89 of this Section; and

b. The United States or Indiana denied in writing South Bend's request for approval of a schedule extension, and South Bend filed a motion seeking judicial review of the dispute no later than 30 days after the date of the earliest written communication in which either the United States or Indiana denied South Bend's request for a schedule extension; or

c. Neither the United States nor Indiana Submitted to South Bend a written decision regarding South Bend's request for a schedule extension within 90 Days of the date that South Bend Submitted its request for a schedule extension to the United States and Indiana.

95. If South Bend invokes dispute resolution procedures pursuant to Paragraph 93 of this Section for a denial of a schedule extension request, the invocation of dispute resolution procedures shall not extend, postpone, or affect in any way any of South Bend's obligations pursuant to this Consent Decree unless and until final resolution of the dispute so provides.

XXIV. TERMINATION

96. South Bend may Submit to the United States and Indiana a written Request for Termination, with all necessary supporting documentation, only after South Bend:

a. complies with all provisions of Section V (Compliance Requirements) of this Consent Decree;

b. complies with all provisions of Section VI (Supplemental Environmental Project) of this Consent Decree;

c. demonstrates that the CSO Control Measures in the Long Term Control Plan attached as Appendix A to this Consent Decree, as built or otherwise implemented, meet the Design Criteria for those CSO Control Measures required by the Long Term Control Plan;

d. demonstrates that the CSO Control Measures in the Long Term Control Plan attached as Appendix A to this Consent Decree, as operated, meet the Performance Criteria for those CSO Control Measures required by the Long Term Control Plan;

e. demonstrates that, from the time South Bend achieves compliance with all applicable requirements of the Clean Water Act, State Law, South Bend's NPDES Permits, and this Decree, South Bend continuously has maintained such compliance for at least one year;

f. has paid the civil penalties required by Section VII (Civil Penalties) of this Decree; and

g. has paid accrued Stipulated Penalties required by Section IX (Stipulated Penalties) of this Decree.

97. After Plaintiffs receive South Bend's written Request for Termination, the Parties shall confer informally concerning the Request for Termination and any disagreement that the Parties may have regarding whether South Bend has complied with the requirements for termination of this Consent Decree. If the United States and Indiana agree that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

98. After the parties informally confer as required by the preceding Paragraph, if Plaintiffs do not agree that the Decree may be terminated, South Bend may seek judicial review of the dispute, pursuant to, and in accordance with the requirements of, Paragraph 51 of this Decree. South Bend shall not seek judicial review, however, earlier than 60 days, or later than 90 days, after South Bend Submits the written Request for Termination to the United States and Indiana. This Consent Decree shall remain in effect pending resolution of any dispute unless and until the Court enters an Order terminating the Decree.

XXV. PUBLIC PARTICIPATION

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

XXVI. SIGNATORIES/SERVICE

100. Each undersigned representative of South Bend, the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice on behalf of the United States, the Chief Operating Officer of the Indiana Attorney General's Office on behalf of Indiana certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents.

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

102. South Bend agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified South Bend in writing that the United States no longer supports entry of the Decree.

103. South Bend agrees to accept service of process by mail, to the agent authorized to accept service on behalf of the City of South Bend indicated underneath the signatures of South Bend's representatives on this Consent Decree, with respect to all matters arising under or related to this Consent Decree and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including without limitation service of a summons.

XXVII. INTEGRATION/APPENDICES

104. This Consent Decree, Appendix A, and Appendix B, constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersede all prior agreements and understandings, whether

oral or written, concerning the settlement embodied in this Decree. Other than Appendix A and Appendix B, which are attached to and incorporated into this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitute any part of this Decree or the settlement it represents, nor shall they be used in construing the terms of this Decree.

XXVIII. FINAL JUDGMENT

105. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, Indiana, and South Bend.

XXIX. APPENDICES

106. The following appendices are attached to, and incorporated into this Decree:

a. Appendix A, Long Term Control Plan, referenced in Paragraph 10 of this Decree, is attached to, and incorporated into, this Consent Decree.

b. Appendix B, Supplemental Environmental Project, referenced in Paragraph 16 of this Decree, is attached to, and incorporated into, this Consent Decree.

Dated and entered this _____ day of _____, 2012.

_____
UNITED STATES DISTRICT JUDGE
Northern District of Indiana

THE UNDERSIGNED PARTIES enter into this Consent Decree in *United States, et al. v. City of South Bend, IN* (N.D. Ind.):

FOR THE UNITED STATES OF AMERICA

ROBERT G. DREHER
Acting Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

THE UNDERSIGNED PARTIES enter into this Consent Decree in *United States, et al. v. City of South Bend, IN* (N.D. Ind.):

FOR THE UNITED STATES OF AMERICA

DAVID CAPP
United States Attorney
Northern District of Indiana

WAYNÉ T. AULT
Assistant United States Attorney
5400 Federal Plaza, Suite 1500
Hammond, Indiana 46320
Telephone: 219-937-5500
Telecopy: 219-852-2770
Internet Address: Wayne.Ault@usdoj.gov

THE UNDERSIGNED PARTIES enter into this Consent Decree in *United States, et al. v. City of South Bend, IN* (N.D. Ind.):

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

THE UNDERSIGNED PARTIES enter into this Consent Decree in *United States, et al. v. City of South Bend, IN* (N.D. Ind.):

