

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: )  
 )  
CITY OF CHARLOTTE, ) CONSENT AGREEMENT AND  
NORTH CAROLINA ) FINAL ORDER  
 )  
Respondent. ) Docket No. CWA-04-2007-4500(b)  
 )

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EPA REGION IV

**CONSENT AGREEMENT**

**I. Statutory Authority**

1. This is a civil penalty proceeding pursuant to Section 309(g)(2)(B) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(B), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, published at 64 Fed. Reg. 40176 (July 23, 1999) and codified at 40 Code of Federal Regulations ("C.F.R.") Part 22.

2. The authority to take action under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), is vested in the Administrator of the United States Environmental Protection Agency ("EPA"). The Administrator has delegated this authority to the Regional Administrator Region 4, who in turn has delegated this authority to the Director of the Water Management Division, ("Complainant").

**II. Allegations**

3. At all times relevant to this action, the City of Charlotte, North Carolina, acting by and through the Charlotte-Mecklenburg Utilities ("Respondent"), was a municipality existing under the laws of the State of North Carolina and, therefore, a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

4. At all times relevant to this action, Respondent owned and/or operated publicly owned treatment works, including five (5) wastewater treatment plants and their associated sanitary sewage collection systems ("Collection Systems"), which have been issued National Pollutant Discharge Elimination System ("NPDES") permits (the "NPDES Permits") by the North Carolina Department of Environment and Natural Resources ("DENR") as follows:

a. Sugar Creek WWTP, located at 5301 Closeburn Road, Charlotte, NC 28216, which operates under NPDES Permit Number NC0024937 and discharges pollutants as a point source into Sugar Creek, a water of the United States as defined in Section 502(7) of the CWA, 33 U.S.C. 1362(7).

b. Irwin Creek WWTP, located at 4000 Westmont Drive, Charlotte, NC 28210, which operates under NPDES Permit Number NC0024945 and discharges pollutants as a point source into Irwin Creek, a water of the United States as defined in Section 502(7) of the CWA, 33 U.S.C. 1362(7).

c. Mallard Creek WWTP, located at 12400 US Highway 29 North, Charlotte, NC 28262, which operates under NPDES Permit Number NC0030210 and discharges pollutants as a point source into Mallard Creek, a water of the United States as defined in Section 502(7) of the CWA, 33 U.S.C. 1362(7).

d. McAlpine Creek WWTP, located at US Highway 521 South, Charlotte, NC 28202, which operates under NPDES Permit Number NC0024970 and discharges pollutants as a point source into McAlpine Creek, a water of the United States as defined in Section 502(7) of the CWA, 33 U.S.C. 1362(7).

e. McDowell Creek WWTP, located at 4901 Neck Road, Huntersville, NC 28078, which operates under NPDES Permit Number NC0036277 and discharges pollutants as a point source into McDowell Creek, a water of the United States as defined in Section 502(7) of the CWA, 33 U.S.C. 1362(7).

5. To accomplish the objective of the CWA (defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), as to restore and maintain the chemical, physical and biological integrity of the nation's waters), Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into waters of the United States except as in compliance with an NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

6. EPA alleges that Respondent has violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a) by discharging untreated sanitary sewage containing pollutants to waters of the United States at locations not authorized by an NPDES permit and by failing to properly operate and maintain the Collection Systems as required by Part II., Section C., Paragraph 2. of the NPDES Permits resulting in sanitary sewage overflows ("SSOs") during the five (5)-year period immediately preceding the effective date of this Consent Agreement.

### **III. Stipulations and Findings**

7. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order ("CA/FO") will simultaneously commence and conclude this matter.

8. For the purposes of this CA/FO, Respondent neither admits nor denies the factual allegations set out above.

9. Respondent hereby waives its right to contest the allegations set out above and its right to appeal the Final Order accompanying this Consent Agreement.

10. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CA/FO and consents to the other conditions set forth in this CA/FO.

11. By signing this CA/FO, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete for each such submission, response and statement. Respondent realizes that there are significant penalties for submitting false or misleading information, including the possibility of fines and/or imprisonment for knowing submission of such information.

12. EPA reserves the right to assess and collect any and all civil penalties for any violation described herein to the extent that any information or certification provided by Respondent was materially false or inaccurate at the time such information or certification was provided to EPA.

