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January 17, 2005

BY HAND DELIVERY
Ms. Eurika Durr
Clerk of the Board, Environmental Appeals Board
U.S. Environmental Protection Agency
Colorado Building
1341 G Street, N.W., Suite 600
Washington, D.C. 20005

Re: Petition for Review
NPDES Permit No. DC0000221

Dear Ms. Durr:

Enclosed for filing in the above-captioned matter are the original and three copies (as exhibits exceed 30 pages) of the District of Columbia Water and Sewer Authority's Petition for Review of the December 16, 2004 modification to NPDES Permit No. DC0000221.

An additional copy is included to be date stamped and returned to our office with the courier. Thank you for your assistance, and please do not hesitate to contact me if you have any questions.

Sincerely,

David E. Evans

Enclosures

Copies to:
Donald S. Welsh, Regional Administrator
Avis M. Russell, Esquire

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
ENVIRONMENTAL APPEALS BOARD

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY,	)	
Petitioner	)	**NPDES Permit Appeal No.** ___
In re: NPDES Permit No. DC0021199	)	

PETITION FOR REVIEW

Pursuant to 40 C.F.R. § 124.19, the District of Columbia Water and Sewer Authority ("WASA") submits this Petition for Review ("Petition") to contest certain conditions in the December 16, 2004 modification to the above referenced NPDES Permit issued to WASA for the Blue Plains Advanced Wastewater Treatment Plant ("Blue Plains") and the District of Columbia's separate and combined sanitary sewer systems ("Permit").

WASA seeks review of a final determination by the United States Environmental Protection Agency, Region III ("EPA"), to modify the Permit to incorporate certain conditions governing WASA's combined sewer system. As explained below, the contested conditions are part of WASA's combined sewer overflow "Phase II" permit. WASA respectfully submits that the issues raised in this appeal present important policy considerations that the Board should review.

Copies of the modified Permit, the Fact Sheet, and EPA's Response to Comments accompanying the permit modification are attached to and incorporated in this Petition as Exhibit A. EPA issued the draft permit modification for public notice on March 19, 2004, and WASA submitted written comments on the draft permit modification on April 16, 2004. A copy of WASA's comments is attached to and incorporated in this Petition as Exhibit B.

INTRODUCTION AND BACKGROUND

A. Applicable Provisions of EPA's CSO Policy

The issues raised in this appeal call for an analysis of whether certain conditions included the combined sewer overflow "Phase II" portion of the December 16, 2004 permit modification conform to EPA's 1994 Combined Sewer Overflow Control Policy ("CSO Policy" or "Policy")[1].

The CSO Policy, which was incorporated into the Clean Water Act in 2000,[2]

> *represents a comprehensive national strategy to ensure that municipalities, permitting authorities, water quality standards authorities and the public engage in a comprehensive and coordinated planning effort to achieve cost effective CSO controls that ultimately meet appropriate health and environmental objectives.*

56 Fed. Reg. 18,688.

The Policy generally provides that communities with combined sewer overflows ("CSOs") must comply with the technology-based and water quality-based requirements of the Clean Water Act ("CWA"). The technology-based requirements for combined sewer systems ("CSS") are known as the Nine Minimum Controls ("NMCs"). The NMCs

[1] U.S. EPA Office of Water, CSO Policy. EPA 830-B-94-001 (April 1994), 59 Fed. Reg. 18688 (Apr. 19, 1994)

[2] Clean Water Act § 402(q), 33 U.S.C. § 1342(q). Wet Weather Water Quality Act of 2000, Pub. L. No. 106-554, 114 Stat. 2763 (Dec. 21, 2000).

consist of a wide variety of best management practices tailored to the site-specific characteristics of individual combined sewer systems, and are intended to reduce, to the extent possible, CSO pollutant loads pending development and implementation of Long Term CSO Control Plans ("LTCPs") that provide for compliance with the water quality-based requirements of the CWA. CSO Policy at II.B.

The Policy provides for compliance with the water quality-based requirements of the CWA through the development and implementation of LTCPs. CSO Policy at II.C. LTCPs consist of a number of elements, but their ultimate purpose is to indentify the controls needed to prevent CSS discharges from causing or contributing to violations of applicable water quality standards. The CSO Policy allows communities to develop their LTCPs using either a "presumption" approach or a "demonstration" approach. CSO Policy at II.C.4. Communities selecting the presumption approach can choose from among three control alternatives which are "presumed" to meet water quality standards so long as the presumption is reasonable in light of the available data. CSO Policy at II.C.4.a. Communities selecting the demonstration approach must show through data collection and modeling performed during LTCP development that the selected controls are projected to meet water quality standards following LTCP implementation. CSO Policy at II.C.4.b. Under either approach, CSO communities must ultimately show through post-construction water quality monitoring and assessment that the CSO discharges remaining after LTCP implementation are not causing or contributing to violations of applicable water quality standards.

The Policy also establishes a two-phased permitting approach. CSO Policy at IV.B. Phase I permits are issued to CSO communities in the initial stages of their CSO

programs, and generally contain (1) requirements to implement the NMCs, and (2) schedules to develop and submit LTCPs to the permitting authorities. CSO Policy at IV.B.1. Phase II permits are issued to CSO communities following completion of their LTCPs and the permitting authority's determination that the LTCP meets the requirements of the selected approach. The CSO Policy calls for Phase II permits to contain the water quality-based requirements for the CSS based on the selected controls in the LTCP. CSO Policy at IV.B.2. These requirements and their specific application to WASA's CSS and LTCP are discussed in detail below.

B. WASA's Wastewater Collection and Treatment System

WASA is an independent authority of the Government of the District of Columbia. It was created in 1996 by the United States and the Government of the District of Columbia to provide drinking water to the residents of the District of Columbia and regional wastewater collection and treatment to citizens and businesses in the metropolitan Washington, D.C. area. Prior to 1996, both Blue Plains and the District's wastewater collection system were operated by the District of Columbia government.

WASA operates the wastewater collection and treatment system for the District of Columbia. Blue Plains serves portions of surrounding areas including suburban Virginia and Maryland in addition to the District of Columbia.[3] The service area for Blue Plains covers approximately 735 square miles. Approximately one-third of the wastewater collection system in the District of Columbia consists of combined sewers, which convey both sanitary wastewater and storm water. The combined sewer system serves the central,

[3] Blue Plains treats all of the wastewater generated in the District of Columbia, approximately 90 percent of the wastewater generated in Montgomery County, Maryland, approximately 50 percent of the wastewater generated in Prince George's County, Maryland, and approximately 15 percent of the wastewater generated in Fairfax County, Virginia.

older portions of the District and covers about 20 square miles. Approximately 66 percent of this area drains to the lower Anacostia River, with the remainder to the Potomac River and Rock Creek. There are 53 active CSO outfalls listed in the Permit. When the capacity of the combined sewer system is exceeded during storms, the combined excess flow, which is a mixture of wastewater and storm water, is discharged to the receiving streams through the CSO outfalls.

Blue Plains is designed to provide advanced wastewater treatment (complete treatment) and excess flow treatment during CSS flow (wet weather) conditions. Flow receiving complete treatment is discharged from Outfall 002 and flow receiving excess flow treatment is discharged from Outfall 001. The complete treatment facilities have capacity for an annual average flow of 370 million gallons per day ("mgd") and a four-hour peak rate of 740 mgd during wet weather conditions. After four hours of wet weather event peak flow, the complete treatment facilities have capacity for 511 mgd. The excess flow treatment facilities comprise primary treatment and chlorination and dechlorination with a capacity of 336 mgd that is discharged from Outfall 001. Outfall 001 is a wet weather outfall and discharges only when wet weather conditions exist.

C. WASA's Long Term CSO Control Plan

With financial assistance from EPA, and after implementation of an extensive monitoring and modeling program that was endorsed by EPA, local regulators and representatives of the environmental community, WASA completed its LTCP Final Report in July 2002 and submitted it to EPA and the District of Columbia Department of Health ("DOH") in early August 2002 for these agencies' review and approval.

WASA's LTCP was developed in strict accordance with the CSO Policy. During development of its LTCP, WASA characterized, monitored, and modeled its combined sewer system, considered sensitive areas, evaluated a wide range of control alternatives, and ultimately selected as its control program a separation, storage, conveyance, and treatment system under the "demonstration" approach discussed above.

The LTCP calls for the construction and operation of an extensive underground tunnel system that will capture combined excess flow during and following rainfall events. The LTCP also calls for use of wet weather capacity at Blue Plains to treat excess flow not captured by the tunnels. As wet weather flows to Blue Plains begin to recede following rainfall, capacity at the plant will be used to empty the tunnels. Approximately $860 million in treatment plant and system upgrades are currently under design or construction, and when these upgrades are completed in 2008, Blue Plains is projected to have the capacity to treat a four-hour peak rate of 1076 mgd during wet weather events. When fully implemented, the selected controls in WASA's LTCP will reduce CSO discharges by approximately 96 percent over uncontrolled levels based on the average wet weather condition at an estimated cost of $1.265 billion in 2001 dollars. CSO discharges will continue following LTCP implementation, but they will be few and far between.

As provided in the CSO Policy and its implementing guidances, WASA developed its LTCP and designed the selected CSO controls around average rainfall conditions. *See, e.g.,* CSO Policy at IV.B.2.c. CSO discharge and instream data collected during an extensive monitoring program were used with mathematical models of the CSS and CSO receiving waters to characterize the discharges from the CSS and their impacts

on the receiving waters. The models provide dynamic and continuous simulation of the CSO discharges and their water quality impacts. Based on review of 50 years of rainfall data, the years 1988, 1989, and 1990 were selected as representative of the climatic conditions for the wet weather events causing CSO discharges and their impacts on the receiving waters. Average design conditions were developed from these representative climatic conditions. The models and the average design conditions were then used by WASA for the LTCP.

As reflected in the fact sheet accompanying the permit modification, both EPA and DOH have found that following implementation of the selected controls in the LTCP, the remaining CSO discharges from WASA's CSS are not expected to cause or contribute to violations of the applicable District of Columbia water quality standards or contribute to impairment of the designated uses of the receiving waters. Fact Sheet at 15 (Exhibit A). As provided in the CSO Policy, however, this standards compliance determination must be confirmed through post-construction monitoring. CSO Policy at IV.B.2.d.

D. Total Maximum Daily Loads

Together, DOH and EPA have approved a number of total maximum daily loads ("TMDLs") which establish waste load allocations ("WLAs") for the CSO discharges from WASA's CSS. These include TMDLs for BOD, TSS, bacteria, oil and grease, and organics for the Anacostia River, TMDLs for organics and metals for Piney Branch, and TMDLs for organics, bacteria, and metals for Rock Creek. For purposes of this Petition, it is important to note that all of these TMDLs, with the exception of the Piney Branch TMDLs, were developed using the same data, models and average design conditions used

to develop WASA's LTCP. EPA and DOH have also determined that the selected controls in the LTCP will comply with the CSS WLAs in these TMDLs. Exhibit A to WASA Comments (Exhibit B); Fact Sheet at 15 (Exhibit A).

THE PHASE II PERMIT CONDITIONS

The CSO Policy lists seven requirements that should be included in Phase II permits. Policy at IV.B.2. Of these requirements, only the requirement at IV.B.2.c. is relevant to the issues raised in this appeal. This requirement states, in relevant part, that Phase II permits providing for implementation of the selected controls in LTCPs employing the demonstration approach should include

> *[w]ater quality-based effluent limits under 40 CFR Sections 122.44(d)(1) and 122.44(k), requiring, at a minimum, compliance with, no later than the date allowed under the State's WQS, the numeric performance standards for the selected CSO controls, based on average design conditions specifying ...iv. performance standards that are consistent with II.C.4.b.of the Policy.*

CSO Policy at IV.B.2.c. CSO Policy § II.C.4.b., which is referenced in IV.B.2.c., sets out four criteria that must be satisfied by permittees seeking to use the demonstration approach. Of these criteria, only the criterion at II.C.4.b.ii. is relevant to the issues raised in this appeal. This criterion states that permittees wishing to employ the demonstration approach should demonstrate that:

> *[t]he CSO discharges remaining after implementation of the planned control program will not preclude the attainment of WQS or the receiving waters' designated uses or contribute to their impairment. Where WQS and designated uses are not met in part because of natural background conditions or pollution sources other than CSOs, a total maximum daily load, including a wasteload allocation and a load allocation, or other means should be used to apportion pollutant loads.*

Policy at II.C.4.b.ii.

Taken together, these two CSO Policy sections establish a two-step process for developing and including water quality-based effluent limits in Phase II permits where the permittee employs the demonstration approach in its LTCP. The first step is for the permitting authority to find that the planned control program meets the demonstration approach criteria at CSO Policy § II.C.4.b, including a finding that the CSO discharges remaining after implementation of planned control program will not preclude the attainment of water quality standards or the receiving waters' designated uses or contribute to their impairment. Once the permitting authority has determined that the selected controls will meet the criteria at CSO Policy § II.C.4.b. (including the standards compliance determination required by that section), pursuant to CSO Policy § IV.B.2.c., the permitting authority must then develop and include in the permit, numeric performance standards for the selected controls, based on average design conditions that are consistent with CSO Policy § II.C.4.b.

EPA followed this two-step process in modifying WASA's permit to include the Phase II permit conditions. First, it found that WASA's planned control program and selected controls satisfied the criteria at CSO Policy § II.C.4.b., including a specific finding by EPA that "WASA has demonstrated, pursuant to Section II.C.4.b. of the 1994 CSO Policy, that the CSO control program will not preclude attainment of WQS or the receiving waters designated uses or contribute to their impairment." Fact Sheet at 15 (Exhibit A). Then, pursuant to CSO Policy § IV.B.2.c., EPA developed performance standards for the selected CSO controls, based on average design conditions, that were consistent with its standards compliance determination under CSO Policy § II.C.4.b., and

included these performance standards at Sections III.C.A.3.- 9., of the Permit.[4] These performance standards, therefore, constitute the water quality-based effluent limits under 40 CFR 122.44(d)(1) and 122.44(k) that are called for in CSO Policy § IV.B.2.c.

Having concluded that WASA's selected CSO controls will comply with the District's water quality standards, and then established performance standards in Section III.C. of the Permit based on the selected controls, EPA has necessarily concluded that if WASA complies with the performance standards, the discharges from WASA's CSS will not cause or contribute to violations of water quality standards.

With the exception of EPA's failure to include an implementation schedule in the Permit, WASA believes that the performance standards in Sections III.C.A.3.-9. of the Permit conform to the CSO Policy's directive that permitting authorities should include water quality-based effluent limits in Phase II permits. Unfortunately, however, EPA did not stop with these performance standards, but went on to add Section III.E. to the Permit, entitled "Water Quality-Based Requirements for CSOs." In doing so, EPA added requirements to the Permit that do not conform to the CSO Policy, that conflict with the performance standards in the Permit, and that unfairly expose WASA to multiple liabilities for the same acts even if WASA meets the performance standards in the Permit.

When it incorporated the CSO Policy into the Clean Water Act at section 402(q), Congress gave EPA clear direction with respect to its CSO permitting responsibilities. Section 402(q)(1) provides, in relevant part, that "[e]ach permit ... issued pursuant to this chapter after December 21, 2000 for a discharge from a municipal combined storm and sanitary sewer shall conform to the Combined Sewer Overflow Policy signed by the

[4] Sections III.C.A.3, 5, 6, 7, and 9 are numeric performance standards under 40 CFR 122.44 (d)(1), while Section III.C.A.4. is a best management practices performance standard under 40 CFR 122.44 (k). Section III.C.A.8. is the reporting requirement for the performance standards.

Administrator on April 11, 1994." 33 U.S.C. § 1342 (q)(1). Therefore, permit conditions that do not conform to the CSO Policy, violate Section 402(q) of the Clean Water Act and reflect clearly erroneous conclusions of law.

CHALLENGED PERMIT CONDITIONS AND GROUNDS FOR REVIEW

A. The Water Quality Standards Compliance Requirement in Section III.E.1. Does Not Conform to the CSO Policy, and, Therefore, Violates Section 402(q) of the Clean Water Act and is a Clearly Erroneous Conclusion of Law.

Section III.E.1. of the Permit requires that WASA's CSO discharges

> *shall be of sufficient quality that surface waters shall be free from substances in amounts or combinations that do any of the following: settle to form objectionable deposits; float as debris, scum, oil, or other matter to form nuisances; produce objectionable odor, color, taste or turbidity; cause injury to, are toxic to, or produce adverse physiological or behavioral changes in humans, plants or animals; produce undesirable or nuisance aquatic life or result in the dominance of nuisance species; or impair the biological community that naturally occurs in the waters or depends on the waters for its survival and propagation.*

Section III.E.1. is a recital of the narrative water quality standard in Section 1104.1 of the District's water quality standards, and therefore, incorporates this standard as a requirement of the permit.

As discussed above, CSO Policy § IV.B.2.c. specifies the water quality-based requirements that should be included in Phase II permits. Section III.E.1. is, without question, a water quality-based requirement. Therefore, in order to conform to the CSO Policy, Section III.E.1. must be authorized by and consistent with CSO Policy § IV.B.2.c..

The only kind of water quality-based effluent limits specifically mentioned in CSO Policy § IV.B.2.c. are "numeric performance standards for the selected CSO

controls." Section IV.B.2.c. does state that the performance standards are the "minimum" water quality-based effluent limits that must be included in Phase II permits. Therefore, EPA can include water quality-based effluent limits in addition to the numeric performance standards specifically mentioned in IV.B.2.c. as long as they conform to the CSO Policy.[5] However, where not expressly authorized by the Policy, such additional limits can conform to the Policy only where they are shown to be necessary to achieve the goals and purposes of the Policy; namely, to meet the water quality-based requirements of the Clean Water Act. CSO Policy at I.A.

In this case, as discussed above, EPA found that the selected controls in WASA's LTCP will meet the District's water quality standards and designated uses and has included in the Permit performance standards for the selected controls that, when achieved, will provide for compliance with the standards and designated uses. Therefore, it was not necessary for EPA to include Section III.E.1. in the Permit in order to meet the water quality-based requirements of the Clean Water Act because the Permit includes the performance standards specifically called for in CSO Policy § IV.B.2.c.. Section III.E.1. serves no purpose other than to unfairly expose WASA to permit non-compliance, and, therefore, does not conform to the Policy and violates CWA § 402(q).

Section III.E. exposes WASA to enforcement and potential liability for violations of the District's narrative standard after implementation of the selected CSO controls even if WASA meets the performance standards in the Permit and even though EPA has determined that the these same performance standards provide for compliance with this

[5] For example, EPA included an additional water quality-based effluent limit in the Permit in the form of the best management practices performance standard in Section III.C. A.4. Such a limit is authorized by the Policy because it imposes controls not covered by the numeric performance standards, and, therefore, supplements the numeric performance standards.

very same water quality standard. Thus, by including Section III.E.1.in the Permit, EPA is, in effect, taking the position that "although it ('EPA') has concluded that the performance standards derived from the selected controls in WASA's LTCP will provide for compliance with the District's narrative standard, if it ('EPA') is wrong, WASA will be held liable for any resulting non-compliance with the Permit." Surely, Congress did not intend such a result when it incorporated the Policy into the Clean Water Act.

In its comments on the draft permit modification, WASA voiced the same objections to the same Section III.E.1, which at that time, included a different standards compliance requirement that incorporated both the narrative and numeric standards into the Permit. *See* WASA Comments, Attachment 3 at 9 (Exhibit B). In the final permit modification, EPA changed the requirement in Section III.E.1. to include only the narrative standard. In its response to WASA's comments, EPA states that it disagrees with WASA's assertion that a general standards incorporation fails to conform to the CSO Policy, and cites the reference to 40 CFR 122.44(d)(1) in Section IV.B.2.c. as the basis for the requirement. Section 122.44(d)(1) provides that EPA must include any requirement in a permit necessary to achieve water quality standards including State narrative criteria for water quality. EPA asserts that 40 CFR 122.44(d)(1) gives it the authority to include the narrative standards requirement in Section III.E.1 because it has determined that WASA's CSO discharges have the reasonable potential to cause or contribute to non-attainment of the narrative standard at the time of permit issuance. Response to Comments at 20 (Exhibit A).

There are several flaws in EPA's position. First, as specifically directed by Section IV.B.2.c. of the CSO Policy, Sections III.C.A.3.-9 of the Permit already include

water-based effluent limits under 40 CFR 122.44(d)(1) in the form of performance standards which EPA has determined will both attain both the narrative and numeric standards. Accordingly, there is no basis or need for the standards compliance requirement in Section III.E.1. other than to unfairly expose WASA to potential liability not only for actions beyond its control, but also for no less than two permit violations for the same act should EPA fail to comply with the performance standards in the permit. Moreover, even if 40 CFR 122.44(d)(1) did give it the authority to include a narrative requirement such as that in Section III.E.1., as EPA asserts, this authority would exist only where EPA has shown that such a requirement is necessary to comply with water quality standards. EPA has offered absolutely no explanation for the need to include Section III.E.1.in the Permit other than its baseless assertion that it is required by 40 CFR 122.44 (d)(1).

Second, contrary to EPA's assertion, Section IV.B.2.c.'s reference to 40 CFR 122.44(d)(1) does not authorize or direct it to simply engage in a wholesale incorporation of the District's narrative standard. It is clear from the overall structure of the Policy that EPA, and later, Congress, intended, among other things, that permitting authorities use the LTCP process to first require the development of a planned control program that is projected to meet water quality standards and then fashion water quality-based performance standards derived from the planned control program that gave CSO communities clearly defined targets and a reasonable opportunity to meet their standards compliance obligations before investing hundreds of millions of dollars on LTCP implementation.[6] Further, there is nothing in the Policy to suggest that EPA and Congress

[6] The Policy draws a clear distinction between the water quality-based requirements to be included in Phase I permits and the water quality-based requirements to be included in Phase II permits. CSO Policy

intended to needlessly punish CSO communities by holding them liable for failing to meet a general standards obligation even if they comply with the CSO performance standards in their permits.

Third, EPA's position, if sustained, would effectively write Section IV.B.2.c. out of the CSO Policy because EPA already had the authority to include water quality-based effluent limits necessary to meet narrative criteria at the time the CSO Policy was adopted. It must be remembered that the CSO Policy did not constitute independent legal authority at the time it was adopted. Consequently, the reference to 40 CFR 122.44(d)(1) in the first sentence of Section IV.B.2.c. simply cites EPA's legal authority to include water quality-based effluent limits in permits. The remainder of Section IV.B.2.c. sets forth how those limits are to be expressed; namely, as performance standards derived from the selected controls, not as a wholesale incorporation of the narrative standard.[7]

Fourth, 40 CFR 122.44 does not authorize simply incorporating the narrative standard into permits as EPA did in Section III.E.1. Section 122.44(d)(1)(vi) lists three options available to EPA for establishing effluent limits where the State has not established water quality criteria for the specific chemical pollutant that is found to be causing or contributing to an excursion above a narrative criterion. Incorporation of the

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§IV.B.1.c. provides that Phase I permits should contain a "narrative limitation" providing for compliance with applicable water quality standards. The Policy's Phase II permit provisions at IV.B.2.c. contain no such provision, reflecting the fact that such a narrative limitation is not needed following LTCP development and selection of the control program.

[7] As discussed above, the reference in Section IV.B.2.c. to requiring "at a minimum" compliance with the performance standards does appear to authorize water quality-based effluent limits in addition to the performance standards. At the very least, however, any additional limitations would have to be consistent with the performance standards. In this case, there is a basic conflict between Permit Sections III.C.A.3.-9. (performance standards) and III.E.1. (narrative standards) because, as explained above, WASA could comply with the performance standards, but still violate the narrative standard following implementation of the selected controls if post-construction monitoring does not confirm the modeled compliance in the LTCP.

narrative criterion into the permit as EPA did in this case is not among the options listed in 40 CFR 122.44(d)(1)(vi).

Fifth, CSO Policy § IV.B.2.c. refers to "effluent limits" under 40 CFR 122.44 (d)(1), but Section III.E.1.is not an effluent limit or effluent limitation for purposes of 40 CFR 122 . "Effluent Limitation" is defined at 40 CFR 122.2 to mean "any restriction imposed ... on quantities, discharge rates, and concentrations" of pollutants discharged form point sources. Although Section III.E.1. is a requirement governing the "quality" of CSO discharges, it is not an effluent limit or limitation because it imposes no restriction on the "quantities, discharge rates, and concentrations" of the pollutants discharged. Rather, it expresses the instream water quality conditions that must be maintained or avoided by the CSO discharges without specifying a limitation of any kind on the discharge. In effect, Section III.E.1. makes WASA responsible for maintaining the prescribed instream water quality conditions, leaving it to WASA to figure out the effluent "quantities, discharge rates, and concentrations" it must maintain in order not to violate the condition.

Finally, the requirement imposed on WASA by Section III.E.1 .is so vague and undefined that it fails to give WASA fair notice of its legal obligations and, therefore, violates fundamental principles of due process, and, therefore, is unconstitutional.

> *[A] regulation[] which allow[s] monetary penalties against those who violate [it], ... must give ... fair warning of the conduct it prohibits or requires, and it must provide a reasonably clear standard of culpability to circumscribe the discretion of the enforcing authority and its agents.*

See First American Bank v. Dole, 763 F.2d 644, 651 n.6 (4th Cir. 1985) (quoting *Diamond Roofing Co. v. OSHRC,* 528 F.2d 645, 649 (5th Cir. 1976)). *See also United*

States v. Hoechst Celanese Corp., 128 F.3d 216, 224 (4th Cir. 1997), *cert. denied*, 524 U.S. 952 (1998).

Section III.E.1. fails to meet this standard by any measure.

B. The TMDL-derived Effluent Limits in Section III.E.2. Do Not Conform to the CSO Policy, and, Therefore, Violate Section 402(q) of the Clean Water Act and is a Clearly Erroneous Conclusion of Law.

Section III.E.2. requires the discharges from WASA's CSS to comply with the specified CSO waste load allocations ("WLAs") derived from TMDLs that have been developed for the Anacostia River, Piney Branch, and Lower Rock Creek. WASA objected to this condition in its comments on the draft permit modification, asserting that it does not conform to the CSO Policy. WASA Comments at 9 and 10 (Exhibit B). The Fact Sheet accompanying the permit modification reveals that EPA included the WLAs as effluent limits based on its erroneous conclusion that the reference to CSO Policy § II.C.4.b. in Policy § IV.B.2.c.iv. "provides for the use of ...[TMDLs] ... and wasteload allocations in establishing performance standards" under the demonstration approach. Fact Sheet at 16 (Exhibit A). These CSO Policy sections make no such provision. Section IV.B.2.iv. provides that where the demonstration approach is employed, Phase II permits should contain performance standards and requirements that are "consistent" with Section II.C.4.b. of the Policy. Section II.C.4.b., in turn, sets out the criteria that CSO communities using the demonstration approach must satisfy in order to make a successful demonstration.

Reference to the specific wording in Section II.C.4.b.ii. (quoted above) reveals that it has two parts. The first part requires permittees to demonstrate that the "CSO discharges remaining after implementation of the planned control program will not

preclude the attainment of WQS or the receiving waters' designated uses or contribute to their impairment." The second part provides that "[w]here WQS and designated uses are not [being] met in part because of natural background conditions or pollution sources other than CSOs, a total maximum daily load, including a wasteload allocation and a load allocation or other means should be used to apportion pollutant loads." It is clear from the plain language of Section II.C.4.b.ii. that the criterion that the permittee must satisfy is in the first part of the section, and that the second part simply describes how the demonstration can be made where natural background or other pollution sources are contributing to the impairment. In this case, the record shows that WASA was able to make the water quality standards demonstration required by Section II.C.4.b.ii., in part, through the use of the CSO WLAs in the TMDLs. WASA Comments, Ex. A to Attachment 3 (Exhibit B). That demonstration, in turn, was the basis for the performance standards now in the Permit, which means that EPA has concluded that WASA will comply with the WLAs if it complies with the performance standards.

Based on the above, it is clear that the TMDL-derived effluent limits in Section III.E.2. also suffer from many of the same flaws as Section III.E.1., and therefore, fail to conform to CWA § 402(q) and are unlawful and clearly erroneous. First, since the performance standards required by CSO Policy § IV.B.2.c. already provide for compliance with the water quality standards, the limits in Section III.E.2. of the Permit are not needed, and therefore, are not authorized by either CSO Policy § IV.B.2.c. or 40 CFR 122.44(d)(1). Second, the standards compliance determination is based on modeled projections and so it is possible that WASA could comply with the performance standards, but fail to comply with the effluent limits in Section III.E.2.based on the

results of post-construction monitoring. The Policy clearly contemplates that should this occur, the appropriate remedy is a requirement to design and install whatever additional controls are needed to comply with water quality standards, not an enforcement action for non-compliance with the permit. CSO Policy § IV.B.2.g.

C. The TMDL-derived Effluent Limit Monitoring Requirements in Section III.E.3. are Clearly Erroneous and Arbitrary and Capricious Because They Provide for Measuring Compliance with the Effluent Limits Under All Rainfall Conditions.

The final permit modification contains the same erroneous method for measuring compliance with the TMDL-derived effluent limits that WASA objected to in the draft permit modification. WASA Comments, Attachment 3 at 11 & 12 (Exhibit B). As discussed above, the mathematical models that were used to develop both the TMDLs and WASA's LTCP are based on the climatic conditions for the average of 1988, 1989, and 1990, which represent wet, dry, and average rainfall years. The documentation supporting the TMDLs identify the average of these years as the critical environmental condition for establishing a WLA for the CSOs. The WLAs allocated to the CSO discharges that will remain following implementation of the selected controls in WASA's LTCP are the average annual values of the three-year periods. It is these WLAs that EPA uses as effluent limits in Section III.E.2. of the Permit.

Following LTCP implementation, actual loads discharged from the remaining CSOs will vary from year-to-year depending on rainfall volume, duration and frequency, with the expectation that the actual loads discharged will exceed the TMDL-derived effluent limits in those years when rainfall produces loads that exceed the average annual loads for the 1988, 1989, and 1990 period that is the basis for both the TMDLs and WASA's LTCP.

The monitoring requirements for the TMDL-derived effluent limits in Section III.E.3. of the Permit appear to incorrectly assume that compliance with the effluent limits can calculated directly from the monitoring data. As discussed above, compliance with the effluent limits has to be measured against the average annual loads for the three-year period that is the basis for the effluent limits, not the actual loads in the year in which the monitoring is performed. Therefore, the only way to accurately measure compliance with the effluent limits derived from the TMDLs is to use the same sampling protocols and data analysis that were used to develop the TMDLs themselves. This would involve periodic monitoring of the CSO discharges and the water quality conditions in the receiving waters. This information would then be used to make a modeling evaluation to determine whether the selected controls in the LTCP are providing the degree of control required by the TMDLs, again, based on the average annual loads for the three-year period that is the basis for both the TMDLs and WASA's LTCP.

Section III.E.3. fails to set forth the correct procedure for determining compliance with the TMDL-derived effluent limits in Section III.E.2., and, therefore, is clearly erroneous and arbitrary and capricious. In fact, as noted by both WASA and the Sierra Club and Friends of the Earth in their comments on the draft permit modification, Section III.E.2. fails to set forth any procedure for determining compliance with the limits. Response to Comments at 9 (Exhibit A). Section III.E.3. contains monitoring and reporting requirements and states that the results are to be used to measure compliance with the limits, but does not contain any explanation of how the results are to be used to determine compliance. Based on the foregoing, WASA can only assume that EPA intends

that compliance with the TMDL-derived effluent limits be calculated directly from the monitored data.