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

_____

SUSAN HEDMAN
Regional Administrator
United States Environmental Protection Agency
Region 5

GARY PRICHARD
Associate Regional Counsel
Office of Regional Counsel
Region 5
United States Environmental Protection Agency
77 West Jackson Boulevard (C-14J)
Chicago, Illinois 60604-3590

THE UNDERSIGNED PARTIES enter into this Consent Decree in *United States, et al. v. City of South Bend, IN* (N.D. Ind.):

FOR THE STATE OF INDIANA

GREGORY F. ZOELLER
Attorney General of Indiana

_____
PATRICIA ORLOFF ERDMAN
Chief Counsel for Litigation
Office of the Attorney General
Indiana Government Center South
302 West Washington Street
Indianapolis, Indiana 46204

_____
THOMAS W. EASTERLY
Commissioner
Indiana Department of Environmental Management

_____
ELIZABETH ADMIRE
Attorney
Indiana Department of Environmental Management

Agent authorized to accept service on behalf of the State of Indiana:

PATRICIA ORLOFF ERDMAN
Chief Counsel for Litigation
Office of the Attorney General
Indiana Government Center South
302 West Washington Street
Indianapolis, Indiana 46204

THE UNDERSIGNED PARTIES enter into this Consent Decree in *United States, et al. v. City of South Bend, IN* (N.D. Ind.):

FOR THE CITY OF SOUTH BEND, INDIANA

STEPHEN J. LUECKE
Mayor

Agent authorized to accept service on behalf of the City of South Bend, Indiana:

FREDRIC P. ANDES
Barnes & Thornburg LLP
One North Wacker Drive, Suite 4400
Chicago, Illinois 60606

APPENDIX A

Appendix A - Long Term Control Plan

Section 1: CSO Control Measures

1.1. Summary of Selected Plan

The selected plan includes wastewater treatment plant (WWTP) upgrades to increase the wet weather capacity of the WWTP to match the capacity of 100 MGD of the existing interceptor as it enters the plant, and CSO control Phases 1 and 2 in the collection system. Increasing the wet weather capacity of the WWTP will send additional wet weather flow through the WWTP for full secondary treatment, reducing combined sewer overflows.

1.2. CSO Control Phase 1

CSO Control Phase 1 includes source control technologies to prevent stormwater from entering the combined sewer system. Source control technologies include sewer separation, stormwater detention basin management, and Green Infrastructure Measures. The Phase 1 projects are shown in the table below.

Phase I LTCP Projects

Project Name	CSO Area
Bendix	003
Eastbank	027, 028, 030
Diamond Avenue	006
Oliver Plow Phase III	006
Southwood	031
Kensington/Crest Manor Basin Diversion to Fairfax	022

South Bend currently is implementing Phase 1 controls. After completing construction of the CSO Control Phase 1 improvements, South Bend will conduct a period of post-construction monitoring.

1.3. CSO Control Phase 2

CSO Control Phase 2 is shown on Figure 1 and consists of ultimate conveyance of excess flows from the existing CSOs to nine CSO storage facilities. South Bend will take the existing CSOs out of service and discharges will occur directly from new CSO control facilities. The CSO control facilities include seven storage tanks, a storage conduit, and a storage and conveyance interceptor from CSO 006 to the WWTP. After completing construction of all of the storage facilities, South Bend commits to achieving the Performance Criteria of no more than four Overflow Events during the Typical Year.

The Phase 2 CSO storage facilities will receive wet weather excess flows from the CSOs shown in Table 1. Facilities at each of the storage tank sites will consist of screens, storage tank, dewatering pump station, and provisions for solids removal from the tank. Following each wet weather event, South Bend will dewater each tank and convey the contents through the existing interceptor to the WWTP for full secondary treatment.

South Bend will construct the storage conduit facility approximately from CSO 029 to CSO 025. The storage conduit facility will receive excess wet weather flow from CSOs 029, 028, 027, 026, and 025. Following each wet weather event, South Bend will convey the contents of the storage conduit through the existing interceptor to the WWTP for full secondary treatment. South Bend will construct a dewatering pump station to empty the conduit and send flow to the interceptor sewer. The conduit discharging to the St. Joseph River will have screens for floatable removal. South Bend will establish a system for solids removal from the storage conduit.

South Bend will construct approximately 12,000 feet of Parallel Interceptor from CSO 006 to the WWTP on the west side of the St. Joseph River to receive wet weather flows from CSOs 006, 002, 001, 044, and 045. The Parallel Interceptor will function as a conveyance and storage pipe during wet weather. South Bend will design the Parallel Interceptor with enough capacity to achieve the Performance Criteria of no more than four Overflow Events during the Typical Year. South Bend will install screening to prevent the discharge of floatables from the Parallel Interceptor to the St. Joseph River. Following each wet weather event, South Bend will convey the contents of the Parallel Interceptor to the WWTP for full secondary treatment.

South Bend will design each of the storage tanks to include disinfection of CSOs. South Bend will address disinfection and dechlorination (if chlorination is the means of disinfection being employed) at the first CSO storage tank constructed as described below. Disinfection methods for future CSO LTCP projects may vary depending on lessons learned from the first tank or advancements in disinfection technology (UV, ozone, peracetic acid, etc.).