13. Complainant and Respondent agree to settle this matter by their execution of this CA/FO. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of the CWA.

#### **IV. Payment**

14. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R Part 19, and considering the nature of the violations, Respondent's agreement to perform a Supplemental Environmental Project ("SEP") and other relevant factors, EPA has determined that One Hundred Twenty-Five Thousand Dollars (\$125,000) is an appropriate civil penalty to settle this action.

15. Respondent consents to the issuance of this CA/FO and consents for the purposes of settlement to the payment of the civil penalty cited in the foregoing paragraph and to the performance of the SEP.

16. Respondent shall submit payment of the penalty specified in the preceding paragraph within sixty (60) days of the effective date of this CA/FO via a cashier's or certified check, payable to the order of "Treasurer, United States of America." The check shall reference on its face the name of Respondent and the Docket Number of this CA/FO. Such payment shall be tendered to:

U.S. Environmental Protection Agency  
Cincinnati Accounting Operations  
Mellon Lockbox 371099M  
Pittsburgh, PA 15251-7099

17. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CA/FO, to the following persons at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

and

Ms. Mary Mattox  
U.S. Environmental Protection Agency - Region 4  
Water Management Division  
Water Programs Enforcement Branch  
Gulf Enforcement Section  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

18. The penalty amount specified above shall represent civil penalties assessed by EPA and shall not be deductible for purposes of federal taxes.

19. Pursuant to 40 C.F.R. Part 13 and 31 U.S.C. § 3717 et seq., if EPA does not receive payment of the penalty assessed by this CA/FO in full by its due date, interest shall accrue on the unpaid balance from the due date through the date of payment at an annual rate equal to the rate of the current value of funds to the United States Treasury as prescribed and published by the Secretary of the Treasury. If all or part of the payment is overdue, EPA will assess a late-payment handling charge of \$15.00, with an additional delinquent notice charge of \$15.00 for each subsequent thirty (30) day period. EPA will also assess on a monthly basis an up to six per cent (6%) per annum penalty on any principal amount not paid within ninety (90) days of the due date.

20. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by Respondent to pay the penalty assessed by the CA/FO in full by its due date may subject Respondent to a civil action to collect the assessed penalty plus interest (at currently prevailing rates from the effective date of this CA/FO), attorney's fees, costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of such penalty and nonpayment penalty which are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount and appropriateness of the penalty and of this CA/FO shall not be subject to review, except as otherwise expressly provided herein.

#### **V. SUPPLEMENTAL ENVIRONMENTAL PROJECT**

21. Respondent shall complete the SEP described in Appendix A in accordance with the schedule included therein which the parties agree is intended to secure significant environmental or public health protection and improvements.

22. The total expenditure for the SEP shall not be less than Three Hundred Thousand Dollars (\$300,000). Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

23. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by any other agreement, grant or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

24. Respondent shall submit a SEP Completion Report within forty-eight (48) months after the effective date of this CA/FO to Chief, Water Programs Enforcement Branch, U.S. Environmental Protection Agency - Region 4, 61 Forsyth Street, S.W., Atlanta, Georgia 30303-8960. The SEP Completion Report shall contain the following information:

- a. A detailed description of the SEP as implemented;
- b. A description of any operating problems encountered and the solutions thereto;
- c. Itemized costs;
- d. Certification that the SEP has been fully implemented pursuant to the provisions of this CA/FO; and
- e. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

25. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

26. Respondent shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA pursuant to this CA/FO and shall provide the documentation of any such underlying research and data to EPA not more than seven (7) days after a request for such information. In all documents or reports, including, without limitation, the SEP Completion Report, submitted to EPA pursuant to this CA/FO, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

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, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe 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.

27. After receipt of the SEP Completion Report described in Paragraph 24 above, EPA will notify Respondent, in writing, (a) of any deficiencies in the SEP Completion Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; (b) that EPA has concluded that the SEP has been completed satisfactorily, or (c)

that EPA has determined that the SEP has not been completed satisfactorily and that it is seeking, or may seek, stipulated penalties in accordance with Paragraph 29 herein.