EPA's response to comments on this point fails to offer any rational explanation of how compliance with the TMDL-derived effluent limits is to be determined. At one point, EPA does appear to acknowledge that the limits are based on average conditions (Response to Comments at 9 (Exhibit A)), but then goes on to state that WASA could be in violation of the limits in the event of an "anomalous rainfall event" (Response to Comments at 10), which suggests that EPA has no intention of modeling the monitoring data against average rainfall conditions to determine compliance with the limits. Elsewhere in its response to comments, EPA appears to say that it does not intend to use the data generated by the monitoring requirements in Section III.E.3., but instead will wait until construction is complete and use the data generated during the post-construction monitoring for this period. Response to Comments at 11.

Based on the above, at the very least, Section III.E.3. should be set aside and remanded to EPA with direction to offer a rational explanation of the purpose of these monitoring requirements, whether they will be used to calculate compliance with the limits in Section III.E.2., and if so, how compliance will be determined.

D. The Permit Fails to Conform to the CSO Policy, and, Therefore, Violates Section 402(q) of the Clean Water Act and is a Clearly Erroneous Conclusion of law Because it Does Not Include a Compliance Schedule for Implementation of the Selected Controls in WASA's LTCP Based on the Erroneous Conclusion That WASA is not Legally Entitled to a Schedule in the Permit.

Section IV.B.2.c. of the CSO Policy expressly provides that Phase II permits should include water quality-based effluent limits requiring compliance with, "no later than the date allowed under the State's WQS," the numeric performance standards for

the selected CSO controls.[8] The District's water quality standards, in turn, contain the following schedule authorization:

> *When the Director requires a new water quality standard based effluent limitation in a discharge permit, the permittee shall have no more than three(3) years to achieve compliance with the limitation, unless the permittee can demonstrate that a longer compliance period is warranted. A compliance schedule shall be included in the permit.*

D.C. Mun. Regs. tit. 21 § 1105.9.[9]

The draft permit modification failed to include a CSO compliance schedule in the permit and required immediate compliance with the water quality-based CSO requirements based on the erroneous conclusion that the CSO Policy "requires implementation of the LTCP immediately upon issuance of the permit." Draft Permit Fact Sheet at 12-13 (Exhibit C). In response to EPA's stated basis for failing to include an implementation schedule in the draft permit, WASA asserted its right to a schedule in

[8] DOH modified the wording of this section between the time WASA submitted its comments and the present.

[9] Clarifying language included in EPA's FY 2005 budget strongly suggests that Congress intends that EPA not require compliance with water quality standards immediately upon issuance of a Phase II permit. The clarifying language states as follows:

> *The Committee clarifies that 'shall conform' in Clean Water Act (CWA) § 402(q) means that National Pollutant Discharge Elimination System (NPDES) permitting authorities should evaluate the facts and circumstances of each CSO community's program against the CSO Control Policy's themes of flexibility, site specificity, cost effectiveness, and water quality standards achievement after long-term control plan implementation (LTCP). NPDES permits should be used to impose LTCP obligations whenever possible. In authorized states, state administrative orders or state judicial orders should be the primary alternative implementation mechanism to NPDES permits for imposing LTCP obligations. This clarification does not preclude state and/or federal enforcement actions where appropriate.*

H.R. Conf. Rep. No. 108-674 (to accompany H.R. 5041), at 100 (emphasis added). Copies of relevant pages from the reports are attached to and incorporated herein as Exhibit E.

its comments on the draft permit based on the above-cited authorities, arguing that "[t]he obligation to implement the LTCP is unquestionably 'a new water quality standard based effluent limitation' within the meaning of the [District's water quality standards]." WASA Comments, Attachment 3 at 13 (Exhibit B).

In its response to comments accompanying the final permit modification, EPA elected not to respond directly to the basis for WASA's position by incorrectly stating that WASA was asserting "that the LTCP is itself a water quality-based effluent limitation." Response to Comments at 23 (Exhibit A). WASA made no such assertion. Rather, WASA was responding to EPA's stated basis[10] for requiring immediate compliance with the water quality-based CSO requirements in the draft permit modification. From the Fact Sheet accompanying the final permit modification, it is clear that the Permit would not have required immediate compliance with any of its CSO-related water quality-based effluent limitations but for EPA's position that the Policy requires immediate LTCP implementation. [11]

EPA also relies on the fact that shortly before the permit modification was finalized, WASA and the United States signed a consent decree establishing a LTCP

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[10] The draft Permit Fact Sheet stated as follows:

> *The 1994 CSO Policy provides, since implementation schedules for compliance deadlines which have passed may not generally be included in permits, that the Phase II permit reflecting the requirements of the LTCP will be accompanied by a separate enforceable mechanism - in the case of a major facility, a judicial order...*

Draft Permit Fact Sheet dated March 18, 2004 at 13 (Exhibit C).

[11] "Consistent with the 1994 CSO Policy, the modified permit requires implementation of the LTCP immediately upon issuance of this permit." Fact Sheet at 14 (Exhibit A).

implementation schedule, suggesting that this question is now moot. WASA's right to a schedule remains a live issue for two reasons. First, as of this date, the consent decree has only been lodged with court, and neither EPA nor WASA can state without qualification that it will be entered, or entered as lodged. Second, EPA misunderstands the purpose that a permit schedule would serve if the consent decree is entered as lodged. True, the consent decree establishes a schedule for implementation of the selected controls in WASA's LTCP, but it does not address WASA's continued non-compliance with the Phase II water quality-based effluent limits in its permit or insulate WASA from enforcement action by the United States based on non-compliance with these limits.[12] Like most permittees, WASA takes pride in and places great value on maintaining full compliance with its legal obligations. EPA's failure to include a schedule in the permit deprives WASA of the compliance status to which it is legally entitled. WASA did not waive its right to a permit schedule when it signed the consent decree, and in the absence of a waiver, it would be grossly unfair and contrary to the public interest to effectively declare that parties who sign consent decrees give up their right to resolve their compliance status through the permit process. That would be the result if WASA's right to a permit schedule were declared moot now that it has signed a consent decree.

In conclusion, EPA's response to comments failed to address the question presented by WASA, and, at the very least, the Phase II water quality-based effluent

[12] At Section XVIII of the consent decree, the United States expressly reserves its right to commence an enforcement action against WASA in the future based on violations of WASA's permit subsequent to the date the consent decree was lodged with the court. A copy of the consent decree is attached to and incorporated in these comments as Exhibit D.

limits should be set aside and remanded with direction to EPA to either include an appropriate schedule in the Permit or explain why WASA is not entitled to a schedule pursuant to CSO Policy § IV.B.2.c.and 21 DCMR 1105.9 of the District's water quality standards.

E. The Effluent Limits for Chlordane in Section III.E.2. Do Not Conform to the Waste Load Allocations for Chlordane in the Final Anacostia TMDL for Organics and Metals and are Clearly Erroneous.

As explained above, Section III.E.2. of the Permit contains TMDL-derived effluent limits for WASA's CSS. The limits in the draft permit correctly reflected the waste load allocations for chlordane for the upper and lower Anacostia River in the Anacostia TMDLs for organics and metals. However, when EPA finalized the permit modification, it reduced the limits for chlordane without explanation and contrary to the waste load allocations in the final TMDL.[13] By reducing, without explanation, theTMDL-derived limits for chlordane to levels that are more stringent than the levels in the TMDLs, EPA acted arbitrarily and capriciously and contrary to the law. Therefore the effluent limits for chlordane are clearly erroneous.

[13] The draft permit modification contained the following effluent limits for chlordane:

Upper Anacostia - 0.0058 lbs per average year.
Lower Anacostia - 0.0048 lbs per average year.

The final permit modification contains the following effluent limits for chlordane:

Upper Anacostia - 0.001 lbs per average year.
Lower Anacostia - 0.0008 lbs per average year.

Dated: January 18, 2005

Respectfully submitted,

DISTRICT OF COLUMBIA
WATER AND SEWER AUTHORITY

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Petition for Review before the Environmental Appeals Board was mailed, first-class, postage pre-paid, this 18th day of January, 2005 to the following:

Donald S. Welsh
Regional Administrator
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

(DE)

David E. Evans

Permit No. DC0021199

Effective Date:
Expiration Date:

AUTHORIZATION TO DISCHARGE UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Clean Water Act, as amended, 33 U.S.C. # 1251 et seq. (the "Act"),

District of Columbia Water and Sewer Authority

is authorized to discharge from the wastewater system and the facility located at

5000 Overlook Avenue, SW
Washington, D.C. 20372

to receiving waters named Potomac and Anacostia Rivers, Rock Creek, and tributary waters in accordance with effluent limitations, monitoring requirements and other conditions set forth in parts I, II and III, herein.

Signed this day of

Jon M. Capacasa, Director
Water Protection Division
U.S. Environmental Protection Agency
Region III

PART I. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

SECTION A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS OUTFALL 001

Outfall 001 is the treatment plant excess flow outfall and is authorized as a CSO-related Bypass. Treatment includes primary, chlorination, and dechlorination. During the period beginning from effective date and lasting through the expiration date of this permit, permittee is authorized to discharge from Outfall 001 to the Potomac River. Such discharges shall be limited and monitored by the permittee as specified below:

Effluent Characteristic	Discharge Limitations				Monitoring Requirements	
	lb/day		Other units (specify)		Measurement	Sample (6)
	Ave Monthly	Ave Weekly	Ave Monthly	Ave Weekly	Frequency	Type
Flow/discharge(mgd)	N/A (1)	N/A (2)	N/L (3)	N/L	Continuous	Measured
Carbonaceous Biochemical Oxygen Demand (5 day)	N/A	N/A	N/L	N/L	Per discharge	Composite (4)
Total Suspended Solids	N/A	N/A	N/L	N/L	Per discharge	Composite (4)
pH (s.u.)	N/A	N/A	N/L	N/L	Every 8 hours not less than one sample per discharge	Grab
Fecal Coliform (cfu/100 ml) - 30 day geometric mean for 5 samples minimum Enterococci (cfu/100 ml)- 30 day geometric	N/A	N/A	N/L	N/L	Every 8 hours, one sample within 2 hours of beginning of the discharge	Grab

mean for 5 samples minimum						

SECTION A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS OUTFALL 001 (Continued)

Effluent Characteristic	Discharge Limitations				Monitoring Requirements	
	lb/day		Other units (specify)		Measurement	Sample (6)
	Ave Monthly	Ave Weekly	Ave Monthly	Ave Weekly	Frequency	Type
Total Residual Chlorine (mg/l) (5)	Non-detectable		Non-detectable		Every 2 hours Not less than one sample/ discharge	Grab
Total Nitrogen	N/A	N/A	N/L	N/L	Per discharge	Composite (4)
Total Phosphorus	N/A	N/A	N/L	N/L	Per discharge	Composite (4)

(1) Plant influent flow of 336 mgd or less, above the rates to receive complete treatment under Part I.B. Outfall 002, shall receive at least primary treatment, disinfection and dechlorination and may be discharged after such treatment from Outfall 001 subject to the listed monitoring requirements.

(2) N/A Not applicable.

(3) N/L No Limit, monitoring only.

(4) Collect one grab sample every two (2) hours and flow composite samples up to a minimum of 24 hours. Analyze the single composited sample. The monthly average shall be determined by dividing the daily average event or events concentration by the total number of days the events occurred each month.

(5) See Part IV, Section C for additional Chlorination/Dechlorination monitoring requirements.

(6) All pollutant sampling shall commence no later than two (2) hours after a discharge has begun to occur at Outfall 001. Samples are not required for discharges lasting less than two (2) hours. The two hour delay does not apply to flow monitoring.

(7) Authorization of CSO-related bypasses under this provision may be modified or terminated when there is a substantial increase in the volume or character of pollutants being introduced into the POTW.

(8) Permittee shall provide notice to the permitting authority of the discharges for Outfall 001 within 24 hours of the commencement of the discharge.

SECTION B. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS OUTFALL 002

Loading limitations are based upon the capacity of 370 mgd for complete treatment during the period beginning on the effective date of the permit and lasting through the expiration date. During this period, the permittee is authorized to discharge from Outfall 002 to the Potomac River, subject to the following discharge limitations and monitoring requirements:

Effluent Characteristic	Discharge Limitations				Monitoring Requirements	
	(lb/day)		Other units (specify)		Measurement Frequency	Sample Type
	Ave. Monthly	Ave. Weekly	Ave. Monthly	Ave. Weekly		
Flow/day (mgd) (1, 1a, 1b and 1c)	N/A (2)	N/A	N/L (3)	N/L	Continuous	Measured
Carbonaceous Biochemical Oxygen Demand (5 day) **	15,429	23,143	5.0 mg/l	7.5 mg/l	Daily	24-hour Composite
TSS **	21,600	32,400	7.0 mg/l	10.5 mg/l	Daily	24-hr.Comp.
Total Phosphorus	555 (4)	1,080	0.18 mg/l (4)	0.35 mg/l	Daily	24-hour Composite
Ammonia Nitrogen: Summer (5/1-10/31)	12,960	18,823	4.2 mg/l	6.1 mg/l	Daily	24-hour Composite
Winter 1 (11/1-2/14)	34,253	45,670	11.1 mg/l	14.8 mg/l	Daily	24-hr.Comp.
Winter 2 (2/15-4/30)	39,500	52,460	12.8 mg/l	17.0 mg/l	Daily	24-hr.Comp.
Dissolved Oxygen	5.0 mg/l minimum daily ave Not less than 4.0 mg/l at any time				Every 2 hours	Grab (5)
Total Nitrogen (mg/L) (10)	N/L	N/L	N/L	N/L	daily	24-hour Composite
Total Residual Chlorine (mg/l) (6)	Non-detectable		Non-detectable		Every 2 hours	Grab
pH (s.u.) (7)	Within limits of 6.0 to 8.5 standard units				Continuous in-situ monitoring and recording	

SECTION B. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS OUTFALL 002 (Continued)

Effluent Characteristic	Discharge Limitations				Monitoring Requirements	
	(lb/day)		Other units (specify		Measurement Frequency	Sample Type
	Average Monthly	Average Weekly	Average Monthly	Average Weekly		
Total Ortho-phosphate (mg/l)	N/A	N/A	N/L	N/L	Daily	24-hr comp.
Alkalinity,total (CaCO3) (mg/l)	N/A	N/A	N/L	N/L	Daily	24-hr comp.
Hardness, total (CaCO3) (mg/l)	N/A	N/A	N/L	N/L	Daily	24-hr comp.
Nitrite (NO2) (mg/l)	N/A	N/A	N/L	N/L	Daily	24-hr comp.
Nitrate (NO3) Total Kjeldahl Nitrogen (mg/l)	N/A	N/A	N/L	N/L	Daily	24-hr comp.
Cadmium (9) (dissolved)	N/A	N/A	N/L	N/L	Bimonthly	4 grabs/24 hrs
Copper (9) (dissolved)	N/A	N/A	N/L	N/L	Bimonthly	4 grabs/24 hrs
Iron (9) (dissolved)	N/A	N/A	N/L	N/L	Bimonthly	4 grabs/24 hrs
Mercury (8) (total recoverable)	N/A	N/A	N/L	N/L	Bimonthly	4 grabs/24 hrs
Lead (9) (dissolved)	N/A	N/A	N/L	N/L	Bimonthly	4 grabs/24 hrs
Nickel (9) (dissolved)	N/A	N/A	N/L	N/L	Bimonthly	4 grabs/24 hrs
Zinc (9) (dissolved)	N/A	N/A	N/L	N/L	Bimonthly	4 grabs/24 hrs
Fecal coliform	N/A	N/A	200 cfu/100 ml geometric mean	400 cfu/100ml geometric mean	Every 8 hrs.	Grab
Enterococci cfu/100ml geometric mean	N/A	N/A	N/L	N/L	1/day	Grab

SECTION B. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS OUTFALL 002 (Continued)

(1) Treatment for flows received at the plant shall be as follows:

a. Initial Treatment means providing plant influent flows with screening, grit removal and primary treatment.

b. Excess Flow Treatment means treatment of plant influent flows in the east primary treatment facilities followed by chlorination and dechlorination with discharge from Outfall 001. Plant influent flows shall receive Initial Treatment prior to receiving excess flow treatment.

c. Complete Treatment means passage of plant influent and recycle flows through any combination of conveyance and treatment facilities downstream of primary sedimentation that ultimately discharges effluent from Outfall 002, in accordance with the limitations set forth for Outfall 002 found at Part I.B. of this permit.

(1a) Treatment conditions for flows received at the plant shall be as follows:

a. Dry Weather Flow (DWF) conditions exist when plant influent flows are equal to or less than a rate of 511 mgd.

b. Combined Sewer System Flow (CSSF) conditions exist and shall be deemed to start when plant influent flow is greater than a rate of 511 mgd. The CSSF conditions shall be deemed to stop 4 hours after plant influent flow drops to a rate less than 511 mgd or a period of a 4 hours has elapsed since the start of CSSF conditions, whichever occurs last.

(1b) Flows discharged from Outfall 002 shall receive treatment as follows:

a. When DWF conditions exist, plant influent flow shall receive Initial Treatment and Complete Treatment.

b. When CSSF conditions exist, plant influent flow shall receive treatment as follows:

i. Plant influent flow less than or equal to 740 mgd occurring for a period of less than or equal to 4 hours shall receive Initial Treatment and Complete Treatment.

ii. Plant influent flow up to 511 mgd occurring for a period greater than 4 hours shall receive Initial Treatment and Complete Treatment.

c. The provisions of subparagraph I.B(1c).b shall expire June 28, 2007, unless, within 90 days prior to that date, the permittee submits a written demonstration to EPA's satisfaction that completion of construction under Phases 1 through 7 of the Blue Plains Liquid Process Improvement Program has been delayed due to circumstances beyond permittee's control. If the permittee makes the forgoing demonstration, then the provision of subparagraph I.B.(1c).b shall remain in effect until such later date determined by EPA, which shall in no event be later than justified by the circumstances beyond the permittee's control.

(1c) When CSSF conditions exist, plant influent flow greater than the 740 mgd or 511 mgd rates receiving Initial Treatment and Complete Treatment, up to a maximum rate of 336 mgd, shall receive Excess Flow Treatment and be discharged from Outfall 001.

a. When CSSF conditions exist, and until completion of the Excess Flow Treatment controls under the Blue Plains Liquid Process Improvement Program, monitoring, reporting and compliance shall be as follows:

i. When plant influent flow exceeds a rate of 511 mgd, the permittee shall commence hourly readings and recording of the plant influent flow rate and the flow rates being conveyed through Excess Flow Treatment and Complete Treatment.

ii. The average flow rate conveyed to Complete Treatment shall be the maximum that can practicably be achieved, but in no event less than 90% of the flow rate required to be conveyed to Complete Treatment which is:

- Up to 740 mgd during the first 4 hours of CSSF conditions when the plant influent flow exceeds a rate of 511 mgd.

- Up to 511 mgd at all times during CSSF conditions when plant influent flow exceeds a rate of 511 mgd.

iii. The hourly flow rate conveyed through Excess Flow Treatment shall not exceed 336 mgd.

b. During construction under Phases 1 through 7 of the Blue Plains Liquid Process Improvement Program, to the extent such construction occurs during the life of this permit, plant influent flows shall receive treatment as follows:

i. Plant influent flow less than or equal to 511 mgd occurring for a period of less than or equal to 4 hours shall receive Initial Treatment and Complete Treatment and be discharged through Outfall 002.

ii. HPlant influent flow less than or equal to 450 mgd occurring for a period greater than 4 hours shall also receive Initial Treatment and Complete Treatment and be discharged through Outfall 002.

iii. Plant influent flow greater than the 511 mgd or 450 mgd rates, up to a maximum rate of 336 mgd, shall receive Excess Flow Treatment.

iv. The construction phase treatment conditions shall be deemed to start when plant influent flow exceeds a rate of 511 mgd.

v. The construction phase treatment conditions shall be deemed to stop 4 hours after plant influent flow drops to a rate of less than 450 mgd or a period of 4 hours has elapsed since the start of the construction phase treatment condition, whichever occurs last.

vi. When construction phase treatment conditions are in effect, treatment shall comprise a combination of Initial Treatment, Complete Treatment and Excess Flow Treatment.

vii. When plant influent flow exceeds a rate of 511 mgd, the permittee shall commence hourly readings and recording of the plant influent rate and flow rates being conveyed through Excess Flow Treatment and Complete Treatment.

viii. The average of all hourly readings shall be calculated and evaluated as follows:

- The calculated average flow rate conveyed to complete treatment shall be not less than 90% of the rate required to be conveyed to complete treatment which is:
  - Up to 511 mgd during the first 4 hours of construction phase treatment conditions when the plant influent flow exceeds a rate of 511 mgd.
  - Up to 450 mgd at all times during the construction phase treatment condition when plant influent flow exceeds a rate of 450 mgd.
- The hourly flow rate conveyed through the Excess Flow Treatment facilities shall not exceed 336 mgd.

(2) N/A Not Applicable

(3) N/L No Limit, monitoring only

(4) The phosphorus limitation of 0.18 mg/l is based on the Potomac Strategy Management Commission Agreement and the best technical information available at the time of permit issuance. In addition, based upon available data of full plant BNR process operation, the monthly average is expressed as a 12 month rolling average and in any 12 month period no one month may exceed a mass of 1080 lbs/day and 0.35 mg/l. When full plant BNR process is in operation, the 12 month rolling average mass for a month shall be the total mass for the month plus the total mass for the previous eleven (11) months divided by the total number of days in the 12 month period. The 12 month rolling average concentration for a month shall be the total mass for the 12 month period divided by the average daily flow (in mgd) for the 12 month period times 8.34. No single month in any 12 month period used to calculate a 12 month rolling average shall exceed a monthly average limit of 490 kg/day (1080 lb/day) and 0.35 mg/l.

(5) Continuous in situ monitoring and recording of dissolved oxygen shall continue. The monitoring requirements shall be understood to require twelve (12) readings from the continuous recording per day.

(6) When the total residual chlorine (TRC) analysis of the final effluent at Outfall 002 results in a detectable measurement, the permittee shall take steps to achieve a non-detectable TRC concentration. See Special Condition Part IV Section C.

(7) The permittee is required to be in compliance with the pH limitations specified above for 99% of the time for any calendar month. The total excursion time allowed for any calendar month is 7 hours, 26 minutes and no individual excursion shall exceed 60 minutes.

(8) The permittee shall sample the effluent for mercury using the most sensitive test method 245.1 or 245.2 Cold Vapor Technique. The method detection limit, and the method used to perform the mercury analysis shall be submitted with the discharge monitoring reports. See Part IV, Special Conditions, Section D.

(9) The permittee shall monitor the effluent at Outfall 002 for the metals listed above in accordance with the conditions set forth below. Report results in micrograms per liter.

a. The permittee shall test for additional metals, and priority pollutants twice in five (5) years during the term of this permit. One such testing shall be in the third year of the permit and the second shall be in the last year of the permit.

b. All analytical methods will be EPA approved methodologies found in 40 C.F.R. Part 136.

c. The quantification level (QL) shall be the lowest concentration used for the calibration of a measurement system when the calibration is in accordance with the procedures published for the required method. Usually, units for the QL are in micrograms per liter.

d. Permittee shall analyze each grab sample and report the average of the four samples. Alternatively, the permittee may prepare a composite of the grab samples in the laboratory by proportioning to flow and analyze the laboratory composite sample.

(10) As provided in Part IV Section E of this permit, the permittee shall use its best efforts to operate the Biological Nitrogen Removal (BNR) process to meet a total nitrogen effluent goal of not more than 8,467,200 pounds per year.

Total nitrogen concentration shall be the sum of organic nitrogen, ammonia nitrogen and (NO2 +NO3) - N concentrations (e.g., Total Nitrogen = Total Kjeldahl nitrogen + No_2 as N + No_3 as N).

(11) Permittee shall report any substantial changes in the volume or character of pollutants being introduced into the POTW.

** - See Part IV, Special Conditions, Section G for 85% BOD and TSS reduction requirements.

SECTION C. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS OUTFALL 019[1]

Outfall 019 is the discharge from the Northeast Boundary Swirl Concentrator Facility to the Anacostia River. Treatment includes: screening, swirl concentration, chlorination and dechlorination. These effluent limitations and monitoring requirements become effective from issuance date through the expiration date of this permit.

Such discharges shall be limited and monitored by the permittee as specified below:

Effluent Characteristic	Discharge Limitations				Monitoring Requirements	
	Kg/day (lb/day)		Other units (specify)		Measurement Frequency	Sample Type (6)
	Ave Monthly	Ave Weekly	Ave Monthly	Ave Weekly		
Flow/day (mgd)	N/A (2)	N/A	N/L (3)	N/L	Continuous	Measured
Total Suspended Solids (mg/L)	N/A	N/A	N/L	N/L	Per discharge	Composite (4)
Fecal Coliform (cfu/100 ml) - 30 day geometric mean for 5 samples minimum	N/A	N/A	N/L	N/L	Every 8 hours, first sample within 2 hours of beginning of discharge	Grab
Enterococci (cfu/100 ml) - 30 day geometric mean for 5 samples minimum	N/A	N/A	N/L	N/L	Every 8 hours, first sample within 2 hours of beginning of discharge	Grab
Total Residual Chlorine (mg/l) (5)	N/A	N/A	N/L	N/L	Every 2 hours	Grab
Nitrate(NO3) Total Kjeldahl Nitrogen (7)	N/A	N/A	N/L	N/L	per discharge	24-hr. Composite (4)
Total Nitrogen	N/A	N/A	N/L	N/L	per discharge	24-hr. Composite (4)
Total Phosphorus	N/A	N/A	N/L	N/L	per discharge	24-hr. Composite (4)
Carbonaceous Biological Oxygen Demand	N/A	N/A	N/L	N/L	Per Discharge	Composite (4)

SECTION C. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS OUTFALL 019 (Continued)

(1) The Northeast Boundary Swirl Facility operates during wet weather events that produce flows which exceed the capacity of the upstream Eastside Interceptor. The facility provides treatment for up to 400 mgd of combined sewer overflow. The facility provides screening of influent combined sewage, concentration of solids in the swirl tanks, and disinfection and dechlorination of effluent. The concentrated, solids-bearing underflow from the swirl is pumped by the Eastside Pumping Station to the Blue Plains Wastewater Treatment Plant.

(2) N/A Not Applicable

(3) N/L No Limit, monitoring only

(4) Collect one grab sample every two (2) hours beginning within 2 hours of the start of the discharge, and flow composite samples up to a maximum of 24 hours. Permittee shall analyze the composited sample. If the permittee is unable to collect the first sample within 2 hours of the start of the discharge permittee shall explain in writing why it was unable to collect the required sample.

The Monthly average shall be determined by dividing the daily average event or events concentration by the total number of days the event(s) occurred per month.

(5) See Part IV, Sec. C for additional Chlorination/Dechlorination monitoring requirements.

(6) All sampling shall commence no later than two (2) hours after a discharge has begun to occur at Outfall 019. Samples are not required for discharges lasting less than (2) two hours. The two hour delay does not apply to flow monitoring, which is required to be continuous.

(7) The permittee may either monitor for TKN or Ammonia, whichever sampling is currently being performed.

Note: The rate of flow necessary to trigger the Northeast Boundary Swirl is 15 mgd. The purpose of this facility is to achieve maximum diversion of flow at the Structure 24

Dams on the Northeast Boundary Sewer, and to concentrate the pollutants in that flow to a smaller flow which can be handled by the available capacity of the Eastside Pump Station. The NEBSF has a total design flow rate of 400 mgd.

PART II. STANDARD CONDITIONS FOR NPDES PERMITS

SECTION A. GENERAL CONDITIONS

1. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and may result in an enforcement action; permit termination, revocation and reissuance, or modification; and denial of a permit renewal application.

2. Penalties for Violations of Permit Conditions

The Clean Water Act provides that any person who violates any permit condition or limitation implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Clean Water Act, or any permit condition or limitation implementing of such section, or any requirement imposed in an approved pretreatment program and any person who violates any Order issued by EPA under Section 301(a) of the Act, shall be subject to a civil penalty not to exceed $32,500 per day for each violation, and to an action for appropriate relief including a permanent or temporary injunction.

Any person who negligently violates Sections 301, 302, 306, 307, 308, 318, or 405 of the Clean Water Act, any permit condition or limitation implementing any such section, shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of such violation, or by imprisonment for not more than 1 year, or by both.

Any person who knowingly violates any permit condition or limitation implementing Sections 301, 302, 305, 307, 308, 318, or 405 of the Clean Water Act, shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of such violation or by imprisonment for not more than 3 years, or by both.

Any person who knowingly violates any permit condition or limitation implementing Sections 301, 302, 305, 307, 308, 318, or 405 of the Clean Water Act, and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000, or by imprisonment of not more than 15 years, or by both.

3. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this permit.

4. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause including, but not limited to, the following:

a. Violation of any terms or conditions of this permit;

b. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts;

c. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge;

d. Information newly acquired by the Agency, and which was unavailable at the time of reissuance, and would have justified the application of different permit conditions at the time of issuance, including but not limited to the results of the studies, planning, or monitoring described and/or required by this permit;

e. Facility modifications, additions, and/or expansions;

f. Any anticipated change in the facility discharge, including any new significant industrial discharge or changes in the quantity or quality of existing industrial discharges that will result in new or increased discharges of pollutants; or

g. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.

The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition. When a permit is modified, only conditions subject to modification are reopened.

5. Toxic Pollutants

Notwithstanding Section A.4 above, if a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under section 307(a) of the Act for a toxic pollutant which is present in the discharge and such standard or prohibition is more stringent than any limitation for such pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition and the permittee so notified.

The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic standards within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

6. Civil and Criminal Liability

Except as provided in permit conditions on "Bypassing" (Section B.2) and "Upsets" (Section B.3), nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance.

7. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Act.

8. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by Section 510 of the Act.

9. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

10. Severability

The provisions of this permit are severable, and if any provisions of this permit, or the application of any provision of this permit to any circumstances, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

11. Transfer of Permit

In the event of any change in ownership or control of facilities from which the authorized discharge emanates, the permit may be transferred to another person if:

a. The current permittee notifies the EPA, in writing of the proposed transfer at least 30 days in advance of the proposed transfer date;

b. The notice includes a written agreement, between the existing and new permittee containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

c. The EPA does not notify the current permittee and the new permittee of intent to modify, revoke and reissue, or terminate the permit and require that a new application be submitted.

12. Construction Authorizations

This permit does not authorize or approve the construction of any onshore or offshore physical structures or facilities or the undertaking of any work in any navigable waters.

13. Reopener Provision

This permit may be modified or revoked and reissued as provided pursuant to 40 CFR § 122.62 and Section 124.5 to:

1) include new or revised conditions developed to comply with any State or Federal law or regulation that addresses CSOs that is adopted or promulgated subsequent to the effective date of this permit. This includes, but is not limited to: Water Quality Standards and Total Maximum Daily Loads (TMDLs);

2) to include new or revised conditions if new information, not available at the time of permit issuance, indicates that CSO controls imposed under the permit have failed to ensure the attainment of State WQS;

3) include new or revised conditions based on new information resulting from implementation of the LTCP.

In addition, this permit may be modified or revoked and reissued for any reason specified in 40 C.F.R. §122.62.