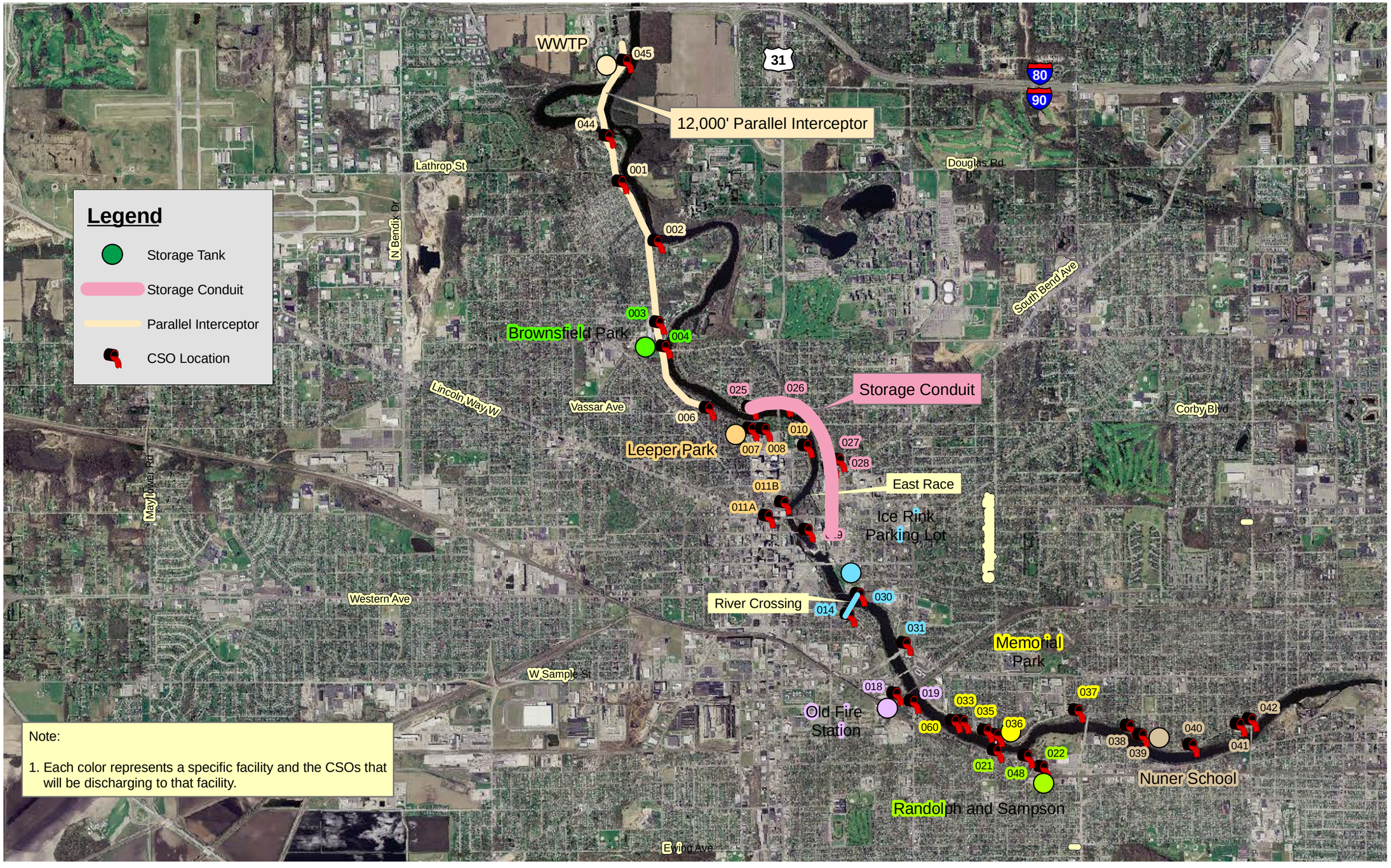
South Bend will configure each of the CSO storage tanks to optimize solids removal and disinfection. South Bend will install baffles to dissipate energy in the influent flow and to minimize short circuiting through each storage tank. South Bend will install interior walls in each storage tank to compartmentalize the total volume stored. Sequential filling of the tank will allow the first compartments to capture the heavy solids and the last compartments to receive more dilute flow. South Bend will install multiple sodium hypochlorite solution injection points in each storage tank (if chlorination is the means of disinfection being employed). South Bend will control the disinfection rate to achieve water quality standards at the Michigan/Indiana state line and the Performance Criteria specified in Table 1. South Bend will dechlorinate (if chlorination is the method of disinfection employed). South Bend will construct a building to store the chemicals including a chemical unloading station, spill containment and emergency eyewash and shower (if chemical disinfection is the means of disinfection being employed).

Other collection system projects were included in the cost estimate for the LTCP including sewer extensions and replacements, the upgrade of River Crossing #5, and engineering.

1.4. LTCP Requirements and Implementation Schedule

South Bend shall construct the CSO Control Measures specified in Table 1 in accordance with the descriptions, Design Criteria, Performance Criteria, and implementation schedule in Table 1. After completing construction of the CSO Control Measures, South Bend shall achieve the Performance Criteria specified in Table 1.