28. If EPA elects to exercise option (a) in Paragraph 27 above, i.e., if the SEP Completion Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Completion Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision to Respondent on the adequacy of the completion of the SEP, which decision shall be final and binding upon Respondent, except as otherwise expressly provided herein. In the event the SEP is not completed as contemplated herein, as determined by EPA, EPA may seek stipulated penalties in accordance with Paragraph 29 herein.

29. In the event that Respondent fails to comply with any of the terms or provisions of this CA/FO relating to the performance of the SEP as described in Appendix A and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP as required in Paragraph 22 herein, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

a. Except as provided in subparagraph (b) below, if the SEP is not completed satisfactorily pursuant to this CA/FO, Respondent shall pay a stipulated penalty to the United States in the amount of Seventy-Five Thousand Dollars (\$75,000).

b. If the SEP is not completed satisfactorily pursuant to this CA/FO, but EPA determines that Respondent: (i) made good faith and timely efforts to complete the SEP; and (ii) certifies, with supporting documentation, that at least ninety percent (90%) of the amount of the money required to be spent in Paragraph 22 herein was expended on the SEP, Respondent shall not be liable for any stipulated penalty under this paragraph.

c. If the SEP is completed satisfactorily in accordance with Appendix A, but Respondent spent less than ninety percent (90%) of the amount of money required to be spent in Paragraph 22 herein on the SEP, Respondent shall pay a stipulated penalty to the United States in the amount of Seven Thousand Five Hundred Dollars (\$7,500).

d. If the SEP is completed pursuant to this CA/FO, and Respondent spent at least ninety percent (90%) of the amount of money required to be spent in Paragraph 22 herein on the SEP, Respondent shall not be liable for any stipulated penalty under this paragraph.

e. For failure to submit the SEP Completion Report required by Paragraph 24 above, Respondent shall pay a stipulated penalty in the amount of One Thousand Dollars (\$1,000) for each day after the due date until the report is submitted.

30. The determinations of whether the SEP has been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the SEP shall be in the reasonable discretion of EPA.

31. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of a written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of Paragraphs 16 and 17 above. Interest and late charges shall be paid as stated in Paragraph 19 above. If the Respondent fails to pay such amount as EPA asserts that Respondent owes pursuant to this CA/FO based upon a determination by EPA that Respondent failed to complete or to substantially complete the SEP to the satisfaction of EPA and if EPA initiates an action to collect such amount (including stipulated penalties and all additional interest, charges, penalties and other amounts as described in Part IV of this CA/FO), it shall be presumed in such action that such determination by the EPA is reasonable; provided that, Respondent may raise as a defense in such action that such determination by EPA was arbitrary and capricious and therefore not a binding determination upon Respondent. If such defense is raised, Respondent shall have the burden of proving that EPA's determination was arbitrary and capricious and that the SEP was completed or substantially completed satisfactorily by Respondent. In such action, the provisions of this Paragraph shall be stipulated as admissible evidence and shall be binding upon EPA and Respondent in all regards.

32. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Clean Water Act."

33. Respondent hereby agrees not to claim any funds expended in the performance of the SEP as a deductible business expense for purposes of Federal taxes.

## **VI. General Provisions**

34. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit. Other than as expressed herein, compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA

35. Nothing in this CA/FO shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Respondent's violation of this CA/FO or of the statutes and regulations upon which this CA/FO is based, or for Respondent's violation of any federal or state statute, regulation or permit.

36. Except as otherwise set forth herein, this CA/FO constitutes a settlement by EPA and Respondent of all claims for civil penalties pursuant to the CWA with respect to only those violations alleged in this CA/FO. Except as otherwise set forth herein, compliance with this CA/FO shall resolve the allegations of violations contained herein. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of Respondent, or other liability resulting from violations that were not alleged in this CA/FO. Other than as expressed herein, Complainant does not waive any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

37. Each undersigned representative of the parties to this CA/FO certifies that he or she is fully authorized to enter into the terms and conditions of this CA/FO and to execute and legally bind that party to it.

38. This CA/FO applies to and is binding upon Respondent and its officers, directors, employees, agents, successors and assigns.

39. Any change in the legal status of Respondent, including but not limited to any transfer of assets of real or personal property, shall not alter Respondent's responsibilities under this CA/FO.

40. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this CA/FO.

41. In accordance with 40 C.F.R. § 22.5, the individuals below are authorized to receive service relating to this proceeding.