14. Endangered Species

The United States Fish and Wildlife Service (FWS) has indicated that the bald eagle, a Federally listed threatened species, occurs downstream of the Blue Plains outfalls, in the vicinity of the Potomac River in the District of Columbia and Maryland. The National Marine Fisheries Service (NMFS) has indicated that the endangered shortnose sturgeon occurs in the Potomac River Drainage and may occur within the District of Columbia. Wastewater discharges, construction, or any other activity that adversely affects a Federally listed endangered or threatened species are not authorized under the terms of this permit.

The monitoring required by this permit will allow further evaluation of potential effects on these threatened and endangered species once monitoring data has been collected and analyzed. EPA requires that the permittee submit to NMFS an annual compilation of the Discharge Monitoring Reports (DMRs), which may be used by NMFS to further assess effects on endangered or threatened species. If these data indicate it is appropriate, requirements of this NPDES permit may be modified to prevent adverse impacts on habitats or endangered and threatened species.

The set of DMRs for the calendar year are to be submitted by Pebruary 15 of the following year to:

The National Marine Fisheries Service
Protected Resource Division
1 Blackburn Drive
Gloucester, MA 01930
Attention: Ms Kim Damon-Randall

DC Department of Health
Fisheries and Wildlife Division
51 N Street, N.E. 5th floor
Washington, DC 20002
Attention: Ira Palmer

SECTION B. OPERATION AND MAINTENANCE OF POLLUTION CONTROLS

1. Proper Operation and Maintenance

The permittee shall at all times properly operate, inspect and maintain all facilities and systems of treatment and control (and related appurtenances including sewers, intercepting chambers, interceptors, combined sewer overflows, pumping stations and emergency bypasses) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate

funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation and maintenance of back-up or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of the permit.

2. Bypass of Treatment Facilities

a. Definitions

(i) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

(ii) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass.

b. Bypass not exceeding limitations

The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it is also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs c. and d. of this section.

c. Notice

(i) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(ii) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Section D.6 (24-hour notice).

d. Prohibition of bypass.

(i) Bypass is prohibited and the EPA may take enforcement action against a permittee for bypass, unless:

(a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if the permittee could have installed adequate backup equipment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(c) The permittee submitted notices as required under Paragraph 2.c of this section.

(ii) The EPA may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraphs (a), (b) and (c) of this section.

3. Upset Conditions

a. Definition: "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

b. Effect of an upset: An upset constitutes an affirmative defense to an action brought for noncompliance with such technology- based permit effluent limitations if the requirements of Paragraph 3.c of this section are met. Administrative determination by the Agency on upset claims of the permittee, made before commencement of an action for noncompliance, are not final administrative actions and therefore subject to judicial review.

c. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed contemporaneous operating logs, or other relevant evidence that:

(i) An upset occurred and that the permittee can identify the cause(s) of the upset;

(ii) The permitted facility was at the time being properly operated;

(iii) The permittee submitted notice of the upset as required in Section D.6; and

(iv) The permittee complied with any remedial measures required under Section A.3.

d. Burden of proof: In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

SECTION C. MONITORING AND RECORDS

1. Representative Sampling

Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge. All samples shall be taken at the monitoring points as defined at Part II, Section C.11 of this permit. Monitoring points shall not be changed without notification to and the approval of the EPA.

2. Flow Measurements

Appropriate flow measurement devices and methods consistent with accepted scientific practices shall be selected and used to insure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated and maintained to insure that the accuracy of the measurements are consistent with the accepted capability of that type of device.

3. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 C.F.R. Part 136, unless other test procedures have been specified in this permit. Monitoring data required by this permit shall be summarized on an average monthly or 7 consecutive day basis or as indicated for Mercury in Part I.B. Calculations shall be based on the average daily flow.

4. Reporting of Monitoring Results

Monitoring results must be reported on a Discharge Monitoring Report (DMR) form (EPA No. 3320-1). DMRs shall be submitted to EPA on a monthly basis. Monitoring results obtained during the previous month shall be summarized and reported on a DMR form postmarked no later than the 28th day

of the following month. Copies of DMR's signed and certified as required by Section D.10, and all other reports required by Part II, Section D, Reporting Requirements shall be submitted to the EPA and to the District of Columbia Department of Health at the following addresses:

U.S. Environmental Protection Agency, Region III
NPDES Discharge Monitoring Reports (3WP31)
1650 Arch Street
Philadelphia, Pennsylvania 19103

and

DC Department of Health
Environmental Health Administration
Water Quality Division
51 N Street, 5th Floor, NE
Washington DC 20002

In addition, in accordance with Part II.A.14 above, by February 15 of the subsequent year, all DMRs for the previous year shall be sent to the NMFS.

5. Monitoring and Analytical Equipment Maintenance

The permittee shall calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals frequent enough to insure accuracy of measurements and shall insure that both calibration and maintenance activities will be conducted.

6. Analytical Quality Control

An adequate analytical quality control program, including the analyses of sufficient standards, spikes, and duplicate samples to insure the accuracy of all required analytical results, shall be maintained by the permittee or designated commercial laboratory.

7. Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 C.F.R. 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR form. Such frequency shall also be indicated.

8. Retention of Records

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports

required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. Records for sewage sludge monitoring shall be retained in accordance with Part IV, Section B of this permit. These periods may be extended by request of the EPA at any time.

9. Record Contents

Records of monitoring information shall include:

a. The date, exact place, time and methods of sampling or measurements;

b. The individual(s) who performed the sampling or measurements;

c. The date(s) analyses were performed;

d. The individual(s) who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

10. Inspection and Entry

The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

a. Enter upon the permittee's premises where a regulated facility activity is located or conducted, or where records must be kept under the conditions of this permit.

b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit;

d. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

11. Definitions

a. The "daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the day.

b. The "average monthly discharge limitation" means the highest allowable average of "daily discharge" over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

c. The "maximum daily discharge limitation" means the highest allowable "daily discharge."

d. Grab Sample - An individual sample collected in less than 15 minutes.

e. The "monthly average" temperature means the arithmetic mean of temperature measurements made on an hourly basis, or the mean value plot of the record of a continuous automated temperature recording instrument, either during a calendar month, or during the operating month if flows are of shorter duration.

f. The "daily maximum" temperature means the highest arithmetic mean of the temperature observed for any two (2) consecutive hours during a 24-hour day, or during the operating day if flows are of shorter duration.

g. "At outfall XXX" - A sample location before the effluent joins or is diluted by any other waste stream, body of water, or substance or as otherwise specified.

h. Estimate - To be based on a technical evaluation of the sources contributing to the discharge including, but not limited to pump capabilities, water meters and batch discharge volumes.

i. "i-s" (immersion stabilization) - A calibrated device is immersed in the effluent stream until the reading is stabilized.

SECTION D. REPORTING REQUIREMENTS

1. Planned Changes

The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. The permittee may submit to the permitting authority requests for modification of this provision in accordance with future promulgated regulations.

2. Anticipated Noncompliance

The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

3. Transfers

This permit is not transferable to any person except after notice to the Director as specified in Part II, Section A, Paragraph 11. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Clean Water Act.

4. Monitoring Reports

Monitoring results shall be reported at the intervals and in the form specified in Part II, Section C, Paragraph 4 (Reporting of Monitoring Results).

5. Compliance Schedules

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date. Any reports of noncompliance must include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirement.

6. Twenty-Four Hour Reporting

The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the noncompliance. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the noncompliance. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance,

including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; the steps taken or planned to reduce, eliminate, prevent recurrence of the noncompliance, and the steps taken to minimize any adverse impact to navigable waters. The following shall be included as information which must be reported within 24 hours:

a. Any unanticipated bypass which exceeds any effluent limitation in the permit.

b. Any upset which exceeds any effluent limitation in the permit.

The EPA may waive the written report on a case-by-case basis if the oral report has been received within 24 hours and the EPA determines that the noncompliance does not endanger health or the environment.

7. Other Noncompliance

The permittee shall report all instances of noncompliance not reported under Section D, Paragraphs 1, 4, 5, and 6 at the time monitoring reports are submitted. The reports shall contain the information listed in Paragraph 6.

8. Duty to Provide Information

The permittee shall furnish to the EPA, within a reasonable time, any information which the EPA may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the EPA, upon request, copies of records required to be kept by this permit.

9. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. The application shall be submitted at least 180 days before the expiration date of this permit. The Director may grant permission to submit an application less than 180 days in advance but no later than the permit expiration date. In the event that a timely and complete reapplication has been submitted and the Director is unable, through no fault of the permittee, to issue a new permit before the expiration date of this permit, the terms and conditions of this permit are automatically continued and remain fully effective and enforceable.

10. Signatory Requirements

All applications, reports or information submitted to the Director shall be signed and certified as required by 40 C.F.R. 122.22. Knowingly making false statements, representations, or certifications is subject to penalty.

11. Availability of Reports

Unless a confidentiality claim is asserted pursuant to 40 C.F.R. Part 2, all reports submitted in accordance with the terms of this permit shall be available for public inspection at the offices of the Director. If a confidentiality claim is asserted, the report will be disclosed only in accordance with the procedures in 40 C.F.R. Part 2. As required by the Act, permit applications, permits and effluent data shall not be considered confidential.

12. Penalties for Falsification of Reports

The Clean Water Act at Section 309 (c)(4), provides that any person who knowingly makes any false representation or certification in any record or other document filed or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance, shall, upon a first conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both. For a conviction of a person for a violation committed after a first conviction of such person, punishment shall be by fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

13. Correction of Reports

If the permittee becomes aware that it submitted incorrect information in any report to the Director, it shall promptly submit the correct information.

SECTION E. PUBLIC ACCOUNTABILITY

The permittee shall undertake an overall program of public accountability, including quarterly summary reports to inform all users of the sanitary system and local government officials and the general public of the extent of actual compliance with permit requirements and conditions. To facilitate public information, the permittee shall use available means such as posting quarterly summary reports on its website, inserts with water and sewer bills or other

means to distribute this information to the public. In addition, the permittee shall include in this report information on the efficacy of all (on and off site) operations used in the disposal of sludge from the Blue Plains WWTP. Reports shall be provided to at least the following:

Secretary, Maryland Department of the Environment
Executive Director, Virginia Dept. of Environmental Quality
Director, DC Department of Health
Chief of Maintenance, National Park Service
Director, Interstate Commission of the Potomac River Basin
Director, Metropolitan Washington Council of Governments

PART III. SEWER SYSTEM

SECTION A. COMBINED SEWER SYSTEM - GENERAL

The permittee operates a Combined Sewer System (CSS). The CSS includes the combined sewer overflow (CSO) outfalls listed below and other outfalls as indicated by footnotes. During the period beginning with the permit effective date and lasting until the permit expiration date, the permittee is authorized to discharge from the CSOs listed below, except as otherwise noted. Such discharges shall be limited and conditioned by the permittee as specified in the following paragraphs and sections.

Outfall (1)	Overflow Structure Location	Receiving Stream	Latitude and Longitude (approximate)
003	Bolling AFB	Potomac River	N 38 49 51 W 77 01 32
004 (2)	Emergency relief for Poplar Point Sewage Pumping Station, SE	Anacostia River, East Side	N 38 51 57 W 77 00 18
005	Chicago Street and Railroad Station, SE	Anacostia River, East Side	N 38 52 08 W 76 59 36
006	Good Hope Road, West of Nichols Ave.,SE	Anacostia River, East Side	N 38 52 16 W 76 59 28
007	13th Street and Ridge Place,SE	Anacostia River, East Sido	N 38 52 16 W 76 59 19
008 (2)	Anacostia Ave. west of Blaine St. NE - relief for Anacostia Main Interceptor	Anacostia River, East Side	N 38 53 29 W 76 57 46
009	2nd Street, 300 feet North of N Place, SE	Anacostia River, West Side	N 38 52 21 W 77 00 15
010	O Street Sewage Pumping Station, SE	Anacostia River, West Side	N 38 52 23 W 77 00 14
011	South of Main Sewage Pumping Station, SE (pumped overflow)	Anacostia River, West Side	N 38 52 22 W 77 00 17
011a	South of Main Sewage Pumping Station, SE (gravity overflow)	Anacostia River, West Side	N 38 52 22 W 77 00 17
012	North of Main Sewage Pumping Station, SE	Anacostia River, West Side	N 38 52 22 W 77 00 09
013	4th and N Streets, SE	Anacostia River, West Side	N 38 52 22 W 77 00 09
014	6th and M Streets, SE	Anacostia River, West Side	N 38 52 23 W 76 59 09
015	9th and M Streets, SE	Anacostia River	N 38 52 18 W 76 59 38
016	12th and M Streets, SE	Anacostia River, West Side	N 38 52 20 76 59 28
017	14th and M Streets, SE	Anacostia River	N 38 52 31 W 76 59 28

018	Barney Circle and Pennsylvania Ave, SE	Anacostia River	N 38 52 39 W 76 58 57
019	NE Boundary Trunk, Vic. Of 25th and E Sts., SE	Anacostia River, West Side	N 38 52 21 W 77 00 09
020	23rd Street, North of Constitution Ave, NW	Potomac River, East Side	N 38 53 10 W 77 03 03
021	Northeast of Roosevelt Bridge, NW	Potomac River, East Side	N 38 53 19 W 77 03 11
022	27th and K Streets, NW	Potomac River, East Side	N 38 53 52 W 77 03 27
023	Abandoned (Formerly 29th and K Streets, NW)	Potomac River, East Side	Not Available
024	30th and K Streets, NW	Potomac River, East Side	N 38 54 05 W 77 03 31
025	31st and K Streets, NW	Potomac River, East Side	N 38 54 03 W 77 03 44
026	Wisconsin Avenue and K St., NW	Potomac River, East Side	N 38 54 06 W 77 03 47
027	Water Street West of Street, NW	Potomac River, East Side	N 38 54 13 W 77 03 57
028	36th and M Streets, NW	Potomac River, East Side	N 38 54 13 W 77 04 18
029	Canal Road 1000 feet east of Rock Creek, NW	Potomac River, East Side	N 38 49 00 W 77 01 40
030	Abandoned (Formerly Foxhall and Canal Roads, NW)	Potomac River, East Side	Not Available
031	Pennsylvania Avenue, East Rock Creek, NW	Rock Creek, East Side	N 38 54 23 W 77 03 22
032	26th and M Streets, NW	Rock Creek, East Side	N 38 54 22 W 77 03 17
033	N Street extended west of 25th Street,NW	Rock Creek, East Side	N 38 54 26 W 77 03 18
034	23rd and O Streets, SW	Rock Creek, East Side	N 38 54 36 W 77 03 05
035	22nd Street south of Q Street, NW	Rock Creek, East Side	N 38 54 33 W 77 03 00
036	22nd Street South of Q Street, NW	Rock Creek, East Side	N 38 54 38 W 77 03 06
037	Northwest of Belmont and Rock Creek and Potomac Parkway	Rock Creek, East Side	N 38 55 02 W 77 03 04
038	North of Belmont Road, east of Kalorama Circle, NW	Rock Creek, East Side	N 38 55 08 W 77 03 05
039	Connecticut Avenue east of Creek, NW	Rock Creek, East Side	N 38 55 18 W 77 02 56
040	Biltmore Street extended east of Rock Creek, NW	Rock Creek, East Side	N 38 55 40 W 77 02 43
041	Ontario extended and Rock Creek Parkway	Rock Creek, East Side	N 38 55 40 W 77 02 43
042	Harvard Street and Rock Creek Parkway, NW	Rock Creek	N 38 55 42 W 77 02 43
043	Adams Mill Road South of Irving Street, NW	Rock Creek, East Side	N 38 55 42 W 77 02 42
044	Kenyon Street and Adams Mill Road, NW	Rock Creek East Side	N 38 55 44 W 77 02 44

045	Adams Mill Road and Lamont Street, NW	Rock Creek, East Side	N 38 55 50 W 77 02 49
046	Park Road south of Piney Branch Parkway, NW	Rock Creek, East Side	N 38 56 06 W 77 02 45
047	Ingleside Terrace extended and Piney Branch Parkway	Rock Creek, East Side	N 38 56 10 W 77 02 36
048	Mt. Pleasant Street extended and Piney Branch Parkway	Rock Creek, East Side	N 38 56 15 W 77 02 23
049	Piney Branch and Lamont Street, NW	Rock Creek, East Side	N 38 56 12 W 77 02 19
050	28th Street west of 16th Street, NW	Rock Creek, East Side	N 38 54 14 W 77 03 23
051	Olive Street extended and Rock Creek Parkway, NW	Rock Creek, East Side	N 38 54 32 W 77 03 11
052	O Street extended and Rock Creek Parkway, NW	Rock Creek, West Side	N 38 54 31 W 77 03 16
053	O Street west of Rock Creek Parkway, NW	Rock Creek, West Side	N 38 55 18 W 77 01 40
054	West Side of Rock Creek 300 ft. south of Mass. Ave, NW	Rock Creek, West Side	N 38 54 34 W 77 03 02
055	Abandoned		
056	Normanstone Drive extended west of Rock Creek, NW	Rock Creek, West Side	N 38 55 02 W 77 03 04
057	28th Street extended west of Rock Creek, NW	Rock Creek, West Side	N 38 55 18 W 77 03 09
058	Connecticut Avenue and Rock Creek Parkway, NW	Rock Creek, West Side	N 38 55 16 W 77 03 02
059	Abandoned (Formerly 16th and Rittenhouse Streets, NW)	Rock Creek, West Side	N 38 57 54 W 77 02 13
060	P St and 26th St, NW	Rock Creek, West Side	Not Available
061 (2)	Hayes St. & Anacostia Ave NE - Emergency relief for Upper Anacostia Sewage Pumping Station	Tributary to Anacostia - East Side	Not Available
062 (2)	Earl Place, NE - Emergency relief for Earl Place Sewage Pumping Station	Tributary to Anacostia - West Side	Not Available

(1) All outfalls are CSO outfalls unless noted otherwise.

(2) These outfalls are recognized in the permit as emergency relief locations. Report discharges in accordance with requirements for dry weather overflows.
This permit does not authorize discharges from Outfalls 004, 008, 061 or 062. These are not CSO outfalls, rather they are emergency relief outfalls. Discharges are prohibited under Part III.B.1.e(i) and are reportable under Part III.B.1.e(iii) and Part II.D.2 and 7.

SECTION B. TECHNOLOGY-BASED CSS REQUIREMENTS

The permittee is required to control combined sewer overflows in accordance with the CSO Policy (April 1994). The permittee shall comply with the nine minimum technology-based conditions set forth below.

1. Nine Minimum Controls (NMC) Program

   a. Operation and Maintenance - The permittee shall implement proper operation and maintenance programs for the sewer system and all CSO outfalls, in accordance with the program set forth blow, with consideration given to the following: regular sewer inspections, sewer, catch basin and regulator cleaning; equipment and sewer collection system repair or replacement, where necessary; and disconnection of illegal connections.

      (i) Maintain a CSS inventory. Prepare an inspection plan and submit updated inventory information with each annual report as follows:

         (a) List of CSO outfalls and emergency relief locations from Part III, Section A, COMBINED SEWER SYSTEM - GENERAL of the permit.

         (b) Combined Sewer Overflow Structures. Include designation, location, description of operation, capacity and diagram or drawing of each structure. Include similar information for each inflatable dam.

         (c) Outfall Structures. Include designation, location and description of each structure. Include a diagram or drawing and a picture as available and practicable. Describe outfalls characteristic at high and low tide (e.g., submerged, partially submerged, not submerged). Identify whether or not each structure is equipped with a tide gate.

         (d) Supervisory Control and Data Acquisition (SCADA) System. Include a functional description, and list of information provided by the SCADA system for the CSS.

         (e) Rain Gages. List location and description of rain gauges installed within the CSS,

      (ii) Inspect CSS control structures (regulator structures and tide gates) at least once per month.

(iii) Inspect pumping stations at least once per month.

(iv) Inspect Northeast Boundary Swirl Facility at least once per month.

(v) Inspect inflatable dams and CSS SCADA system at least once per month.

(vi) Develop an inspection program for the major combined sewers where each major combined sewer is inspected on a rotating schedule of sufficient frequency to maintain capacity requirements.

(vii) Inspect outfall structures annually.

(viii) Following rehabilitation operate and maintain the Main, "O" Street, Potomac and Poplar Point and Eastside Pumping stations to provide firm pumping capacities of 240 MGD, 45 MGD, 460 MGD 45 MGD and 45 MGD respectively.

b. Use Collection System for Storage

Operate and maintain inflatable dams to optimize storage in the CSS.

c. Pretreatment Program

(i) Use pretreatment regulations to control any industrial discharges that may be identified as impacting CSOs.

(ii) Use pretreatment regulations to require permitted significant industrial users (SIUs) discharging directly to the CSS to establish management practices to limit (e.g., use of control, detention or prohibition) batch discharges during wet weather conditions to the maximum extent feasible. Conduct an annual inspection of the above users to identify the existence of any batch discharges. Evaluate batch discharges identified to determine whether and to what extent limitations are appropriate during wet weather, taking into consideration volume, frequency, characteristics and the need to protect life and property.

d. Maximize Flow to the Blue Plains WWTP (BPWWTP) for Treatment

(i) During wet weather, operate the pumping stations and collection system to deliver the maximum flow possible to the BPWWTP within the constraints of the pumping stations, configuration and capacity of the collection system, and the capacity of the treatment plant. Develop a

reporting system to show that operation of the pumping stations has been maximized during wet weather and that the maximum flow possible is being delivered to the BPWWTP for treatment within the constraints of the pumping stations, collection system and treatment plant. Report such operations for each wet weather event.

(ii) Maintain pumps to maximize flow to Blue Plains.

c. Eliminate Dry Weather Overflows (DWOs)

(i) Dry weather overflows from CSO outfalls are prohibited. When the permittee detects a dry weather overflow, the permittee shall begin corrective action immediately. The permittee shall inspect the dry weather overflow each subsequent day until the overflow has been eliminated.

(ii) Maintain a program to enlist public support for reporting DWOs.

(iii) Receive reports of DWOs on a 24- hour basis. Each dry weather overflow confirmed by the Permittee shall be reported to District of Columbia Department of Health (DOH) and EPA Region III within 24 hours.

f. Control Solid and Floatable Materials in CSOs

(i) Screen pumped overflows at the Main and O Street Pumping Stations.

(ii) Screen flow into the Northeast Boundary Swirl Facility.

(iii) Operate and maintain end of pipe solid and floatable BMP demonstration controls until termination of the demonstrations at locations as follows:

End of pipe netting system at CSO Outfall 018. Bar rack at CSO Outfall 041 at Structure Number 62.

Bar rack at CSO Outfall 040 at Structure 61. Inspect BMP demonstration controls at least once per month. Clean BMPs following wet weather events on a schedule that maintains capture functions.

(iv) Clean 85 percent of the 8200 catch basins in the combined sewer area at least annually. Inspect catch basins in CSO areas tributary to the Anacostia River at least 2 times per year and clean more frequently as identified by inspections.

The Anacostia River CSO areas inspection schedule is an interim schedule

until permanent solids and floatable control facilities are placed in operation as part of the Long Term Control Plan. As permanent facilities are placed in operation, in each combined sewer area, the permittee may petition EPA to reduce the cleaning frequency to once per year in that area.

(v) Operate the Anacostia River Floatable Debris Removal Program. This program comprises pick up of debris by skimmer and support boats on a regular weekly schedule, weather and river conditions permitting.

(vi) Work on a regular and ongoing basis with the D.C. Department of Public Works (DPW) and the National Park Service (NPS) to maximize litter control in the CSS, targeting neighborhoods that contribute disproportionate amounts of trash to the CSS. Document these efforts in quarterly CSO reports.

(vii) Implement an ongoing, appropriate bi-lingual (English and Spanish) public education program aimed at reducing litter in the CSO sewershed, including public service announcements, public school presentations and stenciling programs.

(viii) Hold at least four (4) public education workshop programs each year, two of which shall be held in the Anacostia River CSO areas, (e.g., at schools or to community groups) to inform the public on ways and means for the public to assist in reducing the amount of solid and floatable materials in CSOs. The workshop programs comprise a series of presentations four times per year. The need to continue these workshop programs and the schedule will be re-evaluated every 2 years and the permittee may petition EPA to reduce the number of workshops for the following two year cycle.

g. Pollution Prevention

(i) Conduct regular public education programs to advise citizens of proper disposal of substances (e.g., household wastes, plastics, paper products, oils, leaves and the use of fertilizer).

(ii) Conduct tours of the BPWWTP to educate public on aspects of CSO control that can be enhanced with public assistance.

(iii) Use the pretreatment program to encourage industrial waste reduction through recycling and improved housekeeping.

(iv) Notify responsible agencies to enforce regulations that prohibit entrance into the CSS of any substance that may impair or damage the function and

performance of collection and treatment systems.

(v) Coordinate where feasible and practicable WASA's pollution prevention programs with those of D.C. government agencies such as the following partial list of pollutant prevention programs conducted by District of Columbia government agencies:

A. Department of Public Works Programs

1. Curbside recycling
2. Leaf pickup
3. Public trash receptacles
4. Household hazardous waste collection
5. Residential bulk refuse collection and self-service disposal
6. Campaign against rats
7. Support of community cleanup programs ("Helping Hand")
8. Enforcement of illegal dumping operations
9. Street cleaning and sweeping
10. Public education for DPW Solid Waste Education and Enforcement Program ("SWEEP")

B. Department of Health Programs

1. Public education and assistance
2. Enforcement of storm water and erosion/sedimentation control regulations

h. Public Notification

(i) Install and operate a light on the Anacostia River and a light on the Potomac River to notify river users of CSO events. Locate the lights at or in view of major public access points subject to approval of owners or agencies having jurisdiction (e.g., private property owners, Coast Guard, NPS, DOH). Lights will be operated by a signal from a representative CSO outfall on each river. A light (color A) will be illuminated during a CSO occurrence and a second light (color B) will be illuminated for 24 hours after a CSO has stopped. Final colors shall be subject to approval by the Coast Guard or other agency having jurisdiction.

(ii) Maintain a website with information on: (a) nature of CSO discharges; (b) locations of CSOs; (c) potential health threats of CSOs; (d) record of CSO events by outfall with number, average duration and volume for the prior three month calendar quarter based on modeled results; (e) description of

light system on the Anacostia River and Potomac River that advises river users of times that CSOs are actually occurring; and (f) nature and duration of conditions potentially harmful to users of receiving waters during and after a CSO event.

(iii) Prepare and distribute semi-annually in sewer bills an informational pamphlet with information similar to that listed under h.ii above.

(iv) Distribute a pamphlet semi-annually to locations (e.g., boathouses, marinas, water sports shops) frequented by receiving water users. The pamphlet shall include information similar to that listed under h.i above. Distribution will be to the extent permitted by owners of the locations.

(v) Prepare and maintain an information bulletin to distribute to callers requesting information on the CSS and CSOs.

(vi) Include updates and status of CSS and CSO plans and programs in information distributed under h. i, ii, iii, and iv above.

(vii) Maintain warning signs at all CSOs. The wording, size, location and other aspects of such signs shall be as agreed to among WASA, EPA, the NPS and DOH.

i. Monitoring

(i) Operate and maintain the SCADA system that monitors activation of selected CSO outfalls.

(ii) Conduct visual wet weather surveys at the Main and O Street Pumping Stations CSO outfalls to assess the discharge of floatables.

(iii) Monitor and record debris removed by the Anacostia River Floatable Debris Removal Program.

(iv) Monitor and record flow, screenings removal and disinfection at the Northeast Boundary (NEB) Swirl Facility.

(v) Monitor and record demonstration floatables removal; (a) at the end of pipe netting system at Outfall 018; (b) at bar rack at Outfall 041; and (c) at the bar rack at Outfall 040 for the duration of the demonstration project.

(vi) Monitor and record rainfall at a minimum of four (4) locations in the CSS. Locate rain gages at sites which are different from those used in the

development of the LTCP. Report the number, volume and average duration of overflows for each active CSO outfall. The information shall be prepared using the latest model of the CSS, based on the measured storm event data and the operation of the inflatable dams for the previous calendar year.

SECTION C. LONG TERM CONTROL PLAN (LTCP)

1. The LTCP for the District of Columbia CSS is intended to control CSO discharges to meet the District of Columbia water quality standards in the Anacostia River, Rock Creek and its Pine Branch tributary and the Potomac River.

2. The LTCP is the recommended plan included in the *Combined Sewer System Long Term Control Plan, Final Report, July 2002,* submitted by the permittee to EPA and the DOH.

A. Permittee shall implement and effectively operate and maintain the CSO controls identified in the LTCP.

1. The LTCP for the District of Columbia CSS provides for the control of CSO discharges to the Anacostia River, Rock Creek and its Piney Branch tributary and the Potomac River. The LTCP facilities for controlling discharges to the above named receiving waters include, among other things, diversion structures, a system of underground storage tunnels, pumping stations and outfall structures. The facilities shall, within the capacities provided, divert combined sewer flows to the storage tunnels, store combined sewer flow and convey stored combined sewer flow to Blue Plains for treatment.

2. The permittee shall effectively operate and maintain the LTCP CSO control facilities in accordance with the conditions set forth below.

3. Discharges from CSO outfalls are prohibited except during wet weather events when one or more of the following conditions exist:

a. Combined Sewer System Flow (CSF) conditions exist at Blue Plains, then discharges may occur at Outfall 003. CSF conditions are those described at Part I.B.(1)(1a)(b) of this permit.

b. The associated storage tunnels serving individual CSO outfalls are filled to minimum capacity required.

c. Combined sewer flow is being transferred from individual CSO outfalls to the associated storage tunnel or interceptor at not less than minimum diversion rates listed below.

4. Solids and floatables capture shall be provided for all overflows prior to discharge to receiving waters.

5. All combined sewer flow stored in the Anacostia River, Rock Creek and the Potomac River storage tunnels shall be emptied within 59 hours of the end of a wet weather event. If another wet weather event occurs before 59 hours has elapsed, the 59- hour period shall start from the end of the last wet weather event that occurred. A wet weather event occurs as a result of stormwater runoff, including snow melt, entering into or being conveyed in the CSS. All flow stored in the storage tunnels and appurtenant structures shall be conveyed to Blue Plains for treatment.