FIGURE 1



CSO Control Phase 2

1 inch = 3,000 feet

0 1,500 3,000 6,000 Feet

CITY OF SOUTH BEND

J:\Projects\0787B South Bend CSO LTCP\GIS DATA\FIGURES_2006\Maps\LTCP Final Sites\Recommended CSO Control Phase 2 Alternative 11x17.mxd

City of South Bend, Indiana

Table 1
CSO Control Measures

Project	Description	Design Criteria	Performance Criteria	Capital Cost Estimate[2]	Size [3]	Start Date[4]	End Date[5]
Wastewater Treatment Plant Upgrades	WWTP Upgrades	Designed based on accepted engineering practices, taking into account the Ten State Standards	WWTP peak capacity increased to 100 MGD	$52,416,000	N/A	3/1/2012	12/31/2027
Phase 1 CSO Collection System Controls	Removal of stormwater from South Bend's Facility by implementing sewer separation, detention basin management, or Green Infrastructure Measures, thus reducing stormwater runoff to South Bend's Facility in CSO Areas 003, 006, 022, 027, 028, 030, 031		When incorporated with WWTP upgrade and Phase 2 projects, South Bend's Facility will have no more than 4 Overflow Events during the Typical Year	$49,777,000	N/A	3/1/2012	12/31/2017
			Phase 1 Subtotal	**$102,193,000**			
Phase 2 CSO Collection System Controls							
CSO Controls Upstream of East Race	Memorial Park Storage Tank and disinfection and dechlorination (if chlorination is the means of disinfection being employed) for CSOs 037, 036, 035, 033 and 060	Storage Tank Design Criteria[6]	Storage Tank Performance Criteria[7]	$26,252,000	3.9 MG	3/1/2014	12/31/2025
	Old Fire Station Storage Tank and disinfection and dechlorination (if chlorination is the means of disinfection being employed) for CSOs 019 and 018			$10,287,000	1.0 MG (Maximum) 0.6 MG (Minimum)		
	Ice Rink Parking Lot Storage Tank and disinfection and dechlorination (if chlorination is the means of disinfection being employed) for CSOs 031, 030 and 014			$24,502,000	1.0 MG (Maximum) 0.6 MG (Minimum)		
	Randolph and Sampson Storage Tank and disinfection and dechlorination (if chlorination is the means of disinfection being employed) for CSOs 021, 022 and 048			$20,992,000	4.5 MG (Maximum) 2.7 MG (Minimum)		
	Nuner School Storage Tank and disinfection and dechlorination (if chlorination is the means of disinfection being employed) for CSOs 042, 041, 040, 039 and 038			$8,187,000	0.3 MG (Maximum) 0.2 MG (Minimum)		
Leeper Park CSO Storage Tank (Downstream of East Race)	Leeper Park Storage Tank and disinfection and dechlorination (if chlorination is the means of disinfection being employed) for CSOs 011A, 011B, 010, 008 and 007	Storage Tank Design Criteria[6]	Storage Tank Performance Criteria[7]	$48,956,000	8.7 MG (Maximum) 5.2 MG (Minimum)	3/1/2017	12/31/2023

Project	Description	Design Criteria	Performance Criteria	Capital Cost Estimate[2]	Size [3]	Start Date[4]	End Date[5]
Remaining CSO Controls Downstream of East Race	Brownsfield Park Storage Tank and disinfection and dechlorination (if chlorination is the means of disinfection being employed) for CSOs 003 and 004	Storage Tank Design Criteria[6]	Storage Tank Performance Criteria[7]	$6,990,000	1.0 MG (Maximum) 0.6 MG (Minimum)	3/1/2023	12/31/2031
	Storage Conduit for CSOs 029, 028, 027, 026 and 025	Designed based on accepted engineering practices, taking into account the Ten State Standards	When incorporated with WWTP upgrade and Phase 2 projects, South Bend's Facility will have no more than 4 Overflow Events during the Typical Year	$52,225,000	144 inch (Maximum) 90 inch (Minimum)		
	Parallel Interceptor for storage/conveyance for CSOs 006, 002, 001, 044 and 045			$46,167,000	Diameter at the WWTP: 144 inch (Maximum) 90 inch (Minimum)		
			Phase 2 Subtotal	$244,558,000			
			Engineering, Legal, Admin (20%)	$48,911,600			
			Phase 2 Capital Cost	$293,470,000			
Other Collection System Projects	Sewer Extensions and Replacements, River Crossing #5, and Engineering.	N/A	N/A	$74,228,000	N/A	Other Collection Systems Projects to be underway for the entire duration of the LTCP.	
			Amount spent on Phase I to date	$39,570,000			
			TOTAL CAPITAL COST	**$509,461,000**			

[1]In accordance with Section XXII of the Consent Decree, South Bend may seek changes to the Performance Criteria for *E.coli* .

[2]In 2007 Dollars based on the Construction Cost Index 8100 in Engineering News Record.

[3]South Bend shall construct the Storage Tanks, Conduit, and Parallel Interceptor at the maximum sizes, diameters, and configuration specified in the Size column of this Table 1, unless those sizes, diameters, or configuation have been modified in accordance with Sections XX and XXI of the Consent Decree. If any sizes, diameters, or configuration have been modified in accordance with Section XX or XXI of the Consent Decree, South Bend shall construct the Storage Tanks, Conduit, and Parallel Interceptor in accordance with the terms o any such modification.