For Complainant:

William B. Bush, Jr.  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303  
(404) 562-9538

For Respondent:

H. Michael Boyd  
Senior Deputy City Attorney  
Office of the City Attorney  
600 East Fourth Street  
Charlotte, North Carolina 28202  
(704) 336-2254

42. The parties acknowledge and agree that this CA/FO is subject to the requirements of 40 C.F.R. § 22.45(c)(4), which provides a right to petition to set aside a consent agreement and proposed final order based on comments received during the public comment period.

43. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), Complainant represents that the State of North Carolina was provided a prior opportunity to consult with Complainant regarding this matter.

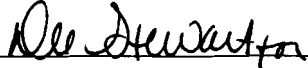
## **VII. Effective Date**

44. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.




**AGREED AND CONSENTED TO:**

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:

  
\_\_\_\_\_  
James D. Giattina, Director  
Water Management Division  
U.S. EPA, Region 4

Date: February 13, 2007

For RESPONDENT, CITY OF CHARLOTTE, NORTH CAROLINA:

  
\_\_\_\_\_  
[TYPE IN NAME OF INDIVIDUAL], [TITLE]  
Douglas O. Bean  
Key Business Executive  
Charlotte-Mecklenburg Utilities

Date: September 26, 2006

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: )  
 )  
 ) **CONSENT AGREEMENT AND**  
 ) **FINAL ORDER**  
 )  
 )  
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 ) **Docket No. CWA-04-2007-4500(b)**  
 )

CITY OF CHARLOTTE,  
NORTH CAROLINA

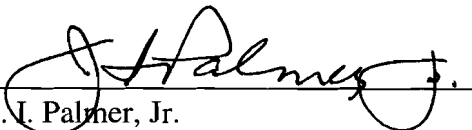
Respondent.

**FINAL ORDER**

In accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, 40 C.F.R. Part 22, and authorities delegated to me, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: FEB 16 2007

  
\_\_\_\_\_  
J. I. Palmer, Jr.  
Regional Administrator  
U.S. EPA, Region 4

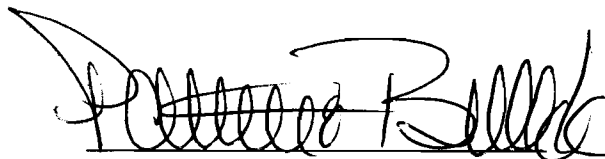
**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of the City of Charlotte, North Carolina, Docket No. CWA-04-2007-4500(b) (filed with the Regional Hearing Clerk on 2-27-07 2007) was served on 2-27, 2007, in the manner specified to each of the persons listed below.

By hand-delivery: William B. Bush, Jr.  
Associate Regional Counsel  
U.S. EPA, Region 4  
61 Forsyth Street, SW  
Atlanta, GA 30303

By certified mail,  
return receipt requested: H. Michael Boyd  
Senior Deputy City Attorney  
Office of the City Attorney  
600 East Fourth Street  
Charlotte, NC 28202

Alan W. Klimek, Director  
Division of Water Quality  
North Carolina Department of Environment  
and Natural Resources  
1617 Mail Service Center  
Raleigh, NC 27699-1617



Ms. Patricia A. Bullock  
Regional Hearing Clerk  
U.S. EPA, Region 4  
61 Forsyth Street, SW  
Atlanta, GA 30303  
(404) 562-9511

## APPENDIX A

### SUPPLEMENTAL ENVIRONMENTAL PROJECT

Within 180 days of the effective date of this CA/FO, Respondent shall provide notice to EPA in care of Chief, Water Programs Enforcement Branch, U.S. Environmental Protection Agency - Region 4, 61 Forsyth Street, S.W., Atlanta, Georgia 30303-8960, indicating which one of the two below options Respondent has chosen to implement as a SEP pursuant to this CA/FO.

#### Option A – Private Lateral Repair for Low and Moderate Income Customers

##### Purpose

If Option A is chosen by Respondent as the SEP pursuant to the CA/FO, the purpose of this project is to provide a mechanism for repairing, rehabilitating, or replacing low and moderate income individuals' private, residential sanitary sewer service laterals. This will result in a reduction of extraneous flows entering the sanitary sewer system through defective private residential laterals that would not be achieved otherwise. Defective laterals allow rain and/or groundwater to enter the public sewer system through cracks, fractures, broken pipes, faulty or improper connections and joints, etc. Reduction of these flows into the sewer system will benefit the environment by reducing the likelihood and the volume of SSOs.