6. Storage tunnels shall have minimum capacities as follows:

   a. Anacostia Tunnel - 126 million gallons
   b. Piney Branch Tunnel - 9.5 million gallons
   c. Potomac Tunnel - 58 million gallons

7. Minimum diversion capacities from CSO outfalls to storage tunnels or interceptors and monitoring of diversions shall be as follows:

a. Anacostia CSO Control Systems

CSO Outfall	*Drainage Area*	*Minimum Diversion Capacity for CSO Control (mgd)*	*Diversion to Tunnel or Interceptor*	*Monitoring*
005	Fort Stanton	37	tunnel	(2)
006	Fort Stanton	to be separated	n/a	n/a
007	Fort Stanton	111	tunnel	(3)
009	Canal Street	36	tunnel	(2)
010	B St/NJ Ave	690	tunnel	(3)
011	B St/NJ Ave	460	tunnel	(3)
012	Tiber Creek	471	tunnel	(3)
013	Canal Street Sewer	18	tunnel	(2)

014	Navy Yard/M St.; 6th St-7th St	92	tunnel	(2)
015	Navy Yard/M St.; 9th St	11	tunnel	(2)
016 (1)	Navy Yard/M St.; 12th St - 9th St.	86	tunnel	(2)
017 (3)	Navy Yard/M St.; 14th St to Penn Ave	65	tunnel	(2)
018	Barney Circle	57	tunnel	(2)
019	Northeast Boundary	1,460	tunnel	(3)

b. Potomac CSO Control Systems

CSO Outfall	Drainage Area	Minimum Diversion Capacity for CSO Control (mgd)	Diversion to Tunnel or Interceptor	Monitoring
020	Easby Point	297	tunnel	(3)
021	Slash Run	530	tunnel	(3)
022	I St - 22nd St. NW	333	tunnel	(3)
024 (1)	West of Rock Creek Diversion Sewer	66	tunnel	(2)
025 (1)	31st & K St NW	3	tunnel	(2)
026 (1)	Water St Dist (WRC)	0	tunnel	(2)
027 (1)	Georgetown	92	tunnel	(2)
028 (1)	37th St. Georgetown	9	tunnel	(2)
029	College Pond	133	tunnel	(3)

c. Rock Creek CSO Control Systems

CSO Outfall	**Drainage Area**	**Minimum Diversion Capacity for CSO Control (mgd)**	**Diversion to Tunnel or Interceptor**	**Monitoring**
031	Penn Ave	to be separated	n/a	n/a

032	26th St - M St	6	interceptor	(4)
033	N St - 25th	5	interceptor	(3)
034	Slash Run	6	interceptor	(4)
035	NW Boundary	290	interceptor	(4)
036	Mass Ave & 24th St	29	interceptor	(3)
037	Kalamora Circle West	to be separated	n/a	n/a
038	Kalamora Circle East	5	interceptor	(4)
039	Belmont Rd	28	interceptor	(4)
040	Biltmore Rd	12	interceptor	(4)
041	Ontario Rd	14	interceptor	(4)
042	Quarry Rd	19	interceptor	(4)
043	Irving St	35	interceptor	(4)
044	Kenyon St	4	interceptor	(4)
045	Lamont St	8	interceptor	(4)
046	Park Rd	9	interceptor	(4)
047	Ingleside Terr	10	interceptor	(3)
048	Oak St/Mt Pleasant	11	interceptor	(4)
049	Piney Branch	468	tunnel	(3)
050	M St - 27th St	21	interceptor	(4)
051	Olive-29th St	4	interceptor	(4)
052	O St - 31st St	56	interceptor	(4)
053	O St	to be separated	n/a	n/a
054	West Rock Cr Diversion Sewer	(5)	interceptor	(4)
055	Abandoned	n/a	n/a	n/a
056	Normanstone Dr	(5)	interceptor	(4)
057	Cleveland - 28th St & Conn Ave	33	interceptor	(3)
058	Conn Ave	to be separated	n/a	n/a
059	16th and Rittenhouse Sts, NW	to be separated	n/a	(4)

(1) These outfalls have been consolidated. Diversion capacity listed is that required for CSO

control.

(2) Diversion capacity validated by construction performance test, no additional monitoring required.

(3) Continuous flow measurement of diversion and outfall. Provision for temporary sampling on diversion and outfalls.

(4) Diversion capacities from the referenced outfalls have been estimated based on computer modeling.

(5) These CSOs are emergency reliefs for the West Rock Creek Diversion sewer. There is no tributary drainage area, and flow diversion does not occur at these CSOs. The performance of these CSOs will be validated by computer modeling, no additional monitoring required.

8. With each DMR, report operations of the monitored CSO control facilities by systems as follows:

   a. Volume into and out of storage tunnels;
   b. Diversion rates into storage tunnels;
   c. Discharge rates from outfalls;
   d. Start and end time of wet weather event;
   e. Time when storage tunnel became filled to minimum required capacity;
   f. All discharges from outfalls occurring prior to storage tunnel being filled to minimum required capacity and at less than minimum required diversion rates;
   g. Volume of overflows from outfalls;
   h. Dewatering time for tunnel following end of wet weather event;
   i. Results of any overflow or diversion sampling.

9. Permittee shall be deemed to be in compliance with each of the following CSO control performance when:

   a. No overflows are recorded at monitored CSO outfalls prior to storage tunnels being filled to minimum required capacities;
   b. No overflows are recorded at monitored CSO outfalls when diversion rates are less than or equal to minimum diversion capacity and associated storage tunnel is not filled to minimum required capacity;
   c. No overflow is recorded at Outfall 003 unless CSF conditions exist at Blue Plains;
   d. Storage tunnels shall be emptied in a time period less than or equal to 59 hours following the end of a wet weather event.

SECTION D. POST CONSTRUCTION MONITORING

The permittee shall implement a phased post-construction monitoring program to obtain

information on rainfall, the volume and character of overflows and receiving waters characteristics. The monitoring phases shall be as follows:

Phase	Post-Construction Condition
1	Following the placement in operation of the inflatable dams and pumping stations rehabilitation.
2	Following the placement in operation of the Anacostia, Rock Creek and Potomac storage tunnels, respectively, as each tunnel is placed in operation.
3	Following the placement in operation of the complete CSO tunnels storage system

1. Phase I monitoring shall be in accordance with the following:

CSO Systems

Monitoring Type	***Anacostia River***	***Potomac River***	***Frequency (3)***
Rainfall Monitoring (1)	1 gauge in Northeast Boundary 1 gauge in Tiber Creek	1 gauge in Slash Run	continuous
CSO Overflow (flow and volume) (1)	Northeast Boundary CSO 019 B ST/NJ Ave pumped overflow CSO 010	Potomac Pumping Station CSO 021 West Rock Creek Diversion Sewer CSO 024	continuous
CSO Overflow Sampling (2)	1 sampling station at Northeast Boundary	n/a	4 storms minimum approximately 1 hr sample
Receiving Water Monitoring - Dissolved Oxygen (4)	DO Monitors	DO Monitors	approximately 30 minute intervals
Receiving Water Monitoring - Bacteria, Field Parameters (2) (4)	Bacteria Samples	Bacteria Samples	4 storms minimum

(1) Temporary gauges, meters and samplers to be installed.
(2) Samples shall be analyzed for fecal coliform, enterococci, CBOD5 and TSS.
(3) Monitoring shall be conducted for a continuous period of 12 months.
(4) The permittee is responsible for submitting all data, however, it is acceptable to use data

developed by other sources.

2. Phase 2 monitoring shall be in accordance with the following:

CSO Systems

Monitoring Type	*Anacostia*	*Potomac*	*Rock Creek*	*Frequency*
Rainfall Monitoring (1)	1 gauge in Northeast Boundary 1 gauge in Tiber Creek	1 gauge in Slash Run 1 gauge in College Pond	1 gauge in Piney Branch	continuous
CSO Overflow Monitoring and Diversion to Storage Monitoring (2)	Northeast Boundary CSO 019 Fort Stanton CSO 007 B ST/NJ Ave Pumped Overflow CSO 010	Potomac Pumping Station CSO 021 College Pond CSO 029	Piney Branch CSO 049	continuous
Tunnel Storage Level Monitoring (2)	1 sensor in tunnel	1 sensor in tunnel	1 sensor in tunnel	continuous
CSO Overflow Sampling (2) (3)	1 sampling station at Northeast Boundary CSO 019	1 sampling station at CSO 021	1 sampling station at CSO 049	4 storms maximum approximately 1 hour sample interval for each storm
Receiving Water Monitoring - Dissolved Oxygen (5)	Continuous DO monitors (5)	Continuous DO monitors (5)	n/a	approximately 30 minute intervals (5)
Receiving Water Monitoring - Bacteria, Field Parameters (3)	Use data from existing monitors and establish at least 6 other locations	Use data from existing monitors and establish at least 3 other locations	Use data from existing monitors and establish at least 7 other locations	once per week for bacteria and once per quarter for all other substances

(1) Temporary gauges to be installed.
(2) Shall use facilities and equipment installed as part of CSO control systems.
(3) Sampling shall be analyzed for fecal coliform, mercury, arsenic, cadmium, total chromium, copper, lead, nickel, selenium, silver, zinc, chromium VI, hardness, cyanide,

pesticides, PCBs, volatiles and semivolatiles, DO, ammonia as N, TKN, total phosphorus, and ortho-phosphorus. Metals shall be analyzed as dissolved and total recoverable.

(4) Monitoring shall be conducted for a continuous period of 12 months, in each CSO system after appropriate facilities are placed in operation.

(5) Permittee is responsible for submitting all data, however, it is acceptable to submit data provided by other sources.

3. Phase 3 monitoring shall be in accordance with the following:

CSO Systems

Monitoring Type	***Anacostia River***	***Potomac River***	***Rock Creek***	***Frequency (4)***
Rainfall Monitoring (1)	1 gauge in Northwest Boundary 1 gauge in Tiber Creek	1 gauge in Slash Run 1 gauge in College Pond	1 gauge in Piney Branch	continuous
CSO Monitoring and Diversion to Storage Monitoring (2)	Northeast Boundary CSO 019 Fort Stanton CSO 007 B St/NJ Ave Pumped Overflow CSO 010	Potomac Pumping Station CSO 021 College Pond CSO 029	Piney Branch CSO 049	continuous
Tunnel Storage Level Monitoring (2)	1 sensor in tunnel	1 sensor in tunnel	1 sensor in tunnel	continuous
CSO Overflow Sampling (2) (3)	Sampling stations at CSO 019 and CSO 010	Sampling stations at CSO 021 and 020	1 sampling station at CSO 049	4 storms maximum approx. 1 hour sample interval for each storm
Receiving water Monitoring - Dissolved Oxygen (5)	continuous DO monitors	continuous DO monitors	n/a	approx 30 minute intervals
Receiving water monitoring- bacteria, field parameters (3) (5)	establish at least 6 locations	establish at least 6 locations	7 other locations	once per week for bacteria and once per quarter for all other parameters

(1) Temporary gauges will be installed.

(2) Shall use facilities and equipment installed as part of CSO control systems.

(3) Sampling shall be analyzed for fecal coliform, Enterococci, CBOD5, TSS, 127 priority

pollutants, mercury, arsenic, cadmium, total chromium, copper, lead, nickel, selenium, silver, zinc, chromium VI, hardness, cyanide, pesticides, PCBs, volatiles, semi-volatiles, DO, ammonia as N, TKN, total phosphorus and ortho-phosphorus. Metals shall be analyzed as dissolved and total recoverable.

(4) Monitoring shall be conducted for a continuous period of 12 months.

(5) The permittee is responsible for submitting all monitoring data.

4. Results from the monitoring phases shall be used to assess the performance of CSO controls against predictions established as part of LTCP development. In general, the assessments shall include:

   a. Comparison of monitored overflow magnitude and duration with the LTCP predictions;
   b. Comparison of monitored water quality in receiving waters with LTCP predictions;
   c. Comparison of monitored CSO reductions with LTCP reductions; and
   d. Overall evaluation as to whether or not CSO controls are providing degree of control predicted for LTCP conditions and whether or not modifications or additions to the LTCP are required.

SECTION E. WATER QUALITY-BASED REQUIREMENTS FOR CSOs

1. Discharges shall be of sufficient quality that surface waters shall be free from substances in amounts or combinations that do any of the following: settle to form objectionable deposits; float as debris, scum, oil, or other matter to form nuisances; produce objectionable odor, color, taste or turbidity; cause injury to, are toxic to, or produce adverse physiological or behavioral changes in humans, plants or animals; produce undesirable or nuisance aquatic life or result in the dominance of nuisance species; or impair the biological community that naturally occurs in the waters or depends on the waters for its survival and propagation.

2. The permittee shall comply with the following effluent limits derived from and consistent with applicable Total Maximum Daily Loads (TMDLs):

Parameter	*Receiving Water*	*Load Allocated to CSO*	*Units*
Fecal coliform	Upper Anacostia	1.94 E + 15	MPN/average year
	Lower Anacostia	7.44 E = 14	
TSS	Upper Anacostia	128	Tons per April to Oct. 1989 equivalent

	Lower Anacostia	100	Tons per April to Oct. 1989 equivalent
BOD	Anacostia	152,906	lbs/average year
nitrogen	Anacostia	12,171	lbs/average year
phosphorus	Anacostia	8,047	lbs/average year
oil and grease	Upper Anacostia	201.8	lbs/day in average year
	Lower Anacostia	137.6	lbs/day in average year
arsenic	Upper Anacostia	1.30	lbs/average year
	Lower Anacostia	1.06	lbs/average year
copper	Upper Anacostia	358.6	Lbs/average year
	Lower Anacostia	382.2	Lbs/average year
lead	Upper Anacostia	409.0	Lbs/average year
	Lower Anacostia	436.2	Lbs/average year
zinc	Upper Anacostia	1414.1	Lbs/average year
	Lower Anacostia	894.5	Lbs/average year
chlordane	Upper Anacostia	0.0010	lbs/average year
	Lower Anacostia	0.0008	lbs/average year
DDD	Upper Anacostia	0.0028	lbs/average year
	Lower Anacostia	0.0047	lbs/average year
DDE	Upper Anacostia	0.0063	lbs/average year
	Lower Anacostia	0.0106	lbs/average year
DDT	Upper Anacostia	0.017	lbs/average year
	Lower Anacostia	0.029	lbs/average year
Dieldren	Upper Anacostia	0.0037	lbs/average year
	Lower Anacostia	0.0026	lbs/average year
Heptachlor Epoxide	Upper Anacostia	0.0018	lbs/average year
	Lower Anacostia	0.0013	lbs/average year
PAH1	Upper Anacostia	0.080	lbs/average year
	Lower Anacostia	0.065	lbs/average year
PAH2	Upper Anacostia	0.472	lbs/average year

	Lower Anacostia	0.389	lbs/average year
PAH3	Upper Anacostia	0.300	lbs/average year
	Lower Anacostia	0.248	lbs/average year
Total PCBs	Upper Anacostia	0.14966	lbs/average year
	Lower Anacostia	0.121290	lbs/average year
total arsenic	Piney Branch	0.016213	lbs/average year
total copper	Piney Branch	0.880107	lbs/average year
total lead	Piney Branch	0.926450	lbs/average year
total zinc	Piney Branch	2.466450	lbs/average year
chlordane	Piney Branch	0.000114	lbs/average year
DDD	Piney Branch	0.000035	lbs/average year
DDE	Piney Branch	0.000154	lbs/average year
DDT	Piney Branch	0.000396	lbs/average year
Dieldrin	Piney Branch	0.000003	lbs/average year
Heptachlor Epoxide	Piney Branch	0.000011	lbs/average year
PAH1	Piney Branch	0.007627	lbs/average year
PAH2	Piney Branch	0.048160	lbs/average year
PAH3	Piney Branch	0.031059	lbs/average year
total PCBs	Piney Branch	0.00	lbs/average year
fecal coliform	Rock Creek	1.360E+14	MPN/average year
total copper	Lower Rock Creek	2.5	lbs/average year
total zinc	Lower Rock Creek	10.59	lbs/average year
total lead	Lower Rock Creek	0.66	lbs/average year
total mercury	Lower Rock Creek	0.008	lbs/average year

For the Potomac River - No TMDLs have been established or approved by EPA. Until such time as EPA approves TMDLs for the Potomac River and incorporates such TMDLs into the Blue Plains permit, DC Water Quality Standards shall be applicable as set forth in Paragraph E.1 above.

3. Monitoring Requirements

In order to measure compliance with TMDL derived limits, beginning with the effective date of this permit, the permittee shall monitor and report results to EPA in accordance with the following:

a. For the Anacostia Outfalls. In addition to the requirements found at Part I.C of this permit, the permittee shall monitor according to the following:

Outfall	*Parameter*	*Measurement Frequency*	*Sample Type*
All sampled outfalls	Flow/discharge (mgd)		estimate
012 Tiber Creek	BOD	2 x per year	composite
	TSS	2 x per year	composite
	Fecal coliform	2 x per year	grab
	organics	2 x per year	grab
	metals	2 x per year	composite
	oil and grease	2 x per year	grab
010 B St/NJ Ave	BOD	2 x per year	composite
	TSS	2 x per year	composite
	fecal coliform	2 x per year	grab
	organics	2 x per year	grab
	metals	2 x per year	composite
	oil and grease	2 x per year	grab

b. For the Rock Creek Outfalls -

Outfall	*Parameter*	*Measurement Frequency*	*Sample Type*
All outfalls	flow		estimate
049 Piney Run	metals	2 x per year	composite
	organics	2 x per year	grab
052 Lower Rock Creek	metals	2 x per year	composite
	organics	2 x per year	grab

Grab sampling shall begin no later than 2 hours after a discharge has begun to occur.

Composite sampling shall begin no later than 2 hours after a discharge has begun and for a period of time not to exceed 24 hours.

In addition to the above monitoring protocol, outfall monitoring data from other existing programs may also be used but not substituted.

4. Reporting requirements - See F.4 below.

SECTION F. CSO STATUS REPORTS AND SCHEDULES

1. Progress reports are to be provided to EPA for all activities scheduled or completed in accordance with the terms of this permit. Such reports shall be submitted in quarterly and annual reports which summarize actions and activities undertaken to comply with Part III, Section B.1. and Part III, Section C of this permit (Nine Minimum Controls Program and the LTCP). Reports shall be submitted to EPA and DOH as follows:

   a. Submit quarterly reports on the 28th day of April, the 28th day of July, the 28th day of October and the 28th day of January. Reports shall summarize information through the last day of the month prior to the month in which the report is due. The first quarterly report shall be submitted for the first full quarter following the effective date of the permit.

   b. Submit annual reports by March 31 of each year summarizing information for the previous calendar year. The first annual report shall be submitted for the first full year following the effective date of the permit.

2. Information submitted in reports shall, in general, be prepared in a tabular format giving dates, times and locations as applicable. The information to be reported of the Nine Minimum Controls Program shall include the following:

   a. CSS Control Structures - Number of inspections conducted, conditions observed (e.g., function normal, blockages, malfunctions, repairs needed) and maintenance and repairs performed. For blockages observed provide: the location of blockage, date and time that the blockage was discovered, date and time blockage was corrected, and whether or not a discharge from the outfall to the receiving water was observed. If a discharge was observed, provide an estimate of discharge volume.

   b. Pumping Stations - Number of inspections conducted, numbers of screens and pumps installed and numbers available for service; and preventative maintenance performed. For pumps found not to be available for service, permittee shall report the cause of unavailability, schedule for and status of

repairs. For the Main and O Street pumping stations, report the results of visual wet weather surveys and record of overflow screenings.

c. Northeast Boundary Swirl Facility - Number of inspections conducted, number of screens and swirls installed and numbers available for service; and preventative maintenance performed. Report record of flow treated and screenings removed.

d. Inflatable Dams and SCADA System - Number of inspections conducted. Number of dams installed and number of dams operational. Occurrence of an overflow and approximate duration of overflow based on dams inflation status.

e. Major Combined Sewers - Upon development of inspection program. Inspections planned, inspections conducted, results of inspections and description and schedule for maintenance and repairs planned and performed.

f. Wet Weather Overflows - Report the modeled results of the number, volume and average duration of overflows for each active CSO outfall due to wet weather events.

g. Dry Weather Overflows - Are prohibited, however, in the event that they do occur, report their location, cause, date and time discovered, action taken, date and time discharge confirmed ceased and actions taken to prevent reoccurrence of the condition causing the overflow. Include an estimate of the overflow volume.

h. Catch Basin Cleaning - Number and location of catch basins required to be cleaned plus the number and location of catch basins actually cleaned.

i. Anacostia River Floatable Debris Removal Program - Number of boats available for service, number of cleaning trips, record of amount and nature of material removed.

j. BMP Demonstration for Solid and Floatable Control - Number of inspections conducted and conditions observed record of material removed at CSO outfalls 018, 040 and 041.

k. Other - Summarize actions and activities under programs for Pollution Prevention, Public Notification and Pretreatment.

l. Wet Weather Flows to Blue Plains WWTP - Upon development of a

reporting system, report operations for each wet weather event.

m. CSS Litter Control - Number of meetings or conferences with DPW and NPS. Summary of topics discussed and actions adopted.

3. Report on the following quarterly:

a. Northeast Boundary Swirl Facility
b. Inflatable Dams and SCADA System
c. Dry Weather Overflows
d. CSS Control Structures
e. Pumping Stations
f. Wet Weather Flows to Blue Plains
g. Wet Weather Overflows
h. CSS Litter Control

4. Report on the following annually:

a. CSS Inventory
b. Major Combined Sewers
c. Catch Basin Cleaning
d. BMP Demonstration for Solid and Floatable Control
e. Anacostia River Floatable Debris Removal Program
f. TMDL Monitoring
g. Other

PART IV. SPECIAL CONDITIONS

SECTION A. PRETREATMENT

1. Permit Conditions for Pretreatment

a. General Requirements - the permittee shall operate and implement an industrial pretreatment program in accordance with the Federal Clean Water Act General Pretreatment Regulations found at 40 C.F.R. 403. The program shall be implemented in accordance with the pretreatment program and any modifications made thereto shall be submitted by the permittee and approved by EPA.

b. Annual Report and Other Requirements - The permittee shall submit an Annual Report by February 28th of each year to EPA which describes the pretreatment activities for the previous calendar year. The Annual Report shall include a description of pretreatment activities in all municipalities

from which waste water is received at the permittee's POTW. At a minimum, the Annual Report shall include the following:

(i) Industrial Listing - The Annual Report shall contain an updated industrial listing showing all current Significant Industrial Users (SIUs) and the categorical standards, if any are applicable, to each. In addition, the report shall include a summary of any trucked or hauled wastewater accepted at the POTW including the source of the wastewater (domestic or industrial), the amount of the wastewater received on a monthly basis, any controls imposed on the users and the discharge point designated by the POTW for acceptance of such waste.

(ii) Control Mechanism Issuance - The Annual Report shall contain a summary of SIU control mechanism issuance, including a list of issuance and expiration dates for each SIU.

(iii) Sampling and Inspection - The Annual Report shall contain a summary of the number and type of inspections and sampling of SIUs by the permittee, including a list of all SIUs either not sampled or not inspected, and the reason that the sampling and/or inspection was not conducted. The Annual Report shall also contain a summary of the number of self-monitoring events reported by each SIU and a list of all SIUs that did not conduct at least two self-monitoring events and the reason why at least two self-monitoring events were not conducted.

(iv) SIU Compliance and POTW Enforcement - The Annual Report shall contain a summary of the number and type of violations of pretreatment standards and requirements, including local limits, and the actions taken by the permittee to obtain compliance, including civil penalty assessments and actions for injunctive relief. The report shall state whether each SIU was in significant noncompliance, as that term is defined in 40 C.F.R. §403.8(f)(2)(vii).

(v) Summary of POTW Operations - The Annual Report shall contain a summary of any interference, pass though, or permit violations by the POTW which may be attributed to industrial users, and actions taken to address those events. The summary shall also include sampling and analysis of treatment plant influent, effluent, and sludge for toxic and incompatible pollutants, and an assessment of the need for changes to the pretreatment program based on this

data.

(vi) Pretreatment Program Changes - The Annual Report shall contain a summary of any changes to the approved program and the date of submission to the Approval Authority.

(vii) As part of the annual pretreatment report and updates, include results of inspections, and identification and evaluation of batch discharges directly to the CSS. Include a list of permitted users with batch discharge control conditions during wet weather.

c. Pretreatment Monitoring - The permittee shall conduct monitoring at its pretreatment plant that, at a minimum, includes quarterly influent, effluent and sludge analysis for all pollutants for which a local limit exists, as well as an annual priority pollutant scan on the influent and sludge. This monitoring data shall be included in the Annual Report.

d. Notification of Pass-Through or Interferences - The permittee shall notify EPA and DOH, in writing, of any instance of pass-through or interference related to an industrial discharge from an IU into the POTW. The notification shall be attached to the DMR submitted to EPA and shall describe the incident, including the date, time, length, cause (including responsible user if known), and the steps taken by the permittee and the IU (if identified) to address the incident. A copy of the notification shall also be sent to the EPA at the address provided below.

e. Headworks Analysis - The permittee shall submit to EPA a reevaluation of its local limits based on a headworks analysis of its treatment plant within one year of permit issuance. The list of pollutants to be evaluated, as well as a sampling plan for the collection of necessary data, shall be submitted to EPA within 3 months of issuance. Within 4 months of acceptance of the headworks analysis by EPA, the permittee shall adopt the revised local limits and notify all contributing municipalities of the need to adopt the revised local limits.

f. Changes to Pretreatment Program - EPA may require the permittee to submit for approval changes to its pretreatment program if any one or more of the following conditions is present:

(i) The program is not implemented in accordance with 40 C.F.R. Part 402;

(ii) Problems such as interference, pass-through, or sludge

contamination develop or continue;

(iii) Federal, State or local requirements change.

g. Correspondence - Pretreatment correspondence shall be submitted to EPA at the following address:

Pretreatment Coordinator (3WP24)
U. S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103 - 2029

SECTION B. STANDARD SLUDGE CONDITIONS

1. The permittee shall comply with all existing federal and state laws and regulations that apply to sewage sludge use and disposal practices, including 40 C.F.R. 503 and 40 C.F.R. 258 which are hereby incorporated as part of the permit by reference, and the Clean Water Act (CWA) Part 405(d) technical standards.

   If an applicable management or practice or numerical limitation for pollutants in sewage sludge more stringent than existing federal and state regulations is promulgated under Part 405(d) of the CWA, this permit shall be modified to conform to the promulgated regulations.

2. The permittee shall give notice to the Director of any change(s) planned or in the permittee's sludge use or disposal practice.

3. A change in the permittee's sludge use or disposal practice is a cause for modification of the permit. It is a cause for revocation and reissuance of the permit if the permittee requests or agrees.

4. The permittee shall submit an annual sludge report containing the information required in 40 C.F.R. 503 by February 19 each year. The report shall cover the previous calendar year. The sludge report shall be submitted to"

U.S. EPA, Region III
Water Protection Division
Office of Compliance and Enforcement (3WP30)
1650 Arch Street
Philadelphia, PA 19103 - 2029

SECTION C. CHLORINATION/DECHLORINATION

1. The permittee shall report chlorine dosage (on a pound basis) per discharge event on Outfall 001. Dosage figures shall be submitted with the DMR for the month of the discharge event.

2. The concentration of Total Residual Chlorine (TRC) in the final effluent after dechlorination shall not exceed not-detectable. The permittee is required to achieve non-detectable for TRC as measured by 0.10 mg/l.

   When the TRC concentration in the final effluent results in a detectable measurement (above 0.10 m/l) the permittee shall take immediate steps to achieve a non-detectable concentration.

   The permittee shall resample TRC within one hour after the original grab sample measurement. If this grab sample shows a non-detectable amount as measured by 0.10 mg/l or less, then the original sample shall be considered in compliance. If this grab sample shows a detectable amount, above 0.10 mg/l, then the permittee shall retest in the second hour after the original non-compliance. If this grab sample in the second hour after the original non-compliance shows a not detectable amount as measured by 0.10 mg/l or less, then the sample shall be considered in compliance, but if the grab sample is above 0.10 mg/l then it will be considered a violation and recorded on the DMR. Each subsequent hourly sample above 0.10 mg/l shall be enumerated on the DMR until the effluent returns to compliance.

   Whenever there is an initial detectable TRC concentration, all subsequent sampling results shall be tabulated and reported with the DMRs and the time required to achieve the TRC of 0.10 mg/l. The analytical method used and the detection limit for each sample should be included on the data tabulation.

   For purposes of reporting on the DMR form, a non-detectable result shall be reported as zero. For a violation(s) of the limit, the maximum chlorine residual for the month and the total number of excursions in that month should be recorded in the appropriate column on the DMR form. The permittee shall operate the dechlorination facilities in a manner which will ensure continuous compliance with the TRC non-detectable limit.

   All analytical testing for TRC shall be in accordance with 40 C.F.R. Part 136, Amperometric Titration or DPD Ferrous Tritrimetric Method.

SECTION D. MERCURY - OUTFALL 002

Based upon mercury levels measured during 1997, 1998 and 1999 in Blue Plains effluent and the results of two edible fish tissues studies, the requirement for annual fish tissue studies is suspended.

SECTION E. TOTAL NITROGEN

The District of Columbia, as a signatory to the 1987 Chesapeake Bay Agreement and the 1992 Amendments tot he Chesapeake Bay Agreement, supports the goal of reducing nutrients to the mainstem of the Chesapeake Bay by 40 percent by the year 2000.

By this permit, EPA has established a total nitrogen goal of not greater than 8,467,200 pounds per year for Blue Plains, which represents a reduction of 40% of the total nitrogen loading per year. The goal is a guideline for the operation of the facility, not an allocation, cap or limit. The permittee shall operate the BNR process and undertake best efforts to meet the nitrogen goal for this facility. Best efforts to meet this goal require optimal operation of nitrogen removal technology to the extent such operation does not preclude permittee's ability to meet its other obligations pursuant to this permit.

Total nitrogen shall be calculated as follows:

Total nitrogen = Total Kjeldahl nitrogen + NO_2 as N + NO_3 as N

SECTION F. STORM WATER MANAGEMENT

A. Storm Water Pollution Prevention Plan

1, General

A Storm Water Pollution Prevention Plan (SWPPP) shall be developed for this facility. The SWPPP shall be prepared in accordance with good engineering practices, and in accordance with the factors outlined in 40 C.F.R. 125.3(d)(2) or (3), as appropriate. The plan shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with sludge handling operations or other portions of the waste water treatment plant as appropriate.

In addition, the plan shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in storm water discharges associated with sludge handling or other activity at the facility and to assure compliance with the terms and conditions of this permit. The permittee must implement the provisions of the storm water prevention plan required under this part as a condition of this permit.

2. Deadline for Plan Preparation and Compliance

The SWPPP shall be prepared, implemented and submitted to EPA Region III within 90 days after the effective date of this permit. If construction is necessary to implement measures required by the plan, the plan shall contain a schedule that provides compliance with the plan as expeditiously as possible, but no later than 3 years after the effective date of the permit. Upon a showing of good faith, EPA may establish a later date, in writing, for preparing and complying with the review.

3. Plan Review

The plan shall be retained on site at the facility. The permittee shall make plans available upon request to the EPA. The EPA may notify the permittee at the time that the plan does not meet one or more of the requirements of this Part. Such notification shall identify those provisions of the permit that are not being met by the plan, and identify which provisions of the plan require modification in order to meet the minimum requirements of this Part. Within 30 days of such notification, the permittee shall make the required changes to the plan and shall submit to EPA a written certification that the requested changes have been made.

4. Plan Modification

The permittee shall amend the plan whenever;

a. There is a change in design, construction, operation or maintenance which has a significant effect on the potential for the discharge of pollutants to the waters of the United States; or

b. EPA notifies the permittee of its finding that the SWPPP is inadequate in eliminating or minimizing pollutants from identified sources, or that the SWPPP is inadequate to prevent the facility from causing, or having a reasonable potential to cause or contribute to a violation of the D.C. Water Quality Standards.

5. Contents of the Plan

The plan, at a minimum, shall include the following items;

a. Pollution Prevention Team - the plan shall identify a specific individual or individuals within the facility organization as members of a storm water pollution prevention team that is responsible for developing the plan and assisting the facility or plant manager in its implementation, maintenance

and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

b. Description of Potential Pollutant Sources - the plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. The plan shall identify all activities and significant materials which may potentially be significant pollutant sources. The plan shall include at a minimum:

(i) Drainage - a site map indicating an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each existing structural control measure to reduce the pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spill or leaks may occur or did occur and locations of the following activities: fueling stations, vehicles and equipment maintenance and/or cleaning areas, loading/unloading areas, locations used for the treatment, storage, or disposal of wastes liquid storage tanks, processing areas and storage areas.

Identify the direction of flow of storm water and type of pollutants which are likely to be present in the storm water. Flows with a significant potential for causing erosion shall also be identified.