[4]See the definition of "Start Date" in Paragraph 8.v v of the Consent Decree.

[5]See the definition of "End Date" in Paragraph 8.v of the Consent Decree.

[6]Each Storage Tank shall include, or be accompanied by screens for removal of solids before discharge, a dewatering pump station, disinfection, and dechlorination (if chlorination is the means of disinfection being employed). South Bend shall design each Storage Tank to achieve the Maximum storage volume specified in the "Size" column of this Table 1 for the facility at issue; unless a smaller storage volume or different tank configuration is established in accordance with Section XX or Section XXI of the Consent Decree, (in which case the facilities shall be designed to achieve the smaller size or different tank configuration established in accordance with Section XX or Section XXI of the Consent Decree). South Bend shall design the disinfection processes for each Storage Tank to achieve the Performance Criteria for *E.coli* and residual chlorine (if chlorination is the means of disinfection employed) specified in the "Performance Criteria" column of this Table 1; unless different Performance Criteria for *E. Coli* are established in accordance with Section XXII of the Consent Decree, (in which case South Bend shall design the disinfection processes to achieve any different Performance Criteria for *E.coli* established in accordance with Section XXII of the Consent Decree).

[7]When incorporated with WWTP upgrade and Phase 1 projects, South Bend's Facility will have no more than 4 Overflow Events during the Typical Year; all CSO Discharges shall meet an *E.Coli* daily maximum effluent limitation of 15,000 colony forming units per 100 milliliters; and all CSO Discharges shall comply with any residual chlorine effluent limits applicable to such discharges contained in South Bend's NPDES Permits. For *E. Coli* , the "daily maximum" shall be the geometric mean of all *E. Coli* amounts found in all samples collected on any day that a CSO Discharge occurs.

Appendix A: Section 2
Post-Construction Monitoring Program

2.1 Purpose of Post-Construction Monitoring Program and Deadline for Completion

The purpose of South Bend's Post-Construction Monitoring Program is to determine (a) whether the CSO Control Measures implemented pursuant to section 1 of this Appendix have achieved the Design Criteria and Performance Criteria specified in Table 1 of this Appendix; (b) whether South Bend is complying with the Water Quality Based Requirements in South Bend's NPDES Permit; and (c) whether South Bend's CSOs cause or contribute to causing exceedances of water quality standards (WQS). South Bend shall complete all requirements of section 2 of this Appendix A, including the requirement in section 2.5 of this Appendix A to Submit to the United States and Indiana a Final Post-Construction Monitoring Report, on or before December 31, 2034.

2.2 Data Collection

After fully constructing and implementing the CSO Control Measures described in Table 1 of this Appendix, South Bend shall continue to monitor rainfall volume and intensity for a 12-month post-construction monitoring period as a component of South Bend's Post-Construction Monitoring Program.

After South Bend constructs and fully implements all Phase I CSO Collection System Controls, and again after South Bend constructs and fully implements all CSO Control Measures, South Bend shall collect sewer response data for each constructed CSO Control Measure location, and use such data to properly calibrate the Collection System Model. During each precipitation event that occurs during each of the two 12-month post-construction monitoring periods, at a minimum, South Bend shall collect the following data: (1) 15-minute rainfall data for each event; (2) CSO Discharge volumes and frequency and duration at each CSO Outfall; and (3) water quality samples from the St. Joseph River for predefined parameters and at predefined frequencies and locations.

South Bend also shall monitor the *E. Coli* (and if chlorination is used for disinfection, the residual chlorine) concentrations in all CSO Discharges that occur during the 12-month post-construction monitoring period after South Bend completes construction and implementation of all of the CSO Control Measures described in Table 1 of this Appendix, when weather and safety conditions are sufficient to allow such sampling.

During the 12-month post-construction monitoring period after all CSO Control Measures are implemented, South Bend shall collect weekly samples of the St. Joseph River upstream of all of South Bend's CSO Outfalls and downstream of all of South Bend's CSO Outfalls, when weather and safety conditions are sufficient to allow such sampling. South Bend shall analyze these weekly samples for *E. coli* to document the upstream and background *E. coli* concentration in the St. Joseph River before the impact of discharges from South Bend's CSO Outfalls and the St. Joseph River's bacterial water quality downstream of South Bend's CSO Outfalls.

After constructing and fully implementing all CSO Control Measures in Table 1 of this Appendix, during the 12-month post-construction monitoring period South Bend shall monitor any remaining CSO Discharges from any remaining CSO Outfalls for flow volume and duration to assist in assessing system performance. As part of this Post-Construction Monitoring Plan, South Bend shall compare the Collection System Model output to the actual observed sewer system response to determine whether model recalibration is necessary. South Bend shall modify the Collection System Model as necessary until the Collection System Model is calibrated and validated to have a high degree of agreement with sewer system response as observed in the monitoring results.

After South Bend verifies that the Collection System Model incorporating all CSO Control Measures has been accurately calibrated and validated, writes all reports required by section 2.3.1 of this Appendix, and receives written approval to proceed from EPA and IDEM as described in section 2.3.1 of this Appendix, South Bend shall use the calibrated and validated Collection System Model to conduct a simulation based on the Typical Year to determine how many Overflow Events are predicted to occur. If the properly calibrated and validated model simulation predicts four Overflow Events or fewer during the Typical Year, South Bend will be deemed to have met that performance objective.