##### Scope

Respondent shall perform the following tasks:

- Identify one or more areas of the Collection Systems that need sewer system rehabilitation or where sewer rehabilitation has been recently completed and that have low and moderate income customers;
- Conduct inspections to locate defective private residential service laterals within these areas;
- Develop low and moderate income level qualifications for property owners to become eligible for repair work on their private service laterals under this SEP using 2000 census information;
- Establish and implement a process using contractors, plumbers, and/or other governmental or non-governmental agencies to repair, rehabilitate, or replace those eligible low and moderate income property owner's private service laterals that are found to have significant defects that could negatively impact the public sanitary sewer system (provided, however, Respondent will not be required to perform work on private property where the property owner will not agree to reasonable right of entry conditions or where estimated repair costs are not commensurate with potential benefits derived from the repair);
- Repair defective private service laterals between the service connection to a public sewer main and a point approximately 5' outside the building foundation;

- Maintain records of disbursement of funds for work under this SEP; and
- Monitor, track and periodically report SEP progress to EPA.

#### Cost

Respondent shall spend at least \$300,000 toward inspection, repair, rehabilitation, or replacement of private service laterals pursuant to this SEP. Respondent's staff costs and administration costs will not be counted against this total. Costs of professional consulting services, contractors, and materials will be included in the total cost, including costs associated with restoring private property disturbed by the work on the service lateral to pre-construction conditions.

#### Schedule

Work on the SEP will be completed within 36 months after the effective date of this CA/FO.

### **Option B – Purchase Land for Water Quality Improvement**

#### Purpose

If Option B is chosen by Respondent as the SEP pursuant to the CA/FO, the purpose of this project will be to restore, protect, and enhance water quality in McDowell Creek by acquiring land adjacent to McDowell Creek, placing perpetual use restrictions on such land and then donating such land to Mecklenburg County to be held for purposes of furthering the goals of the McDowell Creek Watershed Management Plan.

The McDowell Creek watershed is located in the northwestern section of Mecklenburg County and is within the service area covered by Respondent's Collection Systems. The watershed includes a large portion of Town of Huntersville and the southern portion of the Town of Cornelius. McDowell Creek flows into Mountain Island Lake at McDowell Creek Cove upstream of Respondent's drinking water intake. The total area of the watershed is approximately 28.5 square miles (20,800 acres) and is among the most rapidly growing areas in the State of North Carolina. Impacts resulting from urban runoff related to land development activities have resulted in significant declines in water quality conditions in McDowell Creek and McDowell Creek Cove. In February 2003, the Town of Huntersville adopted one of the more stringent post-construction ordinances in the State, which requires the use of low impact development (LID) techniques to reduce non-point source pollutants from new development and redevelopment. The goal of this ordinance is to prevent increased water quality degradation in McDowell Creek and McDowell Creek Cove as the watershed continues to develop. Mecklenburg County has partnered with the Town of Huntersville in its efforts to "save McDowell Creek" by installing retrofit BMPs in the McDowell Creek watershed to reduce existing pollutant loads from developed areas. These efforts are supported by a water quality model developed for McDowell Creek by Mecklenburg County in 2002

and an extensive water quality monitoring program designed to measure the success of restoration efforts. The entire effort is summarized in the McDowell Creek Watershed Management Plan completed in December 2005. The Plan contains specific water quality targets for the watershed and describes the techniques that will be used to achieve these targets by 2020. A copy of the McDowell Creek Watershed Management Plan is available at the following website: <http://stormwater.charmeck.org> (select: *Storm Water Projects*; select: *Restoration and Water Quality Projects*; select: *McDowell Creek Watershed*; and select: *view the plan*).

One of the biggest challenge associated with the implementation of the McDowell Creek Watershed Management Plan is securing the funds necessary to acquire land that would be subject to the goals of the Plan. This SEP would address that challenge.