(ii) Inventory of Exposed Materials - an inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water; method and location of on-site storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff; the location and a description of existing structural and non-structural control measures to reduce pollutants in storm water runoff; and a description of any storm water treatment.

(iii) Spills and Leaks - a list of significant spills and leaks of toxic or hazardous pollutants within the past three years that have occurred at areas exposed to precipitation.

(iv) A summary of all existing sampling data describing pollutants in

storm water discharges.

c. Measures and Controls - the permittee shall develop a description of storm water management controls appropriate for this facility, and implement such controls. The controls shall address the following minimum components, including a schedule for implementing such controls. The implementation schedule shall be as expeditious as possible, but not later than five (5) months after permit issuance.

(i) Good Housekeeping - good housekeeping that requires the maintenance of a clean, orderly facility.

(ii) Preventive Maintenance - a preventive maintenance program shall involve timely inspection and maintenance of storm water management devices, as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters and ensuring appropriate maintenance of such equipment and systems.

(iii) Spill Prevention and Response Procedures - if spills have a potential to occur, procedures for cleaning up spills shall be identified in the plans and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available.

(iv) Inspections - qualified facility personnel shall be identified to inspect designated equipment and areas of the facility at appropriate intervals specified in the plan.

Qualified personnel shall have the training and experience in mechanics, engineering, electric circuitry, electronics or related disciplines (which may be demonstrated by state registration, professional certification or the satisfactory completion of accredited training programs) that is necessary to make sound judgments regarding the safe operation and maintenance of plant equipment.

A set of follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained.

(v) Employee Training - facility personnel responsible for

implementing the activities identified in the SWPPP shall complete a program of classroom instruction or on-th-job training on the storm water system. At a minimum, the training program shall provide adequate instruction on procedures for using, inspecting, repairing, cleaning and replacing storm water sewers and related equipment; and emergency conditions.

(vi) Record Keeping and Internal Reporting Procedures - incidents such as spills, along with other information describing the quality and quantity of storm water discharges, shall be included in the records. Inspections and maintenance activities shall be documented and recorded.

(vii) Non-storm Water Discharges - the plan shall include a certification that the storm water discharge and the storm drainage system has been tested or evaluated for the presence of non-storm water discharges.

(viii) Sediment and Erosion Control - the plan shall identify areas which due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetive, and/or stabilization measures to be used to limit erosion.

(ix) Management of Runoff - the plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices used to divert, infiltrate, reuse or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures determined to be reasonable and appropriate shall be implemented and maintained.

SECTION G. 85% BOD REDUCTION

1. At least once during the term of this permit, the permittee shall demonstrate the sewage treatment plant's percent (%) removal efficiency for CBOD5 and TSS contained in Part I of this permit.

2. The demonstration shall be made as follows:

   a. Percent removal shall be defined as a percentage expression of the removal efficiency across the wastewater treatment plant for CBOD5 and TSS, as determined from the thirty-day average values of the influent concentrations to the facility and the thirty-day average effluent pollutant

concentrations. The percent removal shall be calculated for Outfall 002 only.

b. Wet weather shall be defined for this specific requirement as a day in which the plant influent flow rate equals 511 mgd or greater at some time during the day.

c. Influent CBOD5 and TSS samples shall be collected using the same sample type and in accordance with the provisions found in Part I of this permit. The data collected in accordance with Part I of the permit may be used to demonstrate the percent removal efficiency. The permittee shall select a 30-day period which includes both dry weather and wet weather conditions.

d. Influent CBOD5 and TSS sampling shall be performed over the same time period as effluent CBOD5 and TSS sampling.

FACT SHEET
NPDES PERMIT MODIFICATION
DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
WASTE WATER TREATMENT PLANT AT BLUE PLAINS
WASHINGTON, DC

December 16, 2004

NPDES Permit Number: DC0021199

1. NOTICE OF PERMIT MODIFICATION.

The United States Environmental Protection Agency, Region III (EPA) has decided to modify the permit issued on January 24, 2003 to the District of Colombia Water and Sewer Authority (WASA), for the discharge of treated municipal wastewater from the Blue Plains Wastewater Treatment Plant and treated and untreated storm water through the District of Columbia's combined sewer system as described in the permit application and herein. As discussed below, EPA finds modification to be appropriate in light of certain issues raised by the permittee, as well as Friends of the Earth and the Sierra Club, each of which filed petitions with the Environmental Appeals Board requesting review of certain provisions of the January 24, 2003 permit. In addition, modifications are appropriate: 1) to reflect that the permittee has completed its long term CSO control plan (LTCP) and making this a Phase II permit under the 1994 CSO Policy by adding requirements for the permittee to immediately implement its LTCP; and, 2) reflecting the requirements of the District of Colombia total maximum daily load (TMDL) requirements for parameters in the Anacostia River and for Rock Creek and its Piney Branch tributary. Permit requirements are based on the Clean Water Act (33 U.S.C. § 1251 et seq.), hereinafter referred to as the Act, and NPDES regulations (40 C.F.R. Parts 122, 124 and 133).

2. PERMITTING AUTHORITY.

The NPDES Permitting authority is: U.S. Environmental Protection Agency, Region III ("EPA"), Office of Watersheds (3WP13), 1650 Arch Street, Philadelphia, PA 19103. The permit writer is: Mary Letzkus (215-814-2087), MD/DC Branch.

3. PERMITTEE.

The applicant is: District of Columbia Water and Sewer Authority (WASA), Blue Plains Wastewater Treatment Plant, 5000 Overlook Avenue, Washington, DC 20032. The contact person is: Walter Bailey (202-787-4172).

4. EFFECTIVE DATES.

The modifications to the permit will become effective 30 days after the final determinations are made, unless a request for an evidentiary hearing is submitted within 30 days after receipt of the final determination. The modified permit shall expire on February 25, 2008.

5. PUBLIC NOTICE.

A modified draft permit was offered for a 30-day public comment on March 19, 2004, at which time EPA published notice in the *Washington Post*. At the conclusion of the comment period EPA had received comments from WASA, the Sierra Club and Friends of the Earth by EarthJustice, the Blue Plains Regional Committee and the State of Maryland.

6. BRIEF DESCRIPTION OF THIS ACTION.

A. Background

On January 24, 2003, the Director, Water Protection Division, made final determinations with respect to permit issuance and a final permit was issued to the permittee.

On February 24, 2003, WASA filed a petition for review of the Blue Plains permit with the Environmental Appeals Board (EAB). On March 3, 2003, the Friends of the Earth and the Sierra Club filed a joint petition for review of the Blue Plains permit with the EAB. In addition, by letter dated February 26, 2003, WASA requested that EPA make certain minor modifications of the permit to correct several items identified as errors.

As required by 40 C.F.R. §124.16, on March 21, 2003, EPA notified the EAB and the petitioners that the contested provisions of the permit were stayed pending final agency action on those provisions. Those portions of the permit which were stayed include: 1) Part I. Section A., requirement to monitor fecal coliform and enterococci at Outfall 001; 2) Part I, Section A. Footnote 7; 3) Part I. Section A., Footnote 8; 4) Part III. Section B. 1., 5) Part III. Section B. 1.a., 6) Part III. Section B. 1. d.(I); 7) Part III, Section B. 1. e.; 8) Part III.. Section B. 1. f.(iv); 9) Part III.. Section C.; 10) Part III. Section D.; 11) Part I. Section B. Footnote 10 and Part IV. Section E.; 12) Part I. Section B. footnotes (1a)b, (1b) and (1c), 13) Part III. Section B. 1. d.,.12) Part I. Section C. footnote 6, and 13) Part III. Section B.1. c.(ii).

In addition, the stay notice identified the provisions of the permit which the permittee contends contain clerical errors: 1) certain references in the table and footnotes for Outfall 019 Part I. Section C. relating to sampling frequency requirements for fecal coliform, enterococci, nitrate, nitrogen and phosphorous; 2) reference to CSO Outfall 052 in Part III. Section B.1.(v) should be CSO Outfall 041; 3) record of material removed referenced in Part III. Section E.2. j. should refer to CSO Outfall 041 rather than CSO Outfall 052; and 4) total nitrogen sampling frequency in Part I. Section B. for Outfall 002 should be listed as daily rather than once every eight hours. EPA noted that all other provisions of the permit would continue to be in full force and effect.

In order to provide an opportunity for the parties to resolve issues raised in their appeals, the parties requested, and the EAB granted, extension of EPA's deadline for filing a response to the petitions. Following a period of negotiations, on November 19, 2003, the EAB granted EPA's request to withdraw all of the contested permit conditions, except Part III.C. , which was contested by the permittee. The EAB also granted the parties' request to stay the permit appeals in order to give the agency time to attempt to resolve the contested issues, except for Part III.C., through a permit modification. On May 28, 2004 EPA filed a status report with the Environmental Appeals Board, in which it notified the EAB that the Agency had proposed a draft modified permit. The Agency further notified the EAB that it was withdrawing Part III.C. of the permit, the only remaining contested provision that had not been withdrawn, as the Agency proposed modifications to this provision. On October 12, 2004, the EAB granted EPA's Motion on Consent to Dismiss the appeals, in that basis that there are no active matters before the Board.

In addition to the permit appeals, compliance with the 1994 CSO Policy, including implementation of the Nine Minimum Controls and the LTCP are the subject of a citizen's lawsuit, Anacostia Watershed Society, et al. v. District of Columbia Water and Sewer Authority, et al, Civ. Action No: 1:00CV00183TFH, filed in the United States District Court for the District of Colombia on October 10, 2003. Further, on December 20, 2002, the United States filed a Complaint against WASA and the District of Colombia, alleging, *inter alia*, that the permittee has failed to fully implement the Nine Minimum Controls and violated Water Quality Standards. U. S. v. District of Colombia Water and Sewer Authority, et al., Civil Action No: 1:002CV02511 (Dist. Ct. D.C.). (These matters have now been consolidated as Consolidated Civil Action No. 1: CV00813TFH.) On October 10, 2003, a Consent Decree among the United States, the Permittee and the citizen's groups was entered resolving a number of issues in the litigation, particularly those issues related to implementation of the nine minimum controls. The Consent Decree, to which WASA is obligated, includes CSO control requirements in addition to those contained in the permit. WASA is bound by the Consent Decree provisions regardless of whether they are also stated in the permit. The parties have reached agreement in principle on the remaining issues, including the appropriate schedule for implementation of the LTCP. The agreement has been set forth in a second Consent Decree, between the United States and WASA, and is expected to be lodged with the District Court shortly.

As a result of the discussions which took place during the stay of the permit appeals, certain revisions to the permit were agreed upon by the parties. The agreed upon terms were written into the draft modified permit and offered for public comment on March 19, along with the CSO LTCP requirements and the TMDL-derived water quality-based effluent limits. EPA received four sets of comments on the draft modifications. A Response to Comments was prepared and has been placed in the administrative record for this permit action.

B. Modifications to the Final Permit.

The modified provisions are designed to resolve issues raised by the permittee (EAB Appeal No. 03-01) and Friends of the Earth and the Sierra Club (EAB Appeal No 03-02) in their

respective appeals of the January 24, 2003 permit, to make the permit consistent with the 1994 CSO Policy requirements for Phase II permits and to add water quality-based effluent limits reflecting the requirements of TMDLS issued for the Anacostia River and Rock Creek.

This final permit modifies the following conditions:

- Part I. A - the requirement to monitor fecal coliform and enterococci at Outfall 001 has been modified to require the first sample to be taken within 2 hours of the beginning of the discharge. The January 24 permit required the sample to be taken within 30 minutes of the beginning of the discharge. In addition, this requirement has been modified to clarify that the 2 hour delay does not apply to flow monitoring.

- Part I. A - Footnote 7, contained a typographical error, requiring the permittee to "report and substantiate" changes in the volume or character of pollutants introduced to the wastewater treatment plant. This provision was intended to read "report any substantial" changes. The provision has been modified to correct the typographical error, and to follow the language regarding CSO-related bypasses contained in the 1994 CSO Policy.

- Part I .B - The monitoring frequency for total nitrogen has been changed from every 8 hours to daily to conform to the 24-hour composite sample type.

- Part I. B - Footnote (1b)c. has been modified to clarify that any extension of the June 28, 2007 expiration date for the provisions of Part I.B.(1c)b can be for a period no longer than is justified by circumstances beyond the permittee's control.

- Part I., B - Footnote 10, which requires the permittee to use best efforts to meet the nitrogen reduction goal under the Chesapeake Bay Agreement has been revised, however, the intent and effect remain the same. The word "section" following "as provided in" is not necessary and has been removed.

- Part I .C - the requirement to monitor fecal coliform and enterococci at Outfall 019 has been modified to require the first sample to be taken within 2 hours of the beginning of the discharge. The January 24 permit required the sample to be taken within 30 minutes of the beginning of the discharge. This modification is necessary to allow manual sampling.

- Part I. C. - Footnote 8 which described how composite samples should be taken for carbonaceous biological demand has been removed. The compositing protocol in Footnote 4 has replaced Footnote 8 for these samples.

- Part I. C. - Footnote 4 has been modified to specify that grab samples be taken within 2 hours of the start of sampling. This modification is necessary to allow offsite personnel time to arrive at the site to begin sampling. In addition, the word "flow" has been added to clarify that the composite sampling is flow based.

- Part I. C. - Footnote 6 has been modified to clarify that samples are not required for discharges lasting less than two hours.

- Part II.A.2. - The CWA civil penalty provision has been adjusted upward for inflation from $27,500 to $32,500. This is in accordance with Federal Law which requires adjustments every four years.

- Part II.A.13, Reopener Provision has been modified to clarify that if the CSO controls fail to meet the District of Columbia's Water Quality Standards the permit may be reopened, and has generally been revised to provide more clarity. The reopener language in the permit is broadly written and provides that the permit may be reopened to cover a number of future conditions, including, but not limited to, the introduction of new TMDLs and to incorporate additional nutrient reduction for the Chesapeake Bay.

- Part III.B.1.a. Operation and Maintenance has been clarified; the intent remains the same.

- Part III.B.1.a.viii - A new provision has been added which requires the Main, "O" Street, Potomac, Poplar Point and Eastside pumping stations to be rehabilitated in accordance with the above referenced Consent Decree and to provide pumping capacities of 240 mgd, 45 mgd, 460mgd, 45 mgd and 45 mgd respectively. Clarifying language has been added specifying that operation and maintenance at these pumping capacities is expected following rehabilitation of the pumping stations as these capacities will not be achieved prior to rehabilitation.

- Part III.B.1.c (ii) - Pretreatment Program. A requirement has been added to conduct an annual inspection of significant industrial users and, if necessary establish procedures to control batch discharges into the combined sewer system during wet weather. Batch discharges are to be evaluated to determine whether or not they can be controlled during wet weather, considering such factors as volume, frequency, characteristics and the need to protect life and property.

- Part III.B.1.d - Maximize Flows to Blue Plains. Former (I) which stated that there shall be no combined sewer overflows when there is sufficient treatment capacity at Blue Plains has been deleted. This issue is addressed in the LTCP.

- Part III.B.1.e.i - Eliminate Dry Weather Overflows - the requirement to report all dry weather overflows immediately to the permitting authority has been eliminated because these requirements are redundant, given similar requirements found at III.B.1.e.iii.

- Part III.B.1.f.iv - language requiring cleaning of 100% of catch basins every 2 years has been modified to reflect the requirement in the above-referenced Consent Decree ; cleaning of at least 85% of the catch basins at least annually.

- Part III.B.1.f.vi - is a new requirement providing that the permittee shall work with the Public Works Department and the National Park Service to maximize litter controls in the combined sewershed.

- Part III.B.1.f.vii - is a new requirement providing that the permittee shall institute a bi-lingual (English and Spanish) public education program to reduce litter.

- Part III.B.1.f.viii - is a modification of the previous Part III.B.1.iv in which the permittee is required to conduct four public education workshops each year.

- Part III.B.1.i.v - Reference to CSO Outfall 052 was corrected to reference the bar rack at Outfall 041.

- Part III.B.1.j has been added requiring CSS litter control meetings.

- Part III.C - In the January 24, 2003 permit this was: Water Quality Based Requirements for CSOs. It has become Part III.D in this modified permit. Part III.C is now Long Term Control Plan (LTCP).

- New Part III.C.1 has been added which states that the LTCP for the District of Columbia CSS is designed to control CSO discharges to meet the District of Columbia water quality standards in the Anacostia River, Rock Creek and its Piney Branch tributary, and the Potomac.

- New Part III.C.2 has been added which clarifies that the LTCP is the final report submitted July 2002.

- Part III.C.A. 1 - 9 - requires permittee to implement, operate and maintain the alternatives in the LTCP immediately upon the issuance of the modified permit. Clarifying language has been added to this section identifying the LTCP as the District of Columbia Water and Sewer Authority, Combined Sewer System Long Term Control Plan, Final Report, July 2002.

- Part III.C.A.1., second sentence has been modified to read, "The LTCP facilities

for controlling discharges to the above named receiving waters *include, among other things* diversion structures..."

- Part III.C.A.5., has been added which states, "All combined sewer flow stored in the Anacostia River, Rock Creek and Potomac River storage tunnels shall be emptied within 59 hours of the end of a wet weather event. If another wet weather event occurs before 59 hours has elapsed, the 59 hour period shall start from the end of the last wet weather event that occurred. A wet weather event occurs as a result of storm water runoff, including snow melt, entering into or being conveyed in the CSS. All flow stored in the storage tunnels and appurtenant structures shall be conveyed to Blue Plains for treatment."

- Part III.C.A.7 Footnote 4 has been clarified to state that the diversion capacities from the referenced outfalls have been estimated based on computer modeling.

- New Part III.D, Post-Construction Monitoring for CSOs has been added. EPA has added clarifying language to III.D to specify that the placement in operation of the tunnels is sequential, and has revised minor wording as suggested by the permittee.

- Part III.D language has been modified to clarify that post-construction monitoring is the responsibility of the permittee, however, data obtained from other sources may be used.

- Part III.E, Water Quality Based Requirements was previously Part III.C in the January 24, 2003 permit. This part has been revised setting forth the District's narrative WQS as specific permit conditions for CSOs.

- Part III.E.2 Has been rewritten to incorporate implementation of all EPA approved District of Columbia Total Maximum Daily Loads (TMDLs). The TMDL-based limits have been amended based upon information received during public comment. In the public noticed version of the draft permit, EPA had erroneously used the storm sewer TMDL allocations rather than the CSO allocations. TMDL-based effluent limits has been modified such that limits are presented in tabular form and are expressed as load allocations to CSOs. Compliance is immediate.

- Part III.E.3 Clarifying language has been added to specify that this monitoring, unlike the Post-Construction monitoring, is expected to begin immediately. The purpose of this monitoring is to determine the extent to which TMDL-based limits are being met now.

- Part III.E.3 requirement has been added which requires the permittee to provide

an estimated flow for each CSO discharge sampled.

- Part III.F, CSO Status Reports and Schedules was previously Part III.E in the January 24, 2003 permit.

- Part III.F.1. has been revised to include a requirement for reporting progress to EPA on the Nine Minimum Controls program and the LTCP.

- Part IV.A.1.b.(I) has been added requiring that the Annual Report contain an updated industrial listing and a summary of Significant Industrial Users (SIU).

- Part IV.A.1.b.vii has been added to require the annual pretreatment report to include results of inspection, identification and evaluation of batch discharges to the CSOs during wet weather.

- Part IV.E has been modified to include the requirement that best efforts to meet the nitrogen goal require optimal operation of the nitrogen removal technology to the extent such operation does not preclude permittee's ability to meet other permit conditions.

7. FACILITY DESCRIPTION.

The Blue Plains Wastewater Treatment Plant is the largest advanced waste water treatment plant in the world. It covers 150 acres, has a design capacity of 370 million gallons per day (mgd), and a peak capacity of 1.076 billion gallons per day. The collection system includes 1,800 miles of sanitary and combined sewers, 22 flow-metering stations, nine off-site waste water pumping stations and 16 storm water pumping stations within the District. Separate sanitary and storm sewers serve approximately two-thirds of the District. In older portions of the system, such as the downtown area, combined sanitary and storm sewer systems are prevalent.

The Blue Plains Wastewater Treatment Plant serves the District of Columbia, Montgomery and Prince Georges Counties in Maryland and Fairfax and Loudoun counties in Virginia. Waste water capacity for the District of Columbia is allocated at 153 mgd; the Washington Suburban Sanitary Commission (which serves Montgomery and Prince Georges Counties in Maryland), has an allocation of 169.6 mgd; Fairfax County, Virginia, has an allocation of 31 mgd; Loudoun County has an allocation of 16.4 mgd; and other Potomac interceptor users share an allocation of 16.4 mgd.

During wet weather, the plant flow capacity varies depending upon whether or not the peak flow occurs for greater than or less than four (4) hours. The plant has two discharge points, Outfalls 001 and 002.

Outfall 002, which also discharges to the Potomac River, is the principle discharge point. Treatment for this outfall includes primary treatment, secondary treatment, nitrification, biological nitrogen removal, filtration, disinfection and dechlorination. Outfall 001 functions as an excess flow conduit and is used to avoid hydraulic overloads to the plant during wet weather. Effluent from Outfall 001, which discharges to the Potomac River, receives primary treatment, disinfection and dechlorination. For the purpose of this permit, Outfall 001 has been characterized as a CSO-related by-pass, pursuant to the 1994 Combined Sewer Overflow Policy ("CSO Policy").

The treatment plant and sewer system discharge to the Potomac and Anacostia Rivers, Rock Creek and tributary waters. In its Water Quality Standards (WQS), the District of Columbia has designated these streams for primary contact recreation, aesthetic enjoyment, aquatic life, water oriented wildlife, raw water source for industrial water supply and for navigational use.

The permittee operates a Combined Sewer Overflow system which has a total of 62 outfalls. There are 15 CSOs which discharge to the Anacostia, 13 CSOs on the Potomac, and 30 CSOs that discharge to Rock Creek. This system is designed to convey waste to the treatment plant and to prevent wet weather flow from exceeding the hydraulic capacity of the sewers and/or the treatment plant. EPA requested an accounting of all outfalls in the CSO system. Included among the outfalls identified in the permit are Outfalls 004, 008, 061 and 062, which are emergency relief points at pump stations. They are not authorized to discharge.

During the life of this permit, the waste water treatment plant will undergo a program of improvement and rehabilitation, which will affect most of the treatment processes at the plant. The construction has been divided into seven major phases which necessitates the removal of significant process tankage from service. During the construction period, as significant plant facilities will be out of service in nearly every plant process, an estimated 25% reduction will be required in the amount of wet weather peak flows receiving full treatment and the wet weather peak flows receiving primary/disinfection treatment.

The Blue Plains Waste Water Treatment Plant consists of the following treatment technologies:

Primary Treatment - a waste water treatment process that allows particles which float or settle to be separated from the water being treated. At Blue Plains, this process includes the following processes: raw wastewater pumping; grit removal; grease separation and primary sedimentation. Solids removed from the process are treated by digestion, elutriation and dewatering.

Secondary Treatment - is a waste water treatment process used to convert dissolved or suspended materials into a form which can be separated from the water being treated. This process usually follows primary treatment by sedimentation. At Blue Plains, secondary

treatment is accomplished by means of a modified-aeration step-feed activated sludge process. The secondary treatment facilities are comprised of aeration basins, secondary sedimentation basins, sludge return and wasting systems, the secondary blower facilities with associated blowers and diffusers and pumping stations. At Blue Plains carbon is reduced by use of coarse bubble diffused aeration and the plant uses chemical precipitation for phosphorus removal.

Biological Nitrogen Removal - a process whereby ammonia nitrogen is converted to nitrate nitrogen. The process also includes denitrification facilities for nitrogen removal, filtration for effluent polishing and chlorination for effluent disinfection. Blue Plains retrofitted existing facilities to enable full plant BNR operation in the spring of 2000.

Nitrification - an aerobic process in which bacteria change the ammonia and organic nitrogen in waste water into oxidized nitrogen (usually nitrate). The second stage BOD is sometimes referred to as the "nitrification stage," first stage BOD is called the "carbonaceous stage." Blue Plains employs sparged air turbines for oxygenation.

Denitrification - an anaerobic process that occurs when nitrite or nitrate ions are reduced to nitrogen gas and bubbles are formed as a result of this process. The bubbles attach to the biological flocs and float the flocs to the surface of the secondary clarifers. This condition is often the cause of rising sludge observed in secondary clarifers or gravity thickeners. At Blue Plains, the denitrification facilities are able to treat the entire plant flow under limited conditions of process load and temperature.

Filtration and Disinfection and Dechlorination - includes multimedia filtration of nitrified effluent and disinfection of the filtered effluent by chlorination and dechlorination prior to discharge.

Solids Process - includes gravity thickening and anaerobic digestion of primary sludges, air flotation thickening of waste activated and chemical sludges, vacuum filtration of the thickened and digested sludges and direct off-site disposal of the vacuum filter cake.

Chemical Addition - chemicals may be employed in the liquid stream treatment operations for a variety of functions. The chemicals employed and the treatment application are described briefly below.

Odor Control - Chlorine may be applied at raw wastewater pumping station numbers 1 and 2 and to the effluent from the grit removal facilities.

Settleability Enhancement - polyelectrolytes (polymers) may be added as follows: Influent to primary sedimentation; Influent to secondary sedimentation; and Influent to nitrification sedimentation

Phosphorus Removal - iron salts including ferric chloride, ferrous sulfate and liquid alum may

be added to the unit process as follows: primary sedimentation, secondary treatment, nitrification and effluent filtration.

Metal Salts - are used for the precipitation of phosphorus and as an aid in enhancing Settleability of sludges and mixed liquors.

pH - lime is applied to the effluent to nitrification in order to maintain an adequate pH level for the nitrification process.

Foam Control - Commercial defoamant compounds can be added to secondary treatment and nitrification as needed.

Disinfection - the process used to kill most microorganisms in wastewater including essentially all disease causing bacteria. At Blue Plains, chlorine is used to disinfect effluent discharged from both plant outfalls.

Dechlorination - as noted above, chlorine is used to disinfect effluent discharged at both plant outfalls, however, excess chlorine is removed from the effluent by the addition of sulfur dioxide.

Solids Processing - polymers are used in the dissolved air floatation thickening process as stabilization along with ferric chloride for aiding dewatering during vacuum filtration and at the centrifuges as a dewatering aid.

8. PERMIT EFFLUENT LIMITS.

The following reflect the proposed modifications to the existing permit conditions. All other conditions remain the same:

A. Outfall 002 - This is the primary outfall for treated wastewater from the Blue Plains WWTP. The Potomac River is the receiving water for the effluent from Outfall 002.

Total Nitrogen. The January 24 permit established a nitrogen goal of not greater than 8,467,200 lbs per year for Blue Plains. This goal is intended to be sufficiently stringent to comply with the Bay narrative standards and is to be achieved by operating the Biological Nitrogen Reduction (BNR) process at the facility on a limited year round basis. The modified permit changes the monitoring frequency from every 8 hours to daily, which is consistent with the other sampling requirements in the permit.

B. Outfall 001 - Outfall 001 is a discharge point on the Potomac River which functions as an excess flow conduit and is used to avoid hydraulic overloads to the plant during wet weather. At Blue Plains, excess flows receive primary treatment, chlorination and dechlorination prior to discharge. Depending upon the amount of rainfall in a given year, Outfall 001 generally discharges approximately 3 - 4 times per year.

In addition to the existing requirements for discharge from Outfall 001, the modified permit requires the permittee to take a first sample for fecal coliform and enterococci within 2 hours of the beginning of the discharge. The January 24 permit required the sample to be taken within 30 minutes of the beginning of the discharge. This change was made because the permittee requested the additional time to facilitate manual sampling, since personnel responsible for taking the samples may travel from distant locations or late at night. The two hour delay does not apply to flow monitoring.

Footnote 7, in the existing permit contains a typographical error. It read that the permittee must "report and substantiate" changes to the pollutants introduced to the POTW. It was intended to read "report any substantial" changes. That provision has now been modified to track the requirements of the 1994 CSO Policy and reads: "Authorization of CSO-related bypasses under this provision may be modified or terminated when there is a substantial increase in the volume or character of pollutants being introduced into the POTW" and reflects the Agency's original intent. The permittee will have to note any changes in the influent to the plant when it seeks permit renewal.

C. Outfall 019 - Outfall 019 is located at the south end of the RFK Stadium parking lot, on the west bank of the Anacostia River and adjacent to the East Side Pump Station. The purpose of this facility is to achieve maximum diversion of flow at the Structure 24 dams on the Northeast Boundary Sewer, and to concentrate the pollutants in that flow to a smaller flow which can be handled by the available capacity of the Eastside Pump Station. The Northeast Boundary Swirl Concentrator Facility provides treatment and disinfection for up to 400 mgd of combined sewer overflow before it discharges to the Anacostia River at Outfall 019.

The Northeast Boundary Sewer (NEB) is a combined sewer which serves 4,250 acres and is the largest drainage area in the District. The amount of flow necessary to trigger the Northeast Boundary Swirl is 15 mgd. Treatment at this facility includes mechanical screening of combined sewage influent, concentration of solid materials in the three swirl concentrator tanks, disinfection of the treated influent and dechlorination.

Monitoring requirements continue to be imposed upon Outfall 019 to assess the impact of the discharge on the receiving stream and the effectiveness of the swirl treatment system. The monitoring requirements have been modified as follows:

- Part I. C - the requirement to monitor fecal coliform and enterococci at Outfall 019 has been modified to require the first sample to be taken within 2 hours of the beginning of the discharge. The January 24 permit required the sample to be taken within 30 minutes of the beginning of the discharge. This change was made because the permittee has stated that personnel responsible for taking the samples may travel from distant locations or late at night.

- Part I. C. - Footnote 8, which described how composite samples should be taken

for carbonaceous biological demand has been removed. The compositing protocol in Footnote 4 is more explicit and has replaced Footnote 8 for these samples. This modification provides greater clarity to personnel taking samples and greater conformity in sample technique.

- Part I .C. - Footnote 4 has been modified to specify that grab samples be taken within 2 hours of the start of sampling. This modification is necessary to allow offsite personnel time to arrive at the sampling site to begin sampling.

- Part I. C. - Footnote 6 has been modified to clarify that samples are not required for discharges lasting less than two hours. This is simply intended to make the language more clear. The two hour delay does not apply to flow monitoring which is continuous.

9. GENERAL PERMIT CONDITIONS.

General conditions are requirements that must be incorporated into every permit, in accordance with 40 C.F.R. Sections 122.41 and 122.42. These requirements delineate the legal, administrative and procedural requirements of the permit.

Part II Section A paragraph 13, Reopener Provision has been modified to specify that if the CSO controls fail to meet the District of Columbia's Water Quality Standards the permit may be reopened. This was intended, but not specified in the existing permit. The reopener provision has been revised to provide more clarity. All other provisions of Part II are carried over from the January 24, 2003 permit.

10. COMBINED SEWER SYSTEM PERMIT CONDITIONS.

These conditions are designed to comply with the 1994 CSO Policy.

A. Nine Minimum Controls (NMC) - require permittees to immediately implement technology-based requirements. They are achieved through best available technology economically achievable (BAT)/best conventional pollutant control technology (BCT), as determined on a best professional judgement (BPJ) of the permitting authority. The permittee's NMC program is ongoing and all of the requirements contained in the January 24, 2003 permit remain in effect.

The modifications to the January 24, 2003 permit are as follows:

- Part III.B.1.a.viii, Operation and Maintenance, requires that the Main, "O", Potomac, Poplar Point and Eastside pumping stations be operated and maintained and establishes firm pumping capacities for each. These requirements are based on BCT and BPJ and reflect requirements in the Consent Decree.