2.3 Collection System Data Analysis

2.3.1 Collection System Model Calibration and Validation

South Bend shall update, calibrate, and validate the Collection System Model by performing the following steps:

1. Collect flow monitoring, rainfall, and CSO activation data, as described in greater detail in section 2.2 Data Collection of this Appendix, sufficient to re-calibrate the Collection System Model during the 12-month post-construction monitoring period that commences after South Bend finishes constructing and implementing all of the CSO Control Measures described in Table 1 of this Appendix.

2. Perform quality assurance and quality control of the data collected in Step 1, as described in South Bend's Report on Quality Assurance/Quality Control and Data Management dated September 30, 2005, or any subsequent version approved by EPA.

3. Update the Collection System Model to incorporate all completed CSO Control Measures and any other system improvements completed since the latest previous Collection System Model calibration or validation effort. South Bend then shall use the updated Collection System Model and the rainfall data collected during the post-construction monitoring period to run a continuous simulation of CSO Discharges for the 12-month post-construction monitoring period.

4. Compare CSO Discharge frequency in the continuous simulation outputs to the CSO monitoring data for the 12-month post-construction monitoring period to determine whether re-calibration of the Collection System Model is needed. For each CSO Outfall, the model-predicted activations shall be

no more than one activation less than monitored activations. That is, to be properly calibrated, for a CSO Outfall that is predicted to have four overflows during the Typical Year and which experienced six overflows during post-construction monitoring, the Collection System Model must predict five or more overflows for that CSO Outfall for that same post-construction monitoring period. If these criteria are not met, South Bend shall recalibrate the Collection System Model in accordance with Steps 5-6 below. At the conclusion of Step 4, South Bend shall Submit an Initial Collection System Model Validation Report to EPA and Indiana for written authorization to proceed to the next step.

5. If re-calibration is needed, South Bend shall select two or more appropriate rainfall events from the 12-month post-construction monitoring period for Collection System Model recalibration.

6. After South Bend re-calibrates the Collection System Model using sound engineering judgment in accordance with standard industry practices, South Bend shall run another continuous simulation for the entire monitoring period to verify that the re-calibrated Collection System Model has achieved the criteria described in Step 4, above. Thereafter, South Bend shall compare the continuous simulation outputs to the CSO monitoring data, as described in Step 4, to determine whether additional re-calibration is needed. If additional re-calibration is needed, South Bend shall re-calibrate in accordance with Steps 5-6 until the Collection System Model has achieved the criteria described in Step 4, above.

If EPA and IDEM agree that South Bend has adequately re-calibrated and validated the Collection System Model, South Bend shall prepare a Collection System Model Re-calibration Report documenting the re-calibration and validation efforts. After receiving written authorization to proceed from EPA and IDEM, South Bend shall conduct the Performance Criteria analysis described in section 2.3.2 of this Appendix A.

2.3.2 Collection System Performance Criteria Analysis

South Bend expects that South Bend's CSO Control Measures, when fully constructed and implemented, will result in eliminating all but four Overflow Events during the Typical Year. More than four Overflow Events may occur, however, if the volume and intensity of rainfall during any particular year exceeds the volume and intensity of rainfall during the Typical Year. Nevertheless, the CSO Control Measures will capture for treatment the first part of each storm, known as the first flush.

After Submitting to EPA and Indiana any report required by section 2.3.1 of this Appendix, and receiving written authorization to proceed from EPA and IDEM, South Bend shall use the validated Collection System Model to run a continuous simulation for the Typical Year to determine whether South Bend has achieved the Performance Criteria of no more than four Overflow Events during the Typical Year. Thereafter, South Bend shall include in the Final Post-Construction Monitoring Report required by section 2.5 of this Appendix any discussions, descriptions, and analyses required by section 2.5(h) of this Appendix. If necessary, South Bend shall Submit to EPA and Indiana for review and approval a plan and schedule for the implementation of additional CSO controls necessary to allow South Bend's Facility to meet the Performance Criteria of no more than four Overflow Events during the Typical Year.

South Bend also shall analyze all *E. Coli* and residual chlorine monitoring information for all CSO Discharges that occurred during the 12-month post-construction monitoring period to determine whether South Bend has met the Performance Criteria for *E. Coli* and residual chlorine in Table 1 of this Appendix.

2.4 Receiving Water Data Analysis

2.4.1 St. Joseph River Model Calibration and Validation

South Bend shall perform the following steps to update, calibrate, and validate the St. Joseph River Model:

1. Collect flow monitoring, rainfall, in-stream and CSO water quality, and CSO activation data, as described in greater detail in section 2.2 of this Appendix, during a 12-month post-construction monitoring period that commences after South Bend finishes constructing and implementing all of the CSO Control Measures described in Section 1 of this Appendix.

2. Perform quality assurance and quality control of the data collected in Step 1, as described in South Bend's Report on Quality Assurance/Quality Control and Data Management dated September 30, 2005, or any subsequent version approved by EPA.