#### Scope

Respondent shall purchase a high priority parcel or parcels of land, consistent with the criteria set forth in the McDowell Creek Watershed Management Plan, and place conservation easements and/or other restrictions on such land to ensure that it will be used in perpetuity to restore, protect, and enhance the water quality in McDowell Creek consistent with the McDowell Creek Watershed Management Plan. The primary purpose of such easements and/or restrictions will be to reduce and/or prevent erosion and non-point source pollution from entering McDowell Creek by setting aside land in perpetuity for the protection of McDowell Creek such that the adjacent portion of McDowell Creek may be maintained in, or be restored to, its natural condition. Respondent shall then transfer ownership of the land subject to these restrictions to Mecklenburg County to be held for purposes of furthering the goals of the McDowell Creek Watershed Management Plan. Construction of specific stormwater BMP's by Mecklenburg County pursuant to the McDowell Creek Watershed Management Plan is outside the scope of this SEP.

#### Cost

Respondent shall spend at least \$300,000 toward the purchase of land to be made subject to the purposes of this SEP and the McDowell Creek Watershed Management Plan.

#### Schedule

Along with Respondent's notification to EPA that it has chosen Option B as the SEP to be completed pursuant to this CA/FO, Respondent shall submit to EPA for review and approval the conservation easement and/or other land use restrictions it intends to place on the land to be acquired for purposed of this SEP.

Respondent shall complete this SEP within 36 months after the effective date of the Order.

## Exhibit A

### **Consolidated Pump Station at McAlpine WWTP**

**Identified Problem** - Existing influent pump stations do not have adequate capacity to receive projected wet weather flow contributing to SSO's upstream of the WWTP.

**Scope** - Project consists of a new influent pump station at the McAlpine Wastewater Treatment Plant. The new station is designed to accept dry and wet-weather flow from the existing McAlpine outfall and the proposed McAlpine Relief sewer and pump that flow into the treatment process or on-site flow equalization facilities.

**Schedule** – Construction started in October, 2004 with completion by June 30, 2008.

### **Irwin Creek Relief Sewer, Phase II**

**Identified Problem** - Existing Irwin Creek Outfall (trunk sewer) is not adequate to carry projected flow which could result in wet weather SSO's.

**Scope** – Project consists of approximately 10,800 linear feet of sewer pipe ranging from 36" to 54" in diameter and parallels the existing the Irwin Creek Outfall. The project extends from the terminus of phase one just north of West Boulevard to just north of West Fifth Street.

**Schedule** – Construction started in December, 2004 with completion by September 30, 2008.

### **Long Creek Outfall, Phase I & II**

**Identified Problem** - Existing Long Creek Outfall (trunk sewer) is not adequate to carry projected flow which could result in wet weather SSO's.

**Scope** – Project consists of approximately 40,700 linear feet of 42" to 54" sewer pipe and parallels the existing Long Creek Outfall. The project extends from the recently completed Long Creek Pump Station and Flow Equalization facility upstream to near Oakdale Road.

**Schedule** – Construction started in February, 2005 with completion by January 31, 2008.

### **Briar Creek Relief Sewer, Phase 1 and Pump Station**

**Identified Problem** - The existing Briar Creek Outfall (trunk sewer) is not adequate to carry projected flows. Projected flows from the new relief sewer will be greater than the existing influent pump station can convey. These bottlenecks could cause wet weather SSO's upstream of the Sugar Creek WWTP.

**Scope** – Project consists of a new influent pump station at the Sugar Creek Wastewater Treatment Plant and approximately 23,000 linear feet of 60" to 72" sewer pipe. The pump station is designed to accept dry and wet-weather flow from the existing sewer outfalls and the proposed Briar Creek Relief sewer. The relief sewer will extend from the new pump station up to near Randolph Road.

**Schedule** – Construction on the pump station started in April. The relief sewer is currently in final design and easement acquisition. The relief sewer construction is expected to begin in July 2007. The project shall be completed by November 30, 2010.

### **McAlpine Relief Sewer, Phase 1**

**Identified Problem** - The existing pipeline is not adequate to carry projected flows which could result in wet weather SSO's.

**Scope** – Project consists of 12,900 linear feet of 78" diameter sewer line. The relief sewer will extend from the new McAlpine Influent Pump Station up to the confluence of Four Mile Creek.

**Schedule** - The project is currently in final design and easement acquisition. Construction is projected to begin in July, 2007 with completion by November 30, 2010.