- Part III.B.1.c - Pretreatment Program, requires the permittee to conduct an annual inspection of significant industrial users and establish procedures as necessary to control batch discharges into the combined sewer system during wet weather. This requirement is based on BPJ.

- Part III.B.1.d - Maximize Flows to Blue Plains. Former (I) which stated that there shall be no combined sewer overflows when there is sufficient treatment capacity at Blue Plains has been deleted. Measures to maximize flow to Blue Plains are required in the above-referenced Consent Decree and are also addressed in the LTCP. This requirement is BPJ.

- Part III.B.1.e.i - Eliminate Dry Weather Overflows - the requirement to report all dry weather overflows immediately to the permitting authority has been eliminated because this requirement is already stated at III.B.1.e.iii. This requirement is BPJ.

- Part III.B.1.f.iv - language requiring cleaning of 100% of catch basins within 2 years has been modified to require cleaning of 85 percent of the 8200 basins at least annually, paralleling requirements of the Consent Decree. This requirement is based on BPJ.

- Part III.B.1.f.vi - is a new requirement providing that the permittee shall work with the Public Works Department and the National Park Service to maximize litter controls in the combined sewershed. This requirement is based on BPJ.

- Part III.B.1.f.vii - is a new requirement providing that the permittee shall institute a bi-lingual (English and Spanish) public education program to reduce litter. This requirement is based on BPJ.

- Part III.B.1.f.viii - is a modification of the previous Part III.B.1.iv in which the permittee is required to conduct four public education workshops each year. This requirement is based on BPJ.

B. Long Term Control Plan

Consistent with the 1994 CSO Policy, the modified permit requires implementation of the LTCP immediately upon issuance of this permit.

In accordance with Section 301(b)(1)(C) of the Act, 42 U.S.C. §1311(b)(1)(C), publicly-owned treatment works (POTWs), were required to control their discharges to the extent necessary to protect state water quality standards by no later that July 1, 1977. Where that has not occurred, the 1994 CSO Policy, incorporated into the Act with the addition of Section

402(q) through the Wet Weather Water Quality Control Act of 2000, provides a framework for POTWs to achieve compliance, including the development and implementation of a Long Term CSO Control Plan (LTCP). Accordingly, this permit reflects the requirement that the permittee has a present duty to comply with water quality standards by immediately implementing its LTCP.

As noted in the January 24, 2003 permit, the permittee submitted to EPA a proposed LTCP, using the "demonstration" approach, which was made available to the public for review and comment, in accordance with the 1994 CSO Policy. EPA and members of the public submitted comments on the proposed LTCP to the permittee. The permittee submitted a revised LTCP to EPA in July of 2002. The selected controls include, among other things, construction of diversion structures, a system of underground storage tunnels, upgrading and expansion of pump stations, consolidation of certain outfall structures, as well as some sewer separation and low impact development.

By letter dated August 28, 2003, the DC Department of Health stated that the CSO discharges remaining after implementation of the LTCP will meet the WQS for all receiving waters. EPA has determined that based upon current information, including but not limited to, documentation in the LTCP and the DC DOH's analysis and interpretation of its WQS, WASA has demonstrated, pursuant to Section II.C.4.b of the 1994 CSO Policy, that the CSO control program will not preclude the attainment of WQS or the receiving waters designated uses or contribute to their impairment. This is subject to post-construction monitoring adequate to verify compliance with water quality standards, in accordance with Sections II.C.4.b. and II. C. 9. of the 1994 CSO Policy.

The 1994 CSO Policy provides, since implementation schedules for compliance deadlines which have passed may not generally be included in permits, that the Phase II permit reflecting the requirements of the LTCP will be accompanied by a separate enforceable mechanism- in the case of a major facility, a judicial order - containing compliance dates on the fastest practicable schedule. The LTCP has now been finalized, and, as noted above, the schedule is set forth in a Consent Decree which is expected to be lodged with the District Court. In accordance with applicable regulations, the Consent Decree is subject a thirty (30) day public comment period prior to entry by the Court.

Section III. C., D. and F. of the revised permit set forth the narrative requirements which insure that the selected CSO controls are implemented, operated and maintained as described in the LTCP, as required by Section IV B. 2.b. of the 1994 CSO Policy. As the LTCP controls are implemented, during the life of this and subsequent permits, the treatment of wet weather flows will increase.

C. Water Quality-Based Requirements.

Part III.B, Water Quality-Based Requirements for CSOs was previously Part III.C of the

January 24, 2003, permit. This section has been modified to reflect that the permit is now a Phase II permit under the 1994 CSO Policy, including the water quality based effluent limits for a Phase II permit. In addition, this part has been revised to set forth the applicable narrative conditions of the DC WQS.

Section IV.B.2 c..of the CSO Control Policy provides that Phase II permits should contain "Water quality-based effluent limits under 40 C.F.R. 122.44(d)(1) and 122.44(k), requiring, at a minimum, compliance with, no later than the date allowed under the State's WQS, the numeric performance standards for the selected CSO controls, based upon average design conditions..." Where a permittee has elected to pursue the "demonstration" approach under the policy, the limits are to reflect performance standards and requirements consistent with Section II.C.4.b. of the Policy. That section of the Policy, which outlines the "demonstration" approach, provides for the use of total maximum daily loads (TMDLs) and wasteload allocations in establishing performance standards.

On December 14, 2001, EPA approved the District of Columbia's Total Maximum Daily Loads (TMDLs) for BOD and on March 1, 2002, EPA issued a TMDL for TSS. Both of these TMDLs were for the Anacostia River. These TMDLs were challenged in Friends of the Earth v. EPA, No. 04-0092 (D.D.C.). On November 29, 2004 the Court granted EPA's motion for summary judgment in the TMDL challenge, upholding EPA's approval of the District of Colombia's TMDLs for BOD and TSS. Friends of the Earth v. EPA, Memorandum Opinion, November 29, 2004

On August 28, 2003, EPA approved the District of Columbia's TMDL for bacteria. On October 31, 2003, EPA approved the District of Columbia's TMDL for oil and grease, and on August 29, 2003, EPA approved the District's TMDL for organics and metals. All of these TMDLs were for the Anacostia River.

On February 27, 2004, EPA approved the District of Columbia's TMDLs for organics and metals for Piney Branch.

On February 27, 2004, EPA approved the District of Columbia's TMDLs for organics, bacteria and metals for Rock Creek.

The effluent limits set forth in Part III. E. reflect the TMDLS which have been adopted for the Anacostia River and Rock Creek and its Piney Branch Tributary. The modeling for the TMDLs, as for the LTCP was conducted based upon the average rainfall years of 1988 (dry), 1989 (wet) and 1990 (average).

For the Potomac River, the permittee may not discharge any pollutant at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above District of Colombia water quality standards, including numeric or narrative criteria for water quality. The narrative DC WQS have been set forth in the permit. The Potomac is further protected by the

NMCs and the LTCP requirements.

11. SPECIAL CONDITIONS.

The Special Conditions remain unchanged from the January 24 permit with the exception of the following:

- New Part IV.A.1.b.(I) has been added to the Pretreatment requirements and requires that the Annual Report contain an updated industrial listing and a summary of Significant Industrial Users (SIU). This requirement is based upon BPJ.

- New Part IV.A.1.b.(vii) has been added to the pretreatment requirements and specifies that the annual pretreatment report include results of inspection, identification and evaluation of batch discharges to the CSOs during wet weather. This requirement is based upon BPJ.

- Part IV.E has been clarified to reflect that the requirement that "best efforts" to meet the nitrogen goal requires optimal operation of the nitrogen removal technology to the extent that such operation does not impair the permittee's ability to meet other permit conditions. The District of Columbia, as a signatory to the 1987 Chesapeake Bay Agreement and subsequent amendments to that agreement, supports the goal of reducing nutrients to the mainstem of the Chesapeake Bay and to that end has installed and operated a biological nitrogen reduction (BNR) process at the Blue Plains facility. Operation of BNR at Blue Plains is essential to the health of the Chesapeake Bay. The clarification language in this permit does not relax the nitrogen removal expectations included in the January 2003 permit. It simply acknowledges that under limited circumstances during hot weather, operation of the BNR process would require the addition of so much phosphorous that it could result in a violation of the phosphorous discharge limit set forth in the permit.

- The phosphorous limit is based upon the Potomac Strategy Management Commission Agreement and EPA's Best Professional Judgement. It is also intended to be protective of the Chesapeake Bay. The permit requirement is that the permittee will operate the BNR process to the maximum extent possible, except in the limited circumstances where it would lead to a violation of the phosphorous limit.

12. Public Notice Publication Date, *Washington Post*: March 19, 2004

13. DC 401 Certification Received: December 15, 2004
14. Commonwealth of Virginia Comments Received: July 27, 2004
15. State of Maryland Comments Received: April 19, 2004
16. NMFS Comments Received: May 3, 2004

NPDES PERMIT MODIFICATION
DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
WASTE WATER TREATMENT PLANT AT BLUE PLAINS
WASHINGTON, DC

NPDES Permit Number DC0021199

Response to Comments
March 19, 2004 Public Notice
December 16, 2004 Issued Permit

I. General

On March 19, 2004 the United States Environmental Protection Agency, Region III (EPA) offered for public comment in the *Washington Post*, a modified draft NPDES permit for the District of Columbia Wastewater Treatment Plant located at 5000 Overlook Avenue, SW, Washington, DC. This draft permit included modifications to the NPDES permit that was issued by EPA to this facility on January 24, 2003. The thirty (30) day public comment period ended on April 19, 2004.

During this 30-day public comment period, EPA received comments from four entities: including the District of Columbia Water and Sewer Authority (WASA), the Blue Plains Regional Committee (BPRC), the Sierra Club and Friends of the Earth represented by EarthJustice and the Maryland Department of the Environment. In reaching its decision regarding the issuance of the final modified permit, the region considered these comments and made certain changes in response to those comments to the permit and the fact sheet.

The following is a summary of the comments that EPA received during the public comment period and EPA's responses thereto.

II. Comments and Responses

A. Comments received from the Blue Plains Regional Committee (BPRC). The following comments were received from Donna M. P. Wilson, Esq., BPRC Chair, Prince George's County.

1. **Comment:** The commenter states that the modified draft permit contains inappropriate references to the CSO Long-term Control Plan (LTCP) without inclusion of an approved schedule. EPA needs to resolve the outstanding CSO LTCP schedule issue and negotiate a reasonable and fiscally implementable schedule with WASA and

achieve CWA compliance.

2. Comment: Commenter states that the modified draft permit lacks a "water quality standards (WQS) compliance determination" and that EPA is obligated to make its own formal determination that any CSO discharges remaining after implementation of the LTCP will not cause or have the reasonable potential to cause or contribute to a violation of applicable WQS.

Response: The CSO Policy provides that a permittee who has selected the demonstration approach for its LTCP must demonstrate *inter alia* that the planned control program is adequate to meet WQS and protect designated uses, unless WQS cannot be met as a result of natural background conditions or pollution sources other than CSOs, and that any discharges remaining after the plan is implemented will not preclude the attainment of WQS or the receiving water's designated uses or contribute to their impairment. See CSO Policy at II. C.3.b. The Policy does not direct, much less require, EPA to make a specific finding that the LTCP will meet WQS.

Notwithstanding the preceding, the DC Department of Health (DOH) is responsible for establishing WQS and administering the WQS program for the District. By letter dated August 28, 2003, DOH advised EPA that it had determined that the LTCP was in compliance with the CSO Policy, including that the CSO discharges remaining after implementation of the LTCP will meet the narrative WQS in all receiving waters.

See also response to Comment C. 3.a. *supra*. In addition, in issuing the Phase 2 permit, EPA accepts the position that the LTCP is intended to comply with the CSO Policy and is designed to be protective of water quality standards. However, if after the LTCP controls are in place water quality standards are still not met, additional controls may be needed to meet water quality standards. The post-construction monitoring program and permit re-opener enable any such additional controls.

3. Comment: Commenter states that the modified draft permit inappropriately applies various total maximum daily load (TMDL) and general WQS compliance requirements. The proposed permit language includes several references to related TMDLs and WQS that seem inappropriate in this context. Clearly EPA must determine whether or not the LTCP will meet WQS. TMDLs should be used as

See also response to Comment A.2, above.

B. Comments received from the Sierra Club and Friends of the Earth. The following comments were received from David S. Baron, Esq., attorney for EarthJustice and submitted on behalf of the Sierra Club and Friends of the Earth.

1. **Comments regarding the Long Term Control Plan:**

   a. Part III.C.2 of the draft permit refers to the "LTCP" without referencing a specific version of the plan. To ensure clarity, the permit should provide such a specific reference (i.e., District of Columbia Water and Sewer Authority, Combined Sewer System Long Term Control Plan, Final Report, July 2002).

   Response: EPA has made this change and it can be found at Part III.C2. See C.1.j.(I) below.

   b. Rather than attempting to characterize which plan components are the "principal" ones, the permit should simply reference the pages of the LTCP that set out the plan components: pps. 13-1 to 13-17 Alternatively, the relevant sentence should be revised to read as follows: The LTCP facilities for controlling discharges to the above named receiving waters ~~are principally comprised of~~ include, among other things, diversion structures, a system of underground storage tunnels, [etc.].

   Response: EPA has revised the relevant sentence in Part III.C.A.1 as suggested above.

   c. Footnote 4 of subparagraph III.C.A.7.b. requires clarification. Does the footnote mean that the diversion capacities from the referenced outfalls have previously been estimated based on computer modeling, or that compliance with these capacities after LTCP completion will be determined by computer modeling? If it is the latter, then we question the sufficiency of modeling alone to determine that the specified diversion levels are in fact being achieved.

   Response: EPA estimated the diversion capacities from the referenced outfalls based on computer modeling. The footnote has been revised, however, the reference is III.C.A.7.c not III.C.A.7.b.

   The CSO outfalls covered by Footnote 4 are all located in Rock Creek. They all divert to the Rock Creek Interceptor, which conveys flow to the Potomac Pumping Station. From the Potomac

054	West Rock Creek Diversion Sewer	-	-	-
056	Normanstone Drive	-	-	-
	Total these CSOs		**1.25**	**25%**
	Total Rock Creek CSOs Overflow Volume (including Piney Branch and CSOs Monitored under footnote 3)		**5**	**100%**

As shown by the table, a number of outfalls do not overflow and the frequency and volumes of those predicted to overflow is small. Differences between predictions and actual conditions will be identified by post-construction monitoring and adjustments can be made if they are necessary.

d. Subparagraph III. D provides for Phase 2 monitoring. Since the LTCP proposes building the tunnels sequentially, there is no reason to defer Phase 2 monitoring on the Anacostia until the Rock Creek and Potomac tunnels are completed. Commenter asks the Region to confirm that the above reading correctly reflects the intent of Part III.D. of the permit. To further clarify the permit on this score, commenter urges EPA to amend the relevant language in the first paragraph of Part III. D as follows:

Phase	Post Construction Condition
1	Following the placing in operation of the inflatable Dams and pumping stations Rehabilitation
2	Following the placement in operation of the Anacostia, Rock Creek and Potomac Storage tunnels respectively, as each tunnel is placed in operation.

Response: Commenter urges EPA to amend the relevant language in the first paragraph of Part III.D. Commenter is correct that Phase 2 monitoring for completed facilities is not intended to be deferred until final completion of the LTCP. EPA has added the suggested language.

c. We support the inclusion of TMDL-derived effluent limits in Part III.E.2, but these provisions require clarification and modification to comply with the Clean Water Act and EPA rules, as follows:

1. *average annual load and determination of compliance:* Almost all of the TMDL-related effluent limits are framed in terms of total "average annual" loads, and/or percentage reductions in "average annual" loads. The permit, however, does not specify how "average annual" loads are to be calculated. For example, Part II.E.2.d. requires the anticipated average annual load of biochemical oxygen demand (BOD_5) from CSOs in the Anacostia to be reduced by 90.3%, to not greater than 152,906 pounds per year, but does not specify how the annual average load actually produced by CSOs is to be calculated, or how compliance is to be determined. Does" average annual" refer to the average of various loadings measured at different times over the year?

Response: The average annual load limits are based on the daily simulations in the LTCP submitted by WASA. These simulations modeled for the years 1988, 1989 and 1990, which represent dry, wet and average rainfall years. This span of years also was used for the TMDL modeling assumptions from which the limits were derived.

a. How and where is compliance with this load limit (and/or with the 95% reduction requirement) to be measured? Part III.E.3 of the draft permit requires twice per year monitoring of BOD at two Anacostia outfalls "in order to measure compliance with the TMDLs," but nowhere does the permit explain how the results of this limited monitoring can or will illustrate compliance or noncompliance with the annual average TMDL, or with the percentage reduction requirement. Without such details, the permit does not assure compliance with water quality standards as required by 33 U.S.C. §1311(b)(1)(C) and 40 C.F.R. §§122.4(d) and 122.44(d).

Response: Part III.E.3. sets forth monitoring requirements for the two Anacostia River and two Rock Creek outfalls. Samples are to be taken from these outfalls to gather data that is "representative" of all of the CSO discharges that occur into these two receiving waters. Until such time as construction of the tunnels is complete, however, EPA anticipates noncompliance with CSO limits set forth in this permit. In the interim, the monitoring data gathered will provide greater confidence regarding characterization of the effluent under a variety of circumstances.

the draft permit's monitoring provisions do not comply with this requirement.

Response: As discussed at 1.a above, the monitoring requirements at Part III.E.3 are intended to determine whether or not the TMDL-based limits are being met prior to construction of the structural components of the LTCP. Because the limits either will be met or not, the twice per year monitoring frequency is representative of the non-continuous discharges expected to occur. Construction will not be completed during this permit cycle and thus the post-construction monitoring requirements are unlikely to become effective during the permit term.

EPA selected the outfalls at Part III.E.3 according to the requirements of 40 C.F.R. 122.44(I)(1) and (2), which speak to the representativeness of monitoring, e.g., volume, size and duration of the discharge. The modeling performed during the development of the LTCP provides information regarding the behavior of the CSO during various sizes of storm events. In addition, EPA has added a requirement for the permittee to provide an estimated flow volume. Hourly precipitation data is available through the Reagan International Airport.

In choosing representative outfalls for monitoring, EPA made several practical considerations, specifically, the accessibility of the outfalls to be sampled and the amount of surface area draining through such outfalls. EPA chose two outfalls to represent CSO discharges for each of the Anacostia River (outfalls 010 and 012), and Rock Creek (outfalls 049 and 052). For compliance purposes, these outfalls are surrogates representing all CSOs for the water bodies into which they discharge.

Flow monitors were installed on CSOs 010, 012 and 049 during the LTCP process so some historic flow data is available for them. In addition, these outfalls were sampled during the development of the LTCP, so they are accessible and in adequate condition for sampling. Further, they represent the largest CSO drainage areas into the Anacostia with the exception of the Northeast boundary which drains to CSO 019.

Even though CSO outfall 019 drains a very large area of the District, it was not chosen for monitoring because treatment trains (screening, chlorination, dechlorination) are already in place on

standards, not merely predicted or anticipated compliance. The word "anticipated" must therefore be deleted wherever it appears in Part III.E.2.

Response: The commenter is correct in that the limit is based upon the TMDL, which does not use the word "anticipated" in describing the annual load. This is not longer an issue, as, in response to another comment, EPA has changed the TMDL derived limits from percentage reduction to load allocation. EPA disagrees with the commenter, however, that permit limits are not based on projections, predictions and other assumptions. Permit writing agencies must necessarily draw on models, making assumptions and predictions, in order to derive permit limits to protect water quality.

2. *Need for Daily Loads*: As we have repeatedly stated in comments on proposed TMDLs for D.C. waters, annual and seasonal load limits are not sufficient to assure compliance with water quality standards. Our reasons for so contending are set forth in detail in those comments, which we incorporate herein by reference. We also explained why daily loads are required in our opening and reply briefs in Friends of the Earth v. EPA, No. 02-1123 (D.C. Cir., final briefs filed 2-21-2003), also incorporated by reference. Because the draft permit does not include daily loading limits for the pollutants addressed in Part III.E.2 of the draft, or monitoring requirements sufficient to ensure compliance with daily limits, it likewise fails to assure compliance with water quality standards, and therefore does not comply with 33 U.S.C. §1311(b)(1)(C), and 40 C.F.R. §§122.4(d), 122.44(d).

Response: The commenter is attempting here to challenge the underlying TMDLs EPA has used as the basis for the WQ based effluent limits. TMDLs cannot be challenged in a permit proceeding -- only whether the NPDES permit appropriately translates the TMDL-related limits into WQBELs. See, In re: City of Moscow, Idaho, 10 E.A.D. 135, 159-161. Commenter puts forth the arguments it has made in Friends of the Earth, Inc. v. EPA, Civil Action No 04-92 (D. D. C.). The effluent limits in this permit are consistent with the assumptions and requirements of the applicable WLAs as required by 40 C.F.R. §122.44 (d) (1) (vii)(B). Moreover, on November 29, 2004,the Court granted EPA's motion for summary judgment in Friends of the Earth, upholding the calculation of TMDLs on an annual and seasonal, rather than a daily, basis.

f. Part III.B.1.a.(viii). The commenter requests that the Fact Sheet reference the Consent Decree as follows: second line insert "in accordance with the above referenced Consent Decree" following "rehabilitated". This wording should be consistent with the Fact Sheet at Part III.B.1.f.(iv). Additionally, the commenter requests that Part III.B.1.a(viii) be modified by inserting "Following rehabilitation" in the first line ahead of "Operate".

Response: EPA has revised the Fact Sheet reference that the rehabilitation is also a requirement of the Consent Decree, and has inserted the requested language in the permit.

g. Part III.B.1.c.(ii). Commenter states that the Fact Sheet on page 12 for Part III.B.1.c states the purpose of that condition to be control of SIU discharges to the CSS during wet weather. However, the condition of III.B.1.c.(ii) in line four states "...prohibit batch discharges'. The Fact Sheet and the NMC condition appear to be in conflict as to the procedure to be applied to SIU batch discharges. To set the standard at "prohibition" except for a safety hazard is not reasonable. In view of permittee's belief that a measure other than prohibition is appropriate, commenter suggests the following language for the Part III.B.1.c.(ii):

> Use pretreatment regulations to require permitted significant industrial users discharging directly to the CSS to establish management practices to control batch discharges during wet weather conditions whenever possible. Conduct an annual inspection of the above users to identify the existence of any batch discharges. Evaluate batch discharges identified to determine if the discharges should be controlled during wet weather taking into consideration, volume, frequency, characteristics and the need to protect life and property.

Response: EPA has made this change.

h. PartIII.B.1.f.(iv) and (viii). Language in Part III.B.1.f.(iv) concerning the public education workshops is redundant to the language in (viii). Part (viii) needs to be revised to state that the workshops will be held four times per year.

Response: EPA has made these changes.

i. Part III.B.1.f.(vi). Commenter requests that the condition be modified and the reporting requirements under III.F.2 and III.F.3 be consistent with other NMC conditions to read:

> "Work on a regular and ongoing basis with the DC Department of Public Works (DPW) and National Park Service (NPS) to maximize litter control

terms of this permit.

In addition, immediate CSO monitoring and reporting requirements are included in the permit to confirm the adequacy of the data characterizing the occurrence patterns and quality of the CSOs prior to construction of the planned controls.

k. Commenter provided four pages of handwritten clarifications to Part III.C at pages 40 through 43, inclusive.

Response: EPA has made the clarifications in these pages.

l. Commenter provided four pages of handwritten clarifications to Part III. D. Post Construction Monitoring found on pages 44 through 47, inclusive.

Response: EPA has made these clarifications.

2. **Comments on Part III. Section E of the draft permit related to discrepancies in the TMDL documents and in the TMDL values included in the draft permit.**

General - Commenter states that the permittee believes that all TMDL-derived limits should be deleted from the permit.

Response: EPA believes that TMDL-derived limits are appropriate and required for this permit. See response to Comment A. 3, and Part III.C.3.d above.

a. Part III.E.2.d and e: Anacostia TMDL for BOD, nitrogen and phosphorus. The loads in the draft permit for nitrogen and phosphorus are much lower than those allocated in the TMDL.

Response: EPA has made these changes.

b. Part III.E.2.h: Anacostia TMDL for Total Arsenic: The draft permit allocates a total arsenic load to CSO in the Upper Anacostia of 1.03 pounds per year, whereas the final TMDL allocated a load of 1.30 pounds per average year to CSO. Commenter requests that this discrepancy be corrected.

Response: EPA has made this change.

c. Part III.E.2.h: Anacostia TMDL for Total Copper: Commenter requests that the load discrepancy between EPA's Amended Decision Rationale for the TMDL and DC DOH's Final TMDL be revised as appropriate.

Response: The amended decision rationale is incorrect. EPA reviewed the calculations

determination. That guidance document, however, describes a process for integrating LTCP development with WQS standards reviews, where possible, and is not directed toward NPDES permit writers. The document's references to "approval," therefore, are only abbreviated references to the formal, final actions that the NPDES agency takes in a permitting or an enforcement proceeding. The Guidance contemplates that WQS may be changed where necessary and creates a process to facilitate that change where appropriate. It is not applicable in this instance, as the DC WQS did not undergo review. As noted in the DC DOH letter of August 28, 2003, it is anticipated that implementation of the LTCP will result in WQS compliance. In footnote 13 to Attachment 3 to its comments, the permittee attempts to incorporate the December 2001 EPA Report to Congress, in its entirety, into its comments. To the extent that the commenter has referenced specific pages in the CSO Report, the commenter has not raised a specific comment, or at least not a comment suggesting why EPA should change this permit based on specific language in the Report to Congress. Moreover, CWA section 402(q)(1) refers to the CSO Policy with a specific reference to the date of publication of the CSO Policy, not to any subsequently issued guidance documents.

b. The draft permit fails to conform to CWA § 402(q) because it contains the general water quality standards compliance requirement in Section III.E.1.

Response: EPA disagrees that the permit fails to conform to the CSO Policy based on its inclusion of "general" WQBELs. In the final permit, EPA has enumerated DC's narrative WQS as narrative WQBELs because EPA finds that, at the time of permit issuance, the CSO discharges are likely to cause, have the reasonable potential to cause, or contribute to non-attainment of these narrative WQS. This finding conforms to the CSO Policy for Phase 2 permits because the finding is the one required by 40 C.F.R. 122.44(d)(1). The CSO Policy cites to this regulation at 59 FR 18688, at page 18696.

For this permit, the LTCP evaluated hydraulic loadings and capacity of the Combined Sewer System (CSS) operated by WASA. On the basis of data gathered from flow meters installed in the CSS at key locations, CSO flows in the CSS were documented during storm events. The physical information describing the CSS and related land use and land form data was used to construct a computer-based model of the CSS to help predict the hydraulic response of the system during various storm events. Sampling was conducted at representative CSOs to determine wastewater characteristics during CSO events and to help assess potential environmental impacts. CSO samples were tested for total recoverable metals and cyanide, dissolved metals, pesticides/PCBs, volatiles and semi-volatiles, TSS, $CBOD_5$ and bacteria.

as the critical environmental condition for establishing a wasteload allocation for the CSOs. The wasteloads allocated to the CSO discharges remaining following implementation of the LTCP controls are the average annual values of the three-year period. It is these wasteloads that EPA proposes to use as effluent limits in section III.E.2 of the draft permit. Following LTCP implementation, actual loads will vary depending on rainfall volume, duration and frequency, with the expectation that the actual loads discharged will exceed the TMDL-derived effluent limits in those years when rainfall produces loads that exceed the average annual loads of the average annual years.

iii. The monitoring requirements for the TMDL-derived effluent limits in section III.E.3 of the permit incorrectly assume that compliance with the TMDLs can be monitored directly. Therefore, the monitoring requirements suffer from the same flaws as the effluent limits themselves. Compliance with the TMDLs has to be measured against the average annual loads for the three-year period that is the basis for the TMDLs, not the loads in the year in which the monitoring is performed. The only way to accurately measure compliance with the TMDLs is to use the same sampling protocols and data analysis that were used to develop the TMDLs themselves. This would involve periodic monitoring of the CSO discharges and the water quality conditions in the receiving waters. This information would then be used to make a modeling evaluation to determine whether the selected controls in the LTCP are providing the degree of control required by the TMDLs, again, based on the average annual loads for the 3 years that is the basis for both the TMDLs and the LTCP.

The correct procedure for monitoring compliance with the TMDLs is set forth in the post construction monitoring provisions in section III.D of the draft permit. Moreover, section III.C of the draft permit contains monitoring requirements to ensure that the selected controls in the LTCP are providing the level of CSO control used to establish the wasteload allocations in the TMDLs.

Response: See response to B.2.c.1.a found on page 9, above, which discusses EPA's current thinking on how compliance with TMDL-derived limits will be enforced.

EPA's reliance on TMDLs as a basis for the limits is reasonable and consistent with the regulations. EPA regulations at 40 C.F.R. §122.44(d)(1)(vii)(B) state:

permit may be reopened to add nutrient load allocations.

2. **Comment:** MDE objects to what it believes is a weakening of the nitrogen goal in Section E of the permit. This part states that the permittee must use best efforts to meet the nitrogen goal when it does not interfere with other permit obligations.

Response: Part IV.E has been modified to reflect that best efforts to meet the nitrogen goal require optimal operation of the nitrogen removal technology to the extent that such operation does not impair the permittee's ability to meet other permit conditions. The District of Columbia, as a signatory to the 1987 Chesapeake Bay Agreement and subsequent amendments to that agreement, supports the goal of reducing nutrients to the mainstem of the Chesapeake Bay and to that end the Permittee has installed and operated a biological nitrogen reduction (BNR) process at the Blue Plains facility. Operation of BNR at Blue Plains is essential to the health of the Chesapeake Bay. The clarification language in this permit does not relax the nitrogen removal expectations included in the January 2003 permit. Rather, it acknowledges that under limited circumstances during hot weather, operation of the BNR process would require the addition of so much phosphorous that it could result in a violation of the phosphorous discharge limit set forth in the permit.

Exhibit B

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
5000 OVERLOOK AVENUE, S.W., WASHINGTON, D.C. 20032

April 16, 2004

Ms. Mary M. Letzkus
U.S. Environmental Protection Agency, Region III
MD/DC Branch, Mail Code 3WP13
Office of Watersheds
1650 Arch Street
Philadelphia, PA 19107

Subject: March 18, 2004 Draft for Public Notice Modified NPDES Permit No. DC0021199, Blue Plains Wastewater Treatment Plant

Dear Ms. Letzkus:

Thank you for your letter of March 18, 2004 enclosing the draft modified permit and fact sheet. The District of Columbia Water and Sewer Authority (WASA) has reviewed the documents and organized its comments on the draft permit and fact sheet into three parts. The comments are included as attachments to this letter as follows:

- Attachment No. 1 contains WASA's general comments covering Parts I and III of the draft permit.
- Attachment No. 2 contains WASA comments on Part III, Section E of the draft permit. These comments reflect findings by WASA related to discrepancies in the TMDL documents and in the TMDL values included in the draft permit.
- Attachment No. 3 contains WASA comments on Part III of the draft permit related to Phase II permit conditions.

WASA appreciates this opportunity to submit comments for EPA's consideration. Please contact me if you have any questions, comments or require additional information.

Sincerely,

Walter F. Bailey, Director
Department of Wastewater Treatment

cc:

WASA
J. Johnson
M. Marcotte
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C. Braveboy
A. Tesfaye
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D.C. Dept of Health
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MWCOG
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McGuire Woods LLP
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Greeley and Hansen LLC
R. Bizzarri
L. Jaworski
J. Cassidy

Attachment No. 1
WASA GENERAL COMMENTS
March 18, 2004 Draft for Public Notice
NPDES Permit No. DC0021199

Page	Reference	Comment
All	General	Traditional Part designation and page numbering are missing throughout draft (e.g. Part I Page of)
4	I.A. Footnote(8)	Outfall 001 has been established as a CSO-related bypass and is a component of LTCP. All other monitored CSO outfalls are required to report with DMR (P. 43, III.C.8.). There is no rationale given as to why 001 is singled out from all other CSO outfalls for 24 hour reporting. Appears to be an unnecessary requirement and would confuse reporting. WASA requests footnote (8) be changed to : "Permittee shall report discharges for Outfall 001 with the monthly DMR."
-	I.B. Footnote (10)	First line. Word "section" following "As provided in" does not appear to be necessary and should be deleted.
-	I.C. Footnote (4)	WASA requests word "flow" be added to second line following "the discharge, and" to make clear that sample compositing is to be flow based.
-	I.C. Footnote (6)	Third line. Appears "tow" should be "two"
34	III.B.1.a. (viii)	WASA requests that Fact Sheet reference Consent Decree as follows: second line insert " in accordance with the above referenced Consent Decree" following "rehabilitated". This wording would be consistent with the Fact Sheet at III.B.1.f. (iv). Additionally, WASA requests that III.B.1.a. (viii) be modified by inserting "Following rehabilitation" in the first line ahead of "Operate".
34	III.B.1.c. (ii)	The Fact Sheet (p.12) for III.B.1.c. states the purpose of III.B.1.c.(ii) to be control (emphasis added) of SIU discharges to the CSS during wet weather. However, the condition of III.B..1.c(ii) in line four states ". . . prohibit batch discharges". The Fact Sheet and the NMC condition appear to be in conflict as to the procedure to be applied to SIU batch discharges. To set the standard at "prohibition" except for a safety hazard is not reasonable to apply to a program that is already significantly controlled. Since wet weather events vary widely in frequency, duration and magnitude, it may or may not produce any measurable benefit to arbitrarily prohibit the discharge. However, prohibition could unnecessarily cause an adverse impact to the user's operations, economic situation or function. WASA previously proposed a more rational approach with defined measures to establish controls which can range from stopping discharges, to reducing discharges, to increasing treatment, depending on the circumstances. This would offer the SIU options for how it might conduct wet weather operations. In view of these circumstances, WASA requests that the text for III.B.1.c(ii) be replaced with a condition that would reflect the purpose stated in the Fact Sheet as follows: "(ii) Use pretreatment regulations to require permitted significant industrial users discharging directly to the CSS to establish management practices to control batch discharges during wet weather conditions whenever possible Conduct an annual inspection of the above users to identify the existence of any

Page	Reference	Comment
		batch discharges. Evaluate batch discharges identified to determine if the discharges should be controlled during wet weather taking into consideration volume, frequency, characteristics, and the need to protect life and property."
36	III.B.1.f. (iv) and (viii)	The requirement to hold public education workshops in paragraph (iv) is also required in paragraph (viii). WASA requests the requirement under paragraph (iv) be deleted. In paragraph (Viii), sentence reading "The workshop programs comprise a series of presentations twice per year", WASA requests changing "twice per year" to "four times per year" to be consistent with the prior sentence.
36	III.B.1.f. (vi)	WASA requests that this condition be modified and the reporting requirements be stated under III.F.2 and III.F.3 to be consistent with all other NMC conditions. The modified text is: "Work on a regular and ongoing basis with the D.C. Department of Public Works (DPW) and National Park Service (NPS) to maximize litter control in the CSS, targeting neighborhoods that contribute disproportionate amounts of trash to the CSS." On p.53 at III.F.2. , add a new requirement "j" as follows: "j. CSS Litter Control- Number of meetings or conferences with DPW and NPS. Summary of topics discussed and actions adopted." Renumber the subsequent paragraphs. On p.54 and F.III.3. , add "h. CSS Litter Control"
39	III.C.	WASA requests the following modifications to SECTION C. LONG TERM CONTROL PLAN (LTCP) to clarify various conditions: 1. To be clear on the LTCP, after the section title, add the following: " The LTCP is the recommended plan included in the Combined Sewer System Long Term Control Plan, Final Report, July 2002 submitted by the permittee to EPA and the District of Columbia Department of Health." 2. In accordance with the LTCP, III.C.A.5. provides for establishing a time to dewater the tunnels and when that time period starts. If the tunnels are full and another wet weather event occurs before the dewatering time has elapsed, the start of the dewatering period has to be reset to start from the end of the last event. Also, a definition for wet weather event should be included in this subsection. In order to clarify the dewatering period, WASA requests that III.C.A.5. be revised as follows: "All combined sewer flow stored in the Anacostia River, Rock Creek and Potomac River storage tunnels shall be emptied within 59 hours of the end of a wet weather event. If another wet weather event occurs before 59 hours has elapsed,

Page	Reference	Comment
		the 59 hour period shall start from the end of the last wet weather event that occurs. A wet weather event occurs as a result of stormwater runoff, including snow melt, entering into or being conveyed in the CSS. All flow stored in the storage tunnels and appurtenant structures shall be conveyed to Blue Plains for Treatment." The wet weather event definition is consistent with the CSO Policy at I.B. 3. WASA cannot make the reports required under III.C.A.8. until the various LTCP facilities are placed in operation. Also, WASA cannot comply with the LTCP performance standards under III.C.A.9. until the various LTCP facilities are placed in operation. A condition to establish when WASA's responsibilities under III.C.A.8. and 9. start is needed. WASA requests that a new condition, III.C.A.10. be added as follows: "10. The monitoring, reporting and compliances provisions under subsections III.C.A.8. and 9. above shall become effective when the respective CSO control facilities are placed in operation " 4. See attached markups of pages 40, 41, 42, and 43 for additional clarifications.
44	III.D.	WASA requests the following modifications to SECTION D. POST CONSTRUCTION MONITORING to clarify various conditions: 1. See attached markups of pages 44, 45, 46, and 47.

A. Permittee shall implement and effectively operate and maintain the CSO controls identified in the LTCP.

1. The LTCP for the District of Columbia CSS provides for the control of CSO discharges to the Anacostia River, Rock Creek and its Piney Branch tributary and the Potomac River. The LTCP facilities for controlling discharges to the above named receiving waters are principally comprised of diversion structures, a system of underground storage tunnels, pumping stations and outfall structures. The facilities shall, within the capacities provided, divert combined sewer flows to the storage tunnels, store combined sewer flow and convey stored combined sewer flow to Blue Plains for treatment.

2. The permittee shall effectively operate and maintain the LTCP CSO control facilities in accordance with the conditions set forth below.

3. Discharges from CSO outfalls are prohibited except during wet weather events when ~~any~~ one or more of the following conditions exist:

   a. Combined ~~Storm~~ Sewer Flow (CSSF) conditions exist at Blue Plains ~~when~~ discharges may occur at Outfall 003. CSSF conditions are those described at Part I.B.(1).(a)(b.) of this permit.

   b. The associated storage tunnels serving individual CSO outfalls are filled to minimum capacity required.

   c. Combined sewer flow is being transferred from individual CSO outfalls to the associated storage tunnel or interceptor at not less than minimum diversion rates listed below.

4. Solids and floatables capture shall be provided for all overflows prior to discharge to receiving waters.

5. All combined sewer flow stored in the Anacostia River, Rock Creek and Potomac River storage tunnels shall be emptied within 59 hours of the end of one event, the cessation period shall start from the end of the last event. All flow stored in the storage tunnels and appurtenant structures shall be conveyed to Blue Plains for treatment.

6. Storage tunnels shall have minimum capacities as follows;

a. Anacostia Tunnel - 126 million gallons
b. Piney Branch Tunnel - 9.5 million gallons
c. Potomac Tunnel - 58 million gallons

7. Minimum diversion capacities from CSO outfalls to storage tunnels or interceptors and monitoring of diversions shall be as follows:

a. Anacostia CSO Control Systems

CSO Outfall	Drainage Area	Minimum Diversion Capacity for CSO Control (mgd)	Diversion to Tunnel or Interceptor	Monitoring
005	Fort Stanton	37	Tunnel	(2)
006	Fort Stanton	~~propose~~ to be separated	N/A	N/A
007	Fort Stanton	111	Tunnel	(3)
009	Canal Street	36	Tunnel	(2)
010	B St/NJ Ave	690	Tunnel	(3)
011	B St/NJ Ave	460	Tunnel	(3)
012	Tiber Creek	471	Tunnel	(3)
013	Canal Street Sewer	18	Tunnel	(2)
014	Navy Yard/M St.: 6th St - 7th St	92	Tunnel	(2)
015	Navy Yard/M St.: 9th St	11	Tunnel	(2)
016(1)	Navy Yard/M St.; 12th St - 9th St	86	Tunnel	(2)
017(1)	Navy yard/M St.: 14th St to Penn Ave.	65	Tunnel	(2)
018	Barney Circle	57	Tunnel	(2)
019	Northeast Bound	1,460	Tunnel	(3)

b. Potomac CSO Control Systems

CSO Outfall	Drainage Area	Minimum Diversion Capacity for CSO Control (mgd)	Diversion to Tunnel or Interceptor	Monitoring
020	Easby Point	297	Tunnel	(3)
021	Slash Run	530	Tunnel	(3)
022	I St-22nd St NW	333	Tunnel	(3)
024(1)	West of Rock Creek Diversion Sewer	66	Tunnel	(2)
025(1)	31st & K St NW	3	Tunnel	(2)
026(1)	Water St Dist (WRC)	0	Tunnel	(2)
027(1)	Georgetown	92	Tunnel	(2)
028(1)	37th St Georgetown	9	Tunnel	(2)
029	College Pond	133	Tunnel	(3)

b. Rock Creek CSO Control Systems

CSO Outfall	Drainage Area	Minimum Diversion Capacity for CSO Control (mgd)	Diversion to Tunnel or Interceptor	Monitoring
031	Penn Ave	~~Proposed for sep~~ to be separated	N/A	N/A
032	26th St-M St	6	Interceptor	(4)
033	N St - 25th	5	Interceptor	(3)
034	Slash Run	6	Interceptor	(4)
035	NW Boundary	290	Interceptor	(4)
036	Mass Ave & 24th St	29	Interceptor	(3)
037	Kalamora Circle West	~~Propose for sep~~ to be separated	N/A	N/A
038	Kalamora Circle East	5	Interceptor	(4)
039	Belmont Rd	28	Interceptor	(4)
040	Biltmore Rd	12	Interceptor	(4)
041	Ontario Rd	14	Interceptor	(4)
042	Quarry Rd	19	Interceptor	(4)
043	Irving St	35	Interceptor	(4)
044	Kenyon St	4	Interceptor	(4)
045	Lamont St	8	Interceptor	(4)
046	Park Rd	9	Interceptor	(4)
047	Ingleside Ter	10	Interceptor	(4)
048 (Oak St)	Mt Pleasant	11	Interceptor	(4)
049	Piney Branch	468	Tunnel	(3)
050	M St-27th St	21	Interceptor	(4)
051	Olive-29th St	4	Interceptor	(4)
052	O St-31st St	56	Interceptor	(4)
053	Q St	~~Propose for sep~~ to be separated	N/A	N/A
054	West Rock Cr Diversion Sewer	(5)	Interceptor	(4)
055	Abandoned	N/A	N/A	N/A
056	Normanstone Drive	(5)	Interceptor	(4)
057	Cleveland - 28th St & Conn Ave	33	Interceptor	(3)
058	Conn Ave	~~Proposed for sep~~ to be separated	N/A	N/A
059	16th and Rittenhouse Streets, NW	Separated	N/A	(4)

(1) These outfalls have been consolidated. Diversions capacity listed is that required for CSO control.

(2) Diversion capacity validated by construction performance test, no additional monitoring required.

(3) Continuous flow measurement of diversion and outfall. Provision for temporary sampling on diversion and outfalls.

no additional monitoring required.

(4) Diversion capacity validated by computer modeling.

(5) These CSOs are emergency reliefs for the West Creek Rock Diversion sewer. There is no tributary drainage area, and flow diversion does not occur at these CSOs. The performance of these CSOs will be validated by computer modeling, no additional ~~modeling~~ monitoring required.

8. With each DMR, report operations of the monitored CSO control facilities by systems as follows:

   a. Volume into and out of storage tunnels;
   b. Diversion rates into storage tunnels;
   c. Discharge rates from outfalls;
   d. Start and end time of wet weather event
   e. Time when storage tunnel became filled to minimum required capacity;
   f. All discharges from outfalls occurring prior to storage tunnel being filled to minimum required capacity and at less than minimum required diversion rates;
   g. Volume of overflows from outfalls end
   h. Dewatering time for tunnel following ~~cessation~~ of wet weather event;
   i. Results of any overflow or diversion sampling.

9. Permittee shall ~~be deemed to be in compliance with~~ comply with each of the following CSO control performance standards: ~~requirements where~~

There shall be

   a. No overflows ~~are recorded~~ at monitored CSO outfalls prior to storage tunnels being filled to minimum required capacities;
   b. No overflows ~~are recorded~~ at monitored CSO outfalls when diversion rates are less than or equal to minimum diversion capacity and associated storage tunnel is not filled to minimum required capacity.
   c. No overflow ~~is recorded~~ at Outfall 003 unless CSSF conditions exist at Blue Plains;
   d. Storage tunnels ~~are~~ emptied in a time period less than or equal to 59 hours following ~~cessation~~ of a wet weather event.

shall be

the end

SECTION D. POST CONSTRUCTION MONITORING

The permittee shall implement a phased post construction monitoring program to obtain information on rainfall, the volume and character of overflows and receiving waters characterisation. The monitoring phases shall be as follows:

Phase	Post Construction Condition
1	Following the placing in operation of the inflatable Dams and pumping stations Rehabilitation.
2	Following the placement in operation of the Anacostia, Rock Creek and Potomac Storage tunnels.
3	Following the placement in operation of the complete CSO tunnels storage system.

1. Phase 1 monitoring shall be in accordance with the following:

Monitoring Type	Anacostia River	Potomac River	Frequency (3)
Rainfall Monitoring (1)	1 gauge in Northeast Boundary 1 gauge in Tiber Creek	1 gauge in Slash Run	Continuous
CSO Overflow (flow and volume) (1)	Northeast Boundary CSO 019 B St/NJ Ave Pumped Overflow CSO 010	Potomac Pumping Station CSO 021 West Rock Creek Diversion Sewer CSO 023/024	Continuous
CSO Overflow Sampling (2)	1 sampling station at Northeast Boundary	N/A	4 storms/yr minimum Approx. 1 hr interval for each storm
Receiving Water Monitoring - Dissolved Oxygen	DO Monitors operated By DC DOH	DO Monitors operated By DC DOH	Approx. 30 minute intervals
Receiving Water Monitoring - Bacteria, Field Parameters (2)	Use data from other Existing programs	Use data from other existing Programs	Frequency of existing Programs

(1) Temporary gauges, meters and samplers to be installed
(2) Samples shall be analyzed for fecal coliform, enterococci, CBOD5 and TSS.
(3) Monitoring shall be conducted for a continuous period of 12 months.

2. Phase 2 monitoring shall be in accordance with the

following: CSO system

Monitoring Type	Anacostia	Potomac	Rock Creek	Frequency[4]
Rainfall monitoring[1]	1 gauge in northeast Boundary 1 gauge in Tiber Creek	1 gauge in Slash Run 1 gauge in College Pond	1 gauge in Piney Branch	continuous
CSO Overflow monitoring and Diversion to storage monitoring[2]	Northeast Boundary CSO 019 Fort Stanton CSO 007 B ST/NJ Ave Pumped over-Flow CSO 010	Potomac Pumping Station CSO 021 College Pond CSO 029	Piney Branch ~~Branch~~ CSO 049	continuous
Tunnel Storage Level Monitoring[2]	1 sensor in Tunnel	1 sensor in Tunnel	1 sensor in tunnel	continuous
CSO Overflow Sampling[2,3]	1 sampling station at Northeast Boundary CSO 019	1 sampling station at CSO 021	1 sampling station at CSO 049	4 storms ~~maximum~~ minimum Approx 1 Hr sample Interval For each Storm
Receiving water monitoring-dissolved oxygen	continuous DO monitors operated by DOH	Continuous DO monitors operated by DOH	Approx 30 DO monitors	minute Intervals.
Receiving water monitoring-bacteria, field parameters[3]	~~approx.~~ 6 other locations	~~approx.~~ 3 other locations	~~approx.~~ 7 other locations	once per week for bacteria and once per quarter for all other substances

Use data from existing programs and establish at least

1. Temporary gauges to be installed
2. Shall use facilities and equipment installed as part of CSO control systems
3. Sampling shall be analyzed for fecal coliform, enterococci, CBOD5, TSS, 127 priority pollutants, mercury, arsenic, cadmium, total chromium, copper, lead, nickel, selenium, silver, zinc, chromium VI, hardness, cyanide, pesticides, PCBs, volatiles and semivolatiles, DO, ammonia as N, TKN, total phosphorus, and ortho-phosphorus. Metals shall be analyzed as dissolved and total recoverable.
4. Monitoring shall be conducted for a continuous period of 12 months in each CSO system after appropriate facilities are placed in operation.

3. Phase 3 monitoring shall be in accordance with the following:

Monitoring Type	Anacostia CSO system	Potomac	Rock Creek	Frequency[1]
Rainfall Monitoring[1]	1 gauge in Northwest Boundary 1 gauge in Tiber Creek	1 gauge in Slash Run 1 gauge in College Pond	1 gauge in Piney Branch	Continuous
CSO Overflow Monitoring and Diversion to Storage Monitoring[2]	Northeast Boundary CSO 019 Fort Stanton CSO 007 B ST/NJ Ave Pumped overflow CSO 010	Potomac pumping station CSO 021 College Pond CSO 029	Piney Branch CSO 049	Continuous
Storage Tunnel Level Monitoring[2]	1 sensor in tunnel	1 sensor in tunnel	1 sensor in tunnel	continuous
CSO overflow Sampling[2]	sampling stations At CSO 019 And CSO 010	Sampling stations at CSO 021 and 020	1 sampling station at CSO 049	4 storms ~~Maximum~~ Minimum Approx. 1 Hour sample interval for each storm

Receiving water monitoring-dissolved oxygen	Continuous DO monitors operated by DOH	Continuous DO monitors operated by DOH	----	Approx. 30 min. Intervals
Receiving water monitoring-bacteria, field parameters[3]	use data from ~~other~~ existing programs and establish at least ~~approx~~ 6 other Locations	use data from other existing programs and establish at least ~~Approx~~ 3 other locations	~~approx~~ 7 locations other	once/wk for bacteria and once per ~~4 storm Event max~~ quarter for all other substances

(1) Temporary gauges will be installed
(2) Shall use facilities and equipment installed as part of CSO control systems
(3) Sampling shall be analyzed for fecal coliform, enterrococci, CBOD5, TSS, 127 priority pollutants, mercury, arsenic, cadmium, total chromium, copper, lead, nickel, selenium, silver, zinc, chromium VI, hardness, cyanide, pesticides, PCBs, volatiles, semi volatiles, DO, ammonia as N, TKN, total phosphorus and orhto-phosphorus. Metals shall be analyzed as dissolved and total recoverable.
(4) Monitoring shall be conducted for a continuous period of 12 months.

4. Results from the monitoring phases shall be used to assess the performance of CSO controls against predictions established as part of LTCP development. In general the assessments shall include:

   a. Comparison of monitored overflow magnitude and duration with the LTCP predictions.
   b. Comparison of monitored water quality in receiving waters with LTCP predictions.
   c. Comparison of monitored CSO reductions with LTCP reductions.
   d. Overall evaluation as to whether or not CSO controls are providing degree of control predicted for LTCP conditions and whether or not modifications or additions to the LTCP are required.

Attachment No. 2
WASA COMMENTS
March 18, 2004 Draft for Public Notice
NPDES Permit No. DC0021199

Comments on TMDL Discrepancies in Part III,
SECTION E. WATER QUALITY–BASED REQUIREMENTS FOR CSOs

As indicated in Attachment No. 3, WASA believes that all TMDL-derived limits should be deleted from the permit. However, if they remain as part of the fact sheet, they should be revised to address the items described below:

1. Part III.E.2.d, and e: Anacostia TMDL for BOD, nitrogen and phosphorus - for nitrogen and phosphorus, there appears to be a discrepancy between the loads allocated to CSO in the draft permit and those published in EPA's Decision Rationale for the TMDL and DOH's Final TMDL. The loads published in each document are compared below:

Data Source	Nitrogen Load Allocated to CSO (lb/avg year)	Phosphorus Load Allocated to CSO (lb/avg year)
Public Notice NPDES Permit	87	86
EPA TMDL Decision Rationale	12,171	8,047
DOH Final TMDL	12,171	8,047

The loads allocated in the draft permit for nitrogen and phosphorus are much less than those allocated in the approved TMDL. WASA requests that the loads for permit purposes be modified to agree with the TMDL documents.

2. Part III.E.2.h : Anacostia TMDL for Total Arsenic – the draft permit allocates a total arsenic load to CSO in the Upper Anacostia of 1.03 lb/average year, whereas the Final TMDL allocated a load of 1.30 lb/average year to CSO. WASA requests that the load be corrected to conform to the value in the Final TMDL.

3. Part III.E.2.h : Anacostia TMDL for Total Copper – there appears to be a discrepancy between the loads allocated to CSO in the draft permit and those published in EPA's Amended Decision Rationale for the TMDL and DOH's Final TMDL. The loads published in each document are compared below:

Data Source	Load allocated to CSO (lb/average yr)		
	Upper Anacostia	Lower Anacostia	Total
Public Notice NPDES Permit	409.1	331.9	741
EPA Amended TMDL Decision Rationale (10/16/03)	517.1	328.4	845.5
DOH Final TMDL	No separate allocation	No separate allocation	741

WASA requests that the load discrepancy be corrected and the load for permit purposes be revised as appropriate.

4. Part III.E.2.h ; Anacostia TMDL for PCBs – The draft permit allocates loads to CSO of 0.148 lbs/ average year for the Upper Anacostia and 0.122 lbs/average year for the Lower Anacostia or a total of 0.270 lbs/average year. The Final TMDL allocated a total CSO load of 0.2709 lbs/average year. WASA requests that the allocation for permit purposes be increased to agree with the Final TMDL.

5. Part III.E.2. Piney Branch TMDL for Copper, Lead and Zinc - DOH issued and EPA approved the following two TMDLs that affect Piney Branch:

   - Metals in Rock Creek TMDL– approved 2/27/04 by EPA
   - Rock Creek Tributaries Organics and Metals TMDL - approved 2/27/04 by EPA

   Both of these TMDLs allocate loads for copper, lead and zinc to Piney Branch Stream as follows:

Parameter	TMDL Load allocated to Piney Branch Stream (lb/average yr) [1]	
	Metals in Rock Creek TMDL	Rock Creek Tributaries Organics and Metals TMDL
Copper	30.26	2.395
Zinc	86.57	15.05
Lead	1.88	1.438

Notes:
1. Load in TMDL was allocated to the entire stream: CSO + storm water + direct runoff. The load was not allocated to individual sources.

   Each TMDL allocates different loads to Piney Branch. This must be resolved before any TMDLs are used for permit purposes.

6. Part III.E.2. Piney Branch TMDL for all Parameters – In its Rock Creek Tributaries Organics and Metals TMDL, DOH issued and EPA approved TMDLs for Piney Branch Stream. The TMDL listed existing loads for CSO and storm water and indicated that the allocated loads for CSO were based on a 96.5% reduction in CSO and a 1% margin of safety. The Final TMDL published a total allocated load for the sum of CSO and storm water, but did not provide a load for CSO.

   In the table below, we have calculated the TMDL load allocated to CSO using the existing loads presented by DOH, the 96.5 % CSO reduction and the 1% margin of safety. These values have also been compared to the loads allocated to CSO in the draft permit.

Parameter	A Piney Branch Existing CSO Load in Rock Creek Tributaries Organics and Metals TMDL (lb/avg yr)	B DOH's Assumed CSO reduction	C=Ax(1-B) CSO Load Left (lb/avg yr)	D= 0.01 x C 1% margin of safety	E = C-D Calculated CSO Load (lb/avg yr)	F DOH Load assigned to CSO in TMDL	G EPA Load allocated to CSO in Draft Permit (lb/avg yr)
Total Arsenic	0.46320	96.5%	0.016	0.000162	0.016	(1)	0.162
Total Copper	25.15	96.5%	0.880	0.008803	0.871	(1)	8.8025
Total Lead	26.47	96.5%	0.926	0.009265	0.917	(1)	6.6175
Total Zinc	70.47	96.5%	2.466	0.024665	2.442	(1)	70.47
Chlordane	0.00325	96.5%	1.14E-04	1.14E-06	0.00011	(1)	0.00065
DDD	0.00099	96.5%	3.47E-05	3.47E-07	3.44E-05	(1)	9.926E-05
DDE	0.00440	96.5%	1.54E-04	1.54E-06	0.00015	(1)	0.00035
DDT	0.01132	96.5%	3.96E-04	3.96E-06	0.00039	(1)	0.00034
Dieldrin	0.00010	96.5%	3.36E-06	3.36E-08	3.32E-06	(1)	1.92E-05
Heptachlor Epoxide	0.00032	96.5%	1.11E-05	1.11E-07	1.10E-05	(1)	4.75E-05
PAH1	0.21790	96.5%	7.63E-03	7.63E-05	7.55E-03	(1)	0.2179
PAH2	1.37600	96.5%	4.82E-02	4.82E-04	0.047678	(1)	0.005996
PAH3	0.88740	96.5%	3.11E-02	3.11E-04	0.030748	(1)	0.035496
Total PCBs	0.026670	96.5%	9.33E-04	9.33E-06	0.000924	(1)	0.000933

Notes:

(1) Load in TMDL was allocated to CSO + storm water. The allocated load to CSO was not broken out.

Based on this review, the load allocations to CSO are unclear in the underlying DOH TMDL. The basis for the load allocations in the draft permit are also unclear and do not appear to be based on the TMDL. WASA requests that the TMDL be revised to clarify this issue and that the loads for permit purposes be revised accordingly, both with appropriate public notice and opportunity for comment.

Attachment 3

Attachment No. 3

WASA COMMENTS ON DRAFT "PHASE II" PERMIT CONDITIONS AND FACT SHEET

March 18, 2004 Draft Permit for Public Notice

NPDES Permit No. DC0021199

I. INTRODUCTION AND OVERVIEW

Following one of the most extensive stakeholder and public participation processes ever undertaken during the development of a Long Term Combined Sewer Overflow Control Plan ("LTCP"), WASA submitted its July 2002 LTCP Final Report to EPA and the District of Columbia Department of Health ("DOH") in early August 2002 for their review and approval.[1] WASA's LTCP was developed in strict accordance with EPA's 1994 Combined Sewer Overflow ("CSO) Policy ("Policy"). During development of its LTCP, WASA characterized, monitored, and modeled its combined sewer system, considered sensitive areas, evaluated a wide range of control alternatives, and ultimately selected as its control program a storage, conveyance and treatment system under the "demonstration" approach in section II.C.4.b.of the Policy. As provided in the Policy and as discussed later in these comments, the selected control program was based upon design conditions reflecting average year wet weather conditions for the combined sewer area. When fully implemented, the selected controls in WASA's LTCP will reduce CSO discharges by approximately 96 percent over uncontrolled levels based on the average wet weather condition at a capital cost of approximately $1.265 billion in 2001 dollars. CSO discharges will remain following LTCP implementation, but they will be few and far between.

By letter dated August 28, 2003, DOH approved the LTCP and found that following implementation, the selected controls in the LTCP would not cause or contribute to a violation of District of Columbia water quality standards ("WQS").[2] Unfortunately, however, to date, EPA has refused to fulfill its responsibilities under the Policy and Clean Water Act ("CWA") and find that the CSO discharges remaining after LTCP will not cause or contribute to a violation of WQS. EPA's failure to follow the Policy and comply with the CWA is carried over to the draft phase II permit conditions.

The following overview of the relevant provisions of the Policy and their application to the long term control planning process in WASA's case is intended to set the stage for WASA's comments on the flaws in, and proposed revisions to the phase II permit conditions in the draft permit and fact sheet.

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[1] WASA's July 2002 LTCP Final Report and supporting documents are incorporated into these comments by reference.

[2] The August 28, 2003 letter is attached to and incorporated into these comments as Exhibit A.

When it incorporated the Policy into the CWA at section 402(q), Congress gave EPA, the states, and CSO communities clear direction with respect to their CSO-related duties and responsibilities. CWA § 402(q)(1) provides, in relevant part, as follows:

> *Each permit, order, or decree issued pursuant to this chapter after December 21, 2000 for a discharge from a municipal combined storm and sanitary sewer shall conform to the Combined Sewer Overflow Policy signed by the Administrator on April 11, 1994.*

33 U.S.C. § 1342(q)(1).

This subsection reflects the planning, permitting, and enforcement processes in the Policy governing the development and implementation of the technology-based (Nine Minimum Controls) and water quality-based (Long Term Control Plan) requirements of the Policy. The following steps set forth the substance, timing, and sequence of EPA's and the states' LTCP planning, permitting, and enforcement responsibilities under the Policy, the relevant aspects of which must be reflected in all permits, orders, and decrees issued for discharges from municipal combined sewer systems. The following is an abbreviated version of the full 11-step administrative process in Figure 1, which is taken from EPA guidance[3] and is attached to and incorporated into these comments as Exhibit B.

Step 1 - EPA (or the state permitting authority in a delegated state) must issue a phase I permit containing requirements for demonstrating implementation of the Nine Minimum Controls and development of the LTCP. (Figure 1, Step 1). Policy at IV.B.1.

Step 2 - The permittee must complete development of the LTCP and the selection of the controls necessary to meet CWA requirements (including WQS) following coordination with the permitting and WQS authorities. Policy at II.C.&III.A. The Policy gives EPA, as the permitting authority in this case, responsibility for coordinating review of the LTCP to determine if revisions to the WQS are appropriate (Policy at III.A.) and development of the phase II permit with DOH (as the WQS authority). (Figure 1, Steps 3-8). Policy at IV.

Step 3 – The permitting authority must approve the LTCP under either the presumption or demonstration provisions of section II.C.4. of the Policy. (Figure 1, Step 9). Policy at IV. As stated above, WASA has chosen the demonstration approach in its LTCP, and the Policy and implementing guidances[4] make clear that this approach can be employed only where the permittee can demonstrate that the selected control program is adequate to meet WQS. Policy at II.C.4.b.i.&ii. The Policy does recognize that post-construction monitoring may disclose that the controls may not, in fact, comply with the

[3] Figure 1 is from U.S EPA *Guidance: Coordinating CSO Long-Term Planning with Water Quality Standards Reviews* (EPA-833-R-01-002)(July 31, 2001). This and all other EPA CSO guidances are incorporated into these comments by reference.

[4] See,eg., Guidance, *Id.* at 11-12

standards, and requires that LTCPs utilizing the demonstration approach provide for cost-effective expansion or cost-effective retrofitting should additional controls be needed to meet the standards. Policy at II.C.4.b.iv.

Step 4 – After the LTCP is approved, the permitting authority must include in a "phase II" permit the various requirements and conditions set forth in section IV.B.2. of the Policy, including "[w]ater quality-based effluent limits ... requiring, at a minimum, compliance with, no later than the date allowed under the State's WQS, the numeric performance standards for the selected CSO controls ...." (Figure 1, Step 9)

Step 5 – The permittee must implement the LTCP to comply with the phase II permit conditions. (Figure 1, Step 10). An administrative or judicial decree is appropriate only where the permittee cannot comply with all the requirements of its phase II permit. LTCP implementation schedules should be included in judicial decrees issued in conjunction with the phase II permits for those major permittees that cannot meet the numeric performance standards for the selected CSO controls by the deadline established in the phase II permit. Policy at V.A.

It is apparent from this process that EPA, and later, Congress, recognized that controlling CSOs would be an extremely expensive, long-term undertaking for CSO communities nationwide and that these communities' finite resources would be most effectively and efficiently utilized by following and completing the administrative process established in the Policy. The Policy also reflects EPA's and Congress' intent that these communities not be exposed to liabilities unrelated to their obligations under the Policy. As demonstrated below, EPA has failed to follow the Policy in the draft phase II permit conditions and fact sheet and those failures expose WASA and its ratepayers to the very inefficiencies, risks and potential liabilities that the Policy was designed to avoid.

Steps 1 and 2 above (Figure 1, Steps 1, 3-8) have been completed in WASA's case. The phase I permit issued by EPA on January 22, 1997 required WASA to develop its LTCP. WASA completed the LTCP and submitted its July 2002 LTCP Report to EPA and DOH in August 2002 for their review and approval. WASA is now prepared to proceed with LTCP implementation. (Figure 1, Step 10). To fulfill it responsibilities and complete the administrative process established by the Policy, EPA must first find that the CSO discharges remaining after implementation of the selected controls in WASA's LTCP will not preclude WQS attainment (Policy at II.C.4.b.i&ii), and then modify WASA's permit to incorporate the phase II permit conditions, including narrative requirements to implement, operate and maintain the selected CSO controls and water quality-based numeric performance standards for the selected CSO controls based on the standards compliance determination. (Figure 1, Step 9). Policy at IV.B.2.

Section II.C. of the draft permit contains the narrative requirements and water quality-based numeric performance standards, but fails to make the WQS compliance determination required by the Policy and the CWA. Performance standards for the selected CSO controls under the demonstration approach must be based on a

determination by the permitting authority that compliance with the performance standards will provide for compliance with WQS, subject to post construction monitoring. The absence of such a determination exposes WASA to the risk and attendant financial consequences of having to make substantial modifications to its LTCP after the selected controls are installed in the event of a later determination that these controls will not attain WQS.[5] The Policy was designed to avoid these very risks and consequences for permittees by requiring that the permitting authority make its standards compliance determination before, not after, LTCP implementation.

The potential consequences to WASA of EPA's failure to make the required WQS compliance determination is compounded by EPA's unauthorized inclusion of effluent limits based on the approved TMDLs for the Anacostia River and Rock Creek and the general WQS compliance requirement in section III.E.of the draft permit modification. Section IV.B.2.c.iv.of the Policy calls for phase II permits to contain water quality-based effluent limits requiring compliance with the numeric performance standards for the selected CSO controls. Section III.E. of the draft permit modification fails to conform to Section IV.B.2.c.iv. because, as explained below, the TMDL-derived effluent limits and the general WQS compliance requirement do not reflect the selected CSO controls, are unrelated to and go beyond the permit conditions authorized by the phase II permit provisions in section IV.B.2.of the Policy, and impose liabilities unrelated to WASA's obligations under the Policy.

Specifically, the draft permit and fact sheet contain the following errors:

- The draft permit and fact sheet do not conform to CWA § 402(q) because they fail to make the water quality standards compliance determination required by the Policy;

[5] One might ask why WASA should be so concerned about having to modify its LTCP following implementation when the Policy itself recognizes that the selected controls may have to be expanded or retrofitted where post construction monitoring establishes that CSOs remaining after LTCP will not attain WQS. The answer is that LTCP modifications under these circumstances would by their very nature be cost effective because the possible expansions or retrofits would have been built into the LTCP at the time it was developed and approved, just as WASA has done in its LTCP. In fact, the Policy calls for modifications under these circumstances to be cost effective. Policy at II.C.4.b.iv. WASA also recognizes that it may have to modify its LTCP based on future WQS modifications; however, the financial consequences of LTCP modifications made in response to subsequently adopted WQS modifications are known and accepted at the time the WQS modifications are adopted. The financial consequences of future compliance determinations based on WQS in effect at the time of LTCP development, on the other hand, could have unintended and severe consequences that can be avoided with WQS compliance determinations prior to LTCP implementation. For example, a future WQS compliance determination following implementation of a LTCP that called for continued CSO discharges might require that the discharges be eliminated through separation based on a finding that the discharges impair an existing use that can not be changed. Had such a determination been made prior to LTCP implementation, the CSO community could have turned directly to separation and avoided investing in facilities that can not meet WQS. Also, even if subsequent standards determinations do not result in the abandonment of CSO facilities, it is reasonable to assume that expansions or retrofits that are anticipated or planned for at the time of LTCP development will cost less than unexpected expansions or retrofits required by subsequent standards compliance determinations.

- The draft permit fails to conform to CWA § 402(q) because it contains the general water quality standards compliance requirement in section III.E.1.;

- The draft permit fails to conform to CWA § 402(q) because it contains the TMDL-derived effluent limits in section III.E.2.;

- The TMDL-derived effluent limits and monitoring requirements in sections III.E.2. and III.E.3., respectively, of the draft permit are erroneous and arbitrary and capricious because they incorrectly assume that the TMDLs can be employed directly as effluent limits for the CSO discharges remaining after implementation of the LTCP;

- The draft permit and fact sheet fail to conform to CWA § 402(q) and are contrary to the law because they neither contain nor acknowledge WASA's right to a schedule for implementation of WASA's LTCP based on the erroneous conclusion that the Policy requires WASA to immediately implement its LTCP.

II. ERRORS IN THE PHASE II PERMIT CONDITIONS

A. The Draft Permit and Fact Sheet Do Not Conform to CWA § 402(q) Because They Fail to Make the Water Quality Standards Compliance Determination Required by the Policy.

As discussed above, CWA § 402(q)(1) requires that each permit issued after December 21, 2000 for a discharge from a municipal combined storm and sanitary sewer conform to the Policy. The Policy at II.C.4.b, EPA guidances implementing the Policy[6], and, indeed, EPA's comments on WASA's LTCP itself[7], make clear that when, as here, EPA is the permitting authority, it can not approve a LTCP submitted pursuant to the Policy's demonstration approach and use that LTCP to establish water quality-based conditions in a phase II permit without first determining that the LTCP will comply with applicable water quality standards following implementation. Therefore, a phase II permit that is based upon a LTCP utilizing the demonstration approach which has not been determined by the permitting authority to meet water quality standards does not conform to the Policy and violates CWA § 402(q).

Section II.C.4.b.of the Policy reflects, first, a fundamental legal principle in the CWA that permits issued pursuant to the CWA must, among other things, provide for

[6] See,e.g., *supra*. fn 4

[7] Letter dated September 5, 2002 from Jon Capacasa to Nancy Stoner, et al., which is attached to and incorporated into these comments as Exhibit C.

compliance with applicable water quality standards[8], and, second the practical importance of making standards compliance determinations before using LTCPs to establish phase II permit conditions. Without such compliance determinations, permittees are exposed to the risk of spending hundreds of millions of dollars on LTCP implementation to meet their phase II permit conditions only to learn during or following LTCP implementation that the LTCP must undergo significant modification to meet WQS. These modifications may prevent some portion of the facilities installed pursuant to the LTCP from being utilized for their intended purposes or they may require the permittee to install significant additional controls at considerably greater cost than the permittee would have incurred had these controls been installed as part of the original LTCP.

The relevant provisions from the Policy that require the permitting authority to make the standards compliance determination discussed above are found in section II.C.4.b. Both this section and WASA's LTCP contemplate CSOs remaining after LTCP implementation. Section II.C.4.b.provides that permittees using the demonstration approach must make the following water quality standards compliance demonstration:

> *i. The planned control program is adequate to meet WQS and protect designated uses, unless WQS or uses cannot be met as a result of natural background conditions or pollution sources other than CSOs;*
>
> ii *The CSO discharges remaining after implementation of the planned control program will not preclude the attainment of WQS or the receiving waters' designated uses or contribute to their impairment. Where WQS and designated uses are not met in part because of natural Background conditions or pollution sources other than the CSOs, a total maximum daily load, including wasteload allocation and a load allocation, or other means should be used to apportion pollutant loads.*

In turn, under the Policy, the permitting authority must determine that the permittee has made the required water quality standards compliance demonstration. In making this determination that the LTCP is adequate to meet WQS, the Policy contemplates that the permitting authority must specifically pass upon the design conditions that are the basis for the LTCP. This is because section IV.B.2. of the Policy clearly mandates that specific phase II permit terms and conditions reflect the approved LTCP, and that these permit terms and conditions consequently reflect the design capacities of the selected controls in the LTCP.

Thus, for permittees using the demonstration approach, section IV.B.2.c.of the Policy calls for phase II permits to contain

> *[w]ater-quality based effluent limits under 40 CFR 122.44(d)(1) and 122.44(k), requiring, at a minimum, compliance with ... the numeric performance standards for the selected CSO controls,*

[8] See, CWA§402(a)(1), 33 USC § 1342(a)(1).

based on average design conditions specifying at least one of the following:

iv. performance standards and requirements that are consistent with [section] II.C.4.b. of the Policy.

Emphasis added.

Again, we note that the above referenced section II.C.4.b.of the Policy provides for the two-part WQS compliance demonstration specified in that section.

Together, these provisions of the Policy mean that at the time it issues the phase II permit, EPA must (1) determine that WASA's LTCP makes the compliance demonstration specified in section II.C.4.b.i.&ii., and (2) include in the permit, water quality-based performance standards for the selected CSO controls based on average design conditions from WASA's LTCP. While the draft phase II permit does contain the performance standards specified in (2) above, it is legally flawed because it does not contain the WQS compliance determination specified in (1) above. The draft fact sheet suggests that EPA believes it has fulfilled its WQS compliance determination obligations under section II.C.4.b.of the Policy by its references to DOH's August 28, 2003 standards compliance determination and the various TMDLs that have been approved for the Anacostia River and Rock Creek. As discussed below, these references not only fail to fulfill EPA's obligation, they illustrate the importance of the WQS compliance determination.

EPA's reference to DOH's August 28, 2003 standards compliance determination in the draft fact sheet is not sufficient to fulfill its obligation because EPA is the permitting authority in this case. As the permitting authority, EPA is required by the Clean Water Act and its own regulations and guidances to make this determination rather than simply referencing DOH's determination. We believe EPA can fulfill its obligation by concurring in DOH's determination and rationale, but here, EPA has not even stated that it agrees with DOH.

Further, EPA can not rely simply on its reference to and use of the TMDLs that have been approved for the Anacostia River and Rock Creek to fulfill its obligation to find that the CSO discharges remaining after implementation of the planned control program in WASA's LTCP will not preclude the attainment of WQS or the receiving waters' designated uses or contribute to their impairment. A number of TMDLs containing waste load allocations for WASA's CSO discharges, including all of the TMDLs for CSO discharges to the Potomac River, remain to be developed.[9] Obviously, there can be no finding of standards compliance based on TMDLs that have not been developed. Also, WASA's CSOs must comply with DOH's narrative water quality

[9] See, D.C. Dept. of Health 303(d) 2002 list of impaired waters, which is incorporated into these comments by reference

standards and the TMDLs that have been approved and are referenced in the draft fact sheet and permit do not address compliance with the narrative standards.[10]

Finally, like the planned control program in WASA's LTCP, the TMDLs reflect the average year loads from the years 1988, 1989, and 1990. EPA approved the TMDLs on the basis of these average year loads. However, it is not clear from EPA's TMDL approvals whether EPA has also found, or whether it believes it even needs to find that the TMDLs will provide for compliance under all reasonably foreseeable wet weather conditions as opposed to the wet weather conditions reflected in the average loads. EPA's failure to make such a finding in connection with this phase II permit, or at least explain its finding, calls into question whether EPA has found that the planned control program will comply with water quality standards under all reasonably foreseeable wet weather conditions, not just the wet weather conditions reflected in the average of the years 1988, 1989, and 1990. Moreover, an examination of EPA's approval documents for the TMDLs reveals that EPA has not made any WQS compliance determination at all with respect to a number of the TMDLs.[11]

As explained above, Policy's requirement that WQS compliance determinations be made before, rather than after LTCP implementation is designed to ensure that, to the extent possible, CSO communities are not called upon to invest hundreds of millions of dollars in public funds to implement LTCPs that may have to be modified substantially based on future standards compliance determinations, particularly when these same determinations can be made prior to LTCP implementation. No where is the justification for this requirement more apparent than here. As reflected in the letter attached to these comments[12], several environmental groups have asserted that the CSO discharges remaining after implementation of the selected controls in WASA's LTCP will not comply with WQS. In fact, they have asserted that any CSO discharge following implementation of WASA's LTCP would violate WQS and the Clean Water Act. WASA and DOH disagree; however, the existence of this conflict makes it all the more important that EPA make the standards compliance determination called for in the Policy. Otherwise, WASA faces the very real risk that future challenges to the LTCP could force WASA to spend far more to achieve compliance with WQS than it would have spent had this dispute been resolved prior to or during the early stages of LTCP implementation.

Finally, it should be noted that EPA itself has acknowledged the value of proceeding with LTCP implementation based on the added assurance of the standards compliance determination associated with the demonstration approach. In its December, 2001 CSO Report to Congress[13], EPA assessed State implementation of LTCPs, and observed that "the clear levels of controls needed to meet water quality standards are often not defined" and that "uncertainty" has resulted in "delays on the part of the CSO

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[10] All EPA TMDL administrative record documents related to the TMDLs referenced in the draft permit and fact sheet are incorporated into these comments by reference.

[11] See,e.g., Anacostia TSS, oil & grease, and organics & metals TMDLs; and Piney Branch organics & metals TMDLs.

[12] See, letter dated November 21, 2002 from David S Baron, et al. to Dr Mohsin Siddique, which is attached to and incorporated into these comments as Exhibit D.

[13] The Report is incorporated into these comments by reference

communities to commit to development and implementation of LTCPs." Report at 7-6. EPA further noted that while use of the explicit performance criteria found in the LTCP presumption approach has helped communities design LTCPs, "a number of CSO permittees have decided to follow the demonstration approach in their LTCPs. In general, following a demonstration approach provides CSO communities with more assurance that when completed and implemented, LTCPs will result in attainment of applicable water quality standards." Report at 7-7. Here, WASA has specifically sought the greater level of assurance with regard to WQS compliance that EPA says the demonstration approach was intended to offer because it wants to eliminate levels of uncertainty and the associated risks before implementing its LTCP. Where, as here, EPA, and not a State, is the permitting authority, it would be wholly inadequate for EPA not to pass upon the specific WQS compliance issues and not provide the level of assurance it intended from the Policy, and which it expects its State implementing partners to provide.

B. The Draft Permit Fails to Conform to CWA § 402(q) Because it Contains the General Water Quality Standards Compliance Requirement in Section III.E.1.

EPA does not have the authority to add, on top of the water quality-based requirements derived from the LTCP, the separate general water quality standards compliance requirement in section III.E.1 of the draft permit. Section IV.B.2. of the Policy clearly provides that upon issuance of the phase II permit following LTCP development, water quality-based requirements for the combined system will be expressed as "numeric performance standards for the selected CSO controls." If EPA could simply toss a general standards compliance requirement into permits, it would render the WQS compliance determination in the Policy meaningless.

Moreover, the general water quality standard compliance requirement in wholly unrelated to WASA's obligations under the Policy because, while WASA is obligated to comply with WQS, its WQS obligation is tied directly to the process established in the Policy. Consequently, the Policy does not authorize the general standards compliance requirement in section III.E.1.of the draft permit.

Finally, for the same reasons it is not authorized by the Policy, it would be grossly unfair for EPA to include such a broad standards compliance requirement in the permit before EPA had even made a determination that the CSOs remaining after LTCP implementation will not cause or contribute to violations of WQS. Now that the water quality-based performance standards can be derived from WASA's LTCP, the requirement in section III.E.1.would serve no purpose other than to expose WASA to potential liability for non-compliance with an undefined obligation. The Policy does not authorize such an obligation.

C. The Draft Permit Fails to Conform to CWA § 402(q) Because it Contains the TMDL-derived Effluent Limits in Section III.E.2.

The draft fact sheet (page 14) discloses that EPA included the TMDL-derived effluent limits based on its conclusion that section II.C.4.b.of the Policy provides for the

use of TMDLs and wasteload allocations in establishing performance standards for LTCPs using the demonstration approach. Section II.C.4.b.does authorize the use of TMDLs and wasteload allocations, but not for the purpose that EPA uses them here. Rather, section II.C.4.b.ii. of the Policy provides that TMDLs and wasteload allocations can be used to apportion pollutant loads in determining whether the CSO discharges remaining after implementation of the selected controls will not preclude attainment of WQS where WQS are not met in part because of natural background conditions or pollution sources other than CSOs. In other words, while it may be appropriate for EPA to use the wasteload allocations in the TMDLs to determine that the performance standards for the selected controls in WASA's LTCP will not preclude attainment of WQS, it is not appropriate to use these allocations as the performance standards themselves.

Had the draft permit modification and fact sheet been written to conform to the Policy, they would have stated that the requirements in section III.C. of the draft permit include the performance standards required by section IV.B.2.c.of the Policy. The fact sheet would have stated that these performance standards reflect the selected controls in WASA's LTCP, based on average design conditions. The fact sheet would have also stated that EPA has determined that, subject to post construction monitoring, the CSO discharges remaining after implementation of WASA's LTCP will not preclude attainment of WQS in accordance with section II.C.4.b.of the Policy as long as WASA complies with the performance standards in section III.C.of the permit. EPA could have used the TMDLs and wasteload allocations to make its standards compliance determination for the performance standards,[14] but it would have been unnecessary to include the water quality-based requirements in section III.E of the permit because the performance standards in the permit and EPA's standards compliance determination in the fact sheet would have provided for compliance with WQS.

Unfortunately, the water quality-based CSO provisions in the draft permit and fact sheet bear little resemblance to the way the water quality-based CSO provisions would have been written had the draft permit conformed to the Policy. Rather than expressing the requirements in section III.C of the draft permit as both the narrative requirements pursuant to section IV.B.2.b. of the Policy and the water quality-based performance standards that they are, the fact sheet erroneously describes the requirements in section III.C. only as the narrative requirements. Fact Sheet at p.14. Further, rather than making a standards compliance determination based on the performance standards in section III.C. of the draft permit as it is required to do to conform to the Policy, EPA simply failed to make a standards compliance determination, and instead, added the independent TMDL and WQS compliance obligations in section III.E. of the draft permit.

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[14] As explained above, however, reliance on the TMDLs and wasteload allocations alone would not provide the WQS compliance determination required by the Policy. EPA's WQS compliance determination would also have to address the parameters and water bodies for which TMDLs have not been developed, the narrative WQS, those TMDL which contain no WQS determination at all, and the uncertainty associated with the average year rainfall conditions use to develop the TMDLs and the TMDL approvals, i.e., whether TMDLs developed for average wet weather conditions are sufficient to provide for WQS compliance under all wet weather conditions.

Collectively, these failures by EPA to conform to the Policy have the effect imposing upon WASA (1) the risks and burdens of proceeding with LTCP implementation without any assurance that it will not have to significantly modify its LTCP based on a future standards compliance determination after investing hundreds of millions of dollars toward LTCP implementation; (2) potential liability for non-compliance with TMDL and WQS compliance obligations in section III.E.of the draft permit even if WASA meets the performance standards in section III.C. of the draft permit; and (3) multiple liabilities for the same acts or failures to act because EPA's failure to provide for WQS compliance through the performance standards in section III.C. and its inclusion of redundant and unnecessary water quality-based compliance obligations in section III.E. of the draft permit. Had the draft phase II permit been written to conform to the Policy it would have provided for compliance with WQS based upon three clear and distinct obligations – (1) to implement, operate, and maintain the selected CSO controls as described in the LTCP, (2) to meet the performance standards, and (3) to demonstrate compliance with WQS based on post construction monitoring.

D. The TMDL-derived Effluent Limits and Monitoring Requirements in Sections III.E.2. and III.E.3., Respectively, of the Draft Permit are Erroneous and Arbitrary and Capricious Because They Incorrectly Assume That the TMDLs Can be Employed Directly As Effluent Limits For the CSO Discharges Remaining After Implementation of the LTCP.

The loads allocated to CSOs in the TMDLs cannot be used directly as effluent limits for the CSOs remaining after LTCP implementation as proposed by EPA in section III.E. of the draft permit because the numeric TMDL values and WASA's LTCP were developed from mathematical models that do not reflect the CSO discharges and other sources of water quality impacts on the receiving waters under all rainfall conditions. Thus, the loads in the CSOs remaining after implementation of the selected controls in WASA's LTCP can be expected to exceed the TMDL-derived effluent limits in section III.E.2.in those years when rainfall exceeds the rainfall volumes that are the basis for the design capacity of the selected controls in WASA's LTCP. The performance standards in section III.C. of the draft permit, on the other hand, are derived from the selected controls in WASA's LTCP, and, therefore, do reflect the design capacities of the selected controls. Consequently, WASA could be in full compliance with the performance standards in section III.C. of the draft permit and exceed the TMDL-derived effluent limits in section III.E.2.

The mathematical models that were used to develop both the TMDLs and WASA's LTCP are based on the climate conditions for the average of 1988, 1989, and 1990, which represent wet, dry, and average rainfall years. The documentation supporting the TMDLs identify the average of these years as the critical environmental condition for establishing a wasteload allocation for the CSOs. The wasteloads allocated to the CSO discharges that will remain following implementation of the selected controls in WASA's LTCP are the average annual values of the three-year period. It is these wasteloads that EPA proposes to use as effluent limits in section III.E.2.of the draft permit. Following LTCP implementation, actual loads discharged from the remaining CSOs will vary from year-

to-year depending on rainfall volume, duration and frequency, with the expectation that the actual loads discharged will exceed the TMDL-derived effluent limits in those years when rainfall produces loads that exceed the average annual loads for the 1988, 1989, and 1990 period that is the basis for both the TMDLs and WASA's LTCP.[15]

The monitoring requirements for the TMDL-derived effluent limits in section III.E.3. of the draft permit incorrectly assume that compliance with the TMDLs can be monitored directly. Therefore, the monitoring requirements suffer from the same flaws as the effluent limits themselves. As discussed above, compliance with the TMDLs has to be measured against the average annual loads for the three-year period that is the basis for the TMDLs, not the loads in the year in which the monitoring is performed. Therefore, the only way to accurately measure compliance with the TMDLs is to use the same sampling protocols and data analysis that were used to develop the TMDLs themselves. This would involve periodic monitoring of the CSO discharges and the water quality conditions in the receiving waters. This information would then be used to make a modeling evaluation to determine whether the selected controls in the LTCP are providing the decree of control required by the TMDLs, again, based on the average annual loads for the three-year period that is the basis for both the TMDLs and WASA's LTCP.

The correct procedure for monitoring compliance with the TMDLs is already set forth in the post construction monitoring provisions in section III.D.of the draft permit. Moreover, section III.C.of the draft permit contains monitoring requirements to ensure that the selected controls in the LTCP are providing the level of CSO control used to establish the wasteload allocations in the TMDLs.

E. The Draft Permit Modification and Fact Sheet Fail to Conform To CWA § 402(q) and Are Contrary to the Law Because They Neither Contain Nor Acknowledge WASA's Right to a Schedule for Implementation of WASA's LTCP Based on the Erroneous Conclusion That the Policy Requires WASA to Immediately Implement its LTCP.

The draft permit fails to include a schedule for implementation of the selected CSO controls in WASA's LTCP based on EPA's conclusion that the Policy "... requires implementation of the LTCP immediately upon issuance of this permit." Fact Sheet at p.13. The Policy contains no such requirement. Rather, it expressly provides that phase II permits should require compliance with numeric performance standards for the selected CSO controls "... no later than the date allowed under the State's WQS..." Policy at § IV.B.2.c. The District of Columbia's WQS contain the following schedule authorization:

[15] Further, neither the permit not the fact sheet contain any explanation of the term "average annual load" in the TMDL-derived effluent limits in section III.E. Presumably, they are based on the TMDLs, but it is impossible to determine from the permit how the average annual loads are to be calculated or used for compliance purposes.

> *Whenever a new water quality standard based effluent limitation is imposed in a discharge permit, the permittee shall have no more than three years in which to achieve compliance with such limitation, unless it can demonstrate that a longer compliance period is warranted. A compliance schedule shall be included in the permit.*

21 DCMR 1105.9

The obligation to implement the LTCP is unquestionably "a new water quality standard based effluent limitation" within the meaning of the above referenced the WQS provision. Further, DOH's August 28, 2003 letter to EPA (Exhibit A.) indicates that WASA has demonstrated to DOH's satisfaction that a LTCP implementation schedule is warranted. Accordingly, WASA believes that EPA is legally obligated to include a LTCP implementation schedule in the permit. WASA intends to confer immediately with DOH to establish a mutually agreeable LTCP implementation schedule for the permit, and requests that EPA afford WASA and DOH a reasonable period of time to confer and transmit a schedule to EPA.

EXHIBIT A

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Health
Environmental Health Administration
Bureau of Environmental Quality

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[redacted]

Office of the Bureau Chief

August 28, 2003

Jon Capacasa, Director
Water Protection Division
USEPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Dear Mr. Capacasa:

We have completed our review of the Water And Sewer Authority's Long Term Control Plan. The LTCP recommends a combination of pump station improvements, storage tunnels, sewer separation, outfall consolidation, regulator improvements, low impact development and excess flow treatment improvements at Blue Plains. The system will be sized to control the one year 24 hour storm (it is recognized that there is considerable variation in such a storm and antecedent events). Based upon the capacity of the system derived from the one year 24 hour storm, in the average year the system will reduce overflows to the Anacostia river by 98% and to the Potomac by 93% and to Rock Creek by 90%. In an average year there will only be two overflow events to the Anacostia, four overflow events to the Potomac and four to Rock Creek.

The DC Water Quality Standards Section 1104.3 provides narrative criteria for Class A use - primary contact recreation. These narrative criteria were developed by the District of Columbia and are not commonly in use in the other states. Additionally, the District of Columbia Water Quality Standards were modified in the 1980s to recognize that wet weather events were one of the most serious sources of pollution remaining. The District became the third jurisdiction in the nation to require regulatory storm water BMPs on all new development and redevelopment, while simultaneously understanding that there were combinations of wet weather that would be technically and economically difficult to control. Consequently, the District developed a high flow exemption for four criteria that was patterned after the commonly used low flow exemption (known as the 7Q10). This high flow exemption was approved by EPA three times during triennial reviews. High flow exemptions are cited in the EPA CSO strategy as a legal mechanism for dealing with weather induced uncertainty. The remnants of the District high flow exemption are still contained in the implementation section of the Water Quality Standards as an indication that extreme events such as floods and hurricanes will occur.

The District of Columbia is located at the Fall Line and it is here that the free flowing rivers become tidally influenced estuaries. The majority of the pollution loads that are in the District of Columbia waters originate outside of the District of Columbia. Storm flows on Rock Creek, the Anacostia and the Potomac bring tremendous loads of pollutants to the District waters that exacerbate the difficulty of controlling District of Columbia sources. Even so, huge amounts of progress have been made in restoring the aquatic habitat. American shad, hickory shad and striped bass now spawn in the District of Columbia after a thirty year absence. Submerged aquatic vegetation has staged a slow recovery in the Potomac and Anacostia. Bald Eagles and ospreys routinely nest in and near the District. The restoration of the rivers is not complete, particularly in the case of the Anacostia. The CSO LTCP is a major step in restoring the Anacostia and it places a priority on controlling the overflows to the Anacostia.

We have developed Final Total Maximum Daily Loads (TMDLs) for biochemical oxygen demand, toxics, and total suspended solid for the Anacostia and made load allocations to the combined sewers. The LTCP is in conformance with those TMDLs. The TMDLs demonstrate attainment of the appropriate Water Quality Standards for the District of Colombia. We have reviewed the water quality computer modeling done for the LTCP concerning the water quality standards for Rock Creek and the Potomac and find that the LTCP will meet the water quality standards as long as other sources of pollution receive similar levels of reduction. We therefore believe that TMDLs can be developed for Rock Creek and the Potomac that will demonstrate attainment of the Water Quality Standards for Class A and Class B uses for bacteria criteria.

The Final Anacostia Bacteria TMDL requires a 98 % reduction of CSOs exactly as in the final LTCP. Analysis of the computer simulations indicates that the remaining CSOs have only localized impacts upon the Anacostia River. The LTCP, page 14-9 deals with the degree of treatment to be provided to the remaining overflows. There will be a 98% removal by volume of combined sewage. There will be a total capture of the first flush loads containing the most concentrated combined sewage. There will be capture of floatables and large solids prior to discharge. The Department of Health has determined that the remaining CSO discharges to be "partially treated sewage" and will meet the narrative water quality standards in all receiving waters. The Department of Health does not advocate swimming nor complete, prolonged immersion in the discharge plume or mixing zone or near vicinity of any point source discharge whether sewage or industrial pollutant. We have a final TMDL for bacteria on the Anacostia River with load allocations to the combined sewers, which achieves Class A water quality standards. Some Class A uses that involve limited immersion will have a lower risk than those with prolonged immersion. However, the fact that for a few areas for a few days of the year the risk will be higher than other days and other areas does not negate the attainment of the designated use of the waterbody. This variation in risk is implicit in the criteria adoption as a regulation of the District of Columbia. Furthermore, installation of signs and warning lights concerning CSOs will provide real time guides to users to insure that any risk from the few remaining CSO discharges, are in fact minimal. Once the LTCP is fully implemented, the high risk to full body contact will be the result of storm flows propagating into the District waters from Maryland; rather than being caused by the remaining overflows.

Overall, the studies and modeling included in the LTCP demonstrate that, in accordance with the CSO Policy, for CSO loads only, the remaining overflows after implementation of the LTCP will meet the D.C. Water Quality Standards in all receiving waters.

We have reviewed the framework for NPDES permit conditions in subsection 15.7 of the LTCP. These provisions will assure adequate monitoring and compliance measurements during operation of the facilities. Additionally, the phased post construction monitoring program described in the LTCP will provide an information base to review overall actual performance after the plan has been n operation.

We have reviewed the schedules in the LTCP which are based upon varying assumptions for federal assistance. In FY 2003, federal assistance is $50M and the Presidents budget for FY2004 has $15M for the LTCP. The Mayor has expressed his desire to expedite the cleanup of the Anacostia River. The 12 year schedule for the Anacostia River is approved subject to the federal funding assistance assumptions in the Final LTCP. The Potomac and Rock Creek are not as severely impacted by combined sewer overflows and may be subject to slower schedules.

Therefore, pursuant to District of Columbia Water Pollution Control Act, section 12 (c), The Water And Sewer Authority's Final Long Term Control Plan for the combined sewer system is approved. The LTCP meets the requirements of the EPA CSO policy.

We appreciate the efforts of you and your staff to assist the Mayor in restoring the Anacostia River.

Sincerely,

James R. Collier, P.E.

FIGURE 1 - Coordination of LTCP Development and Water Quality Standards Review and Revision