3. After Submitting to EPA and Indiana any report required by section 2.3.1 of this Appendix, and receiving written authorization to proceed from EPA and IDEM as required by section 2.3.1 of this Appendix, South Bend shall use the St. Joseph River Model in its previously-calibrated state with the validated Collection System Model results, and the rainfall data collected during the 12-month post-construction monitoring period, to run a continuous simulation of the St. Joseph River for the 12-month post-construction monitoring period.

4. Compare the continuous simulation St. Joseph River Model outputs to the in-stream *E. coli* monitoring data for the 12-month post-construction monitoring period to determine whether re-calibration is needed. Re-calibration will not be needed if there is a high degree of agreement between the range of concentrations in the model output and monitoring data. Otherwise, model re-calibration will be needed in accordance with Steps 5-6.

5. If re-calibration is needed, South Bend shall use one rainfall event from the 12-month post-construction monitoring period for the St. Joseph River Model recalibration.

6. After South Bend has recalibrated the St. Joseph River Model using sound engineering judgment in accordance with standard industry practices, South Bend shall verify the re-calibrated model by running at least two additional wet weather events from the 12-month post-construction monitoring period. Thereafter, South Bend shall again compare the continuous simulation outputs to the in-stream monitoring data, as described in Step 4 above, to determine whether additional re-calibration is needed. South Bend shall re-calibrate in accordance with Steps 5-6 until there is a high degree of agreement between the range of concentrations in the St. Joseph River Model output and the monitoring data for the monitoring period.

This re-calibration will result in model-data comparisons for at least three rainfall events. Standard modeling practice (Chapra, 1997) is to calibrate the model to a single dataset and then to confirm or validate the model's calibration by simulating at least one different dataset and comparing model predictions to monitoring data. In South Bend's re-calibration approach, a single rainfall event will serve as the calibration dataset (Step 5). South Bend then shall validate the St. Joseph River Model by running it for two additional rainfall events (Step 6).

After South Bend has adequately calibrated and validated the St. Joseph River Model, based on re-calibration efforts, South Bend shall Submit to EPA and Indiana a Model Re-calibration Report documenting the re-calibration and validation. After receiving written authorization to proceed from EPA and IDEM, South Bend shall conduct the Water Quality Standards Assessment described in section 2.4.2 of this Appendix A.

2.4.2 Water Quality Standards Assessment

After updating, calibrating, and validating the St. Joseph River Model, and receiving written authorization to proceed from EPA and IDEM, South Bend shall use the validated St. Joseph River Model and validated Collection System Model to evaluate in-stream water quality with appropriate analyses. These analyses shall include consideration of compliance with current water quality standards at key locations (including the State line) for the following scenarios: (i) existing upstream/background pollutant concentrations based on samples taken under section 2.2 of this Appendix during the 12-month post-construction monitoring period after all CSO Control Measures are implemented; and (ii) upstream/background pollutant concentrations that are compliant with WQS. South Bend also shall use the St. Joseph River Model to evaluate whether, and how often residual CSO Discharges cause or contribute to exceedances of WQS in Indiana and, at the State line, with Michigan's water quality standards. South Bend then shall Submit to the United States and Indiana a Post-Construction Water Quality Assessment Report documenting South Bend's analysis based on Typical Year performance.

2.5 Final Post Construction Monitoring Report

On or before December 31, 2034, South Bend shall Submit to the United States and Indiana a final Post-Construction Monitoring Report. In the Final Post-Construction Monitoring Report, South Bend shall:

(a) demonstrate that South Bend completed all of the requirements of the Post-Construction Monitoring Plan in section 2 of this Appendix A;

(b) evaluate whether each CSO Control Measure implemented pursuant to section 1 of this Appendix was constructed as designed and in compliance with the Design Criteria described in, and required by, Table 1 of this Appendix, and is performing as designed and expected;

(c) evaluate how well South Bend's entire Facility is performing as a whole, following completion of all CSO Control Measures, and shall include without limitation an assessment of whether the CSO Control Measures implemented pursuant to section 1 of

this Appendix, as constructed, operated, or otherwise implemented, have achieved the Performance Criteria of no more than four Overflow Events during the Typical Year and the Performance Criteria for *E. Coli* and residual chlorine;

(d) summarize the data collected during the entirety of the 12-month post-construction monitoring period and include any new data relevant to the evaluation that South Bend did not previously Submit to EPA or IDEM;

(e) evaluate whether South Bend has any Unlisted Discharges;

(f) evaluate whether South Bend's remaining CSO Discharges, if any, comply with all applicable requirements in this Appendix A, the Clean Water Act, State Law, and South Bend's NPDES Permits;

(g) evaluate whether South Bend has eliminated Bypasses, or to the extent that South Bend has not eliminated Bypasses, evaluate whether South Bend's remaining Bypasses meet the conditions, including all applicable narrative and numeric effluent limitations, governing Bypass in South Bend's NPDES Permits; and

(h) if model or monitoring results show that South Bend's CSO Control Measures did not meet Performance Criteria, including the Performance Criteria of no more than four Overflow Events during the Typical Year and for *E. Coli* and residual chlorine, identify and describe in detail deficiencies or performance-limiting factors in system design, process, operations, and maintenance that may have limited the ability of the CSO Control Measures to achieve their intended performance. Thereafter, South Bend shall identify and describe in detail any and all necessary corrective measures, alternative operating strategies, structural modifications, and additional facilities and processes necessary to meet the Performance Criteria.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

UNITED STATES OF AMERICA, and STATE OF INDIANA,	)	
Plaintiffs,	)	
v.	)	**Case No.**
CITY OF SOUTH BEND, INDIANA,	)	
Defendant.	)	

APPENDIX B: SUPPLEMENTAL ENVIRONMENTAL PROJECT

I. REVIEW OF EXISTING WATER QUALITY STUDIES

1. South Bend shall review and evaluate existing water quality studies and water quality data for Bowman Creek from available sources, including without limitation, studies and data possessed by South Bend, EPA, IDEM, USGS, STORET, and the St. Joseph River WISE Sampling Program.

II. FIELD INVESTIGATION

2. South Bend shall complete a field investigation of Bowman Creek and its tributary ditches, Eberly, Auten, and Philips and obtain analytical results of water samples collected during the field investigation. Starting at the Bowman Creek discharge point at the St. Joseph River, a two-person crew will walk upstream the entire length of Bowman Creek and its tributary ditches Eberly, Auten, and Philips during dry weather both inside

and outside the city limits of South Bend. South Bend shall perform, without limitation, the following tasks during the field investigation:

a. during an initial phase of sampling, South Bend shall collect, and identify the location of, water samples at a minimum of ten locations along Bowman Creek, including the points of discharge of the tributary ditches into Bowman Creek. South Bend shall analyze the samples for phosphorus, ammonia, nitrates, *E. coli*, and surfactants. South Bend also shall measure dissolved oxygen and water temperature in the field with a portable meter and field probe;

b. South Bend shall collect water samples at intervals of approximately 500 feet for a maximum total quantity of 140 samples along the areas of concern in Bowman Creek identified in the preceding Subparagraph to further isolate and identify problem areas. South Bend shall analyze the samples for phosphorus, ammonia, nitrates, *E. coli*, and surfactants. South Bend also shall measure dissolved oxygen and water temperature in the field with a portable meter and field probe;

c. South Bend shall locate visible outfall pipes into Bowman Creek and its three tributary ditches using GPS equipment; take and document physical measurements of each outfall pipe; and collect up to a total of 50 samples of discharges observed at outfalls during the field investigation. South Bend shall analyze the samples for phosphorus, ammonia, nitrates, *E. coli*, and surfactants. South Bend also shall measure dissolved oxygen and water temperature in the field with a portable meter and field probe; and

d. South Bend shall observe and document the channel condition, noting evidence of erosion or scour and areas that need maintenance.

III. EVALUATION AND REPORT OF IMPROVEMENT ALTERNATIVES

3. Evaluation of Alternatives. Based on the review of existing water quality data, and the data and information obtained from the field investigation, South Bend shall evaluate the appropriateness and effectiveness of methods to reduce the levels of bacterial contamination entering, and restore Bowman Creek. South Bend shall assess, without limitation, the following methods: stream bank restoration, erosion control, sediment control and re-aeration, removal of point sources of wastewater, flow improvements, UV Disinfection, and maintenance and clean-up activities.

4. Report and Recommendations Regarding Alternatives. Within one year of the Effective Date of this Consent Decree, South Bend shall Submit to the United States and Indiana a report that includes:

a. a summary of information obtained from the field investigation, including a presentation of physical and analytical data, and GPS data regarding outlet pipe locations;

b. a summary that describes:

1. the most environmentally beneficial pollution reduction and restoration project(s) not already required by law that South Bend could perform to improve water quality in Bowman Creek and its tributary ditches for a total estimated cost of up to $50,000;

2. South Bend's reasonable estimate of the cost of the project(s); and

3. a proposed schedule for completing the project(s) as expeditiously as reasonably possible; and

c. a certification that South Bend is not already required to conduct the project(s) pursuant to any federal, state, or local statute, regulation, or permit other than this Consent Decree.

5. South Bend shall wait 60 days from the date that South Bend Submits the report required by the preceding Paragraph before beginning work on the project(s) described in Subparagraph b.1 of the preceding Paragraph. If neither the United States nor Indiana object to either the proposed project or the proposed schedule for the project within 60 days from the date that South Bend Submits the report required by the preceding Paragraph, South Bend shall complete the project in the manner proposed, and in compliance with the schedule proposed in the report required by the preceding Paragraph.

6. If either the United States or Indiana notifies South Bend that the proposed project(s) or proposed schedule described in Paragraph 4.b of this Appendix B:

a. is not the most environmentally beneficial pollution reduction and restoration project(s) not already required by law that South Bend could perform to improve water quality in Bowman Creek and its tributary ditches for a total estimated cost of up to $50,000;

b. is already required pursuant to a federal, state, or local statute, regulation, or permit other than this Consent Decree; or

c. is not as expeditious as reasonably possible,

within 60 days from the date that South Bend Submits the report required by Paragraph 4 of this Appendix B, the United States, Indiana, and South Bend shall confer informally to attempt to reach agreement regarding which projects South Bend shall complete and the schedule for those projects. If the United States, Indiana, and South Bend do not reach agreement regarding which projects South Bend shall complete and the schedule for those projects, the position of the United States and Indiana regarding which project(s) South Bend is required to complete, and the schedule for those projects, shall control subject to South Bend's right to invoke dispute resolution pursuant to Section XII (Dispute Resolution) of this Decree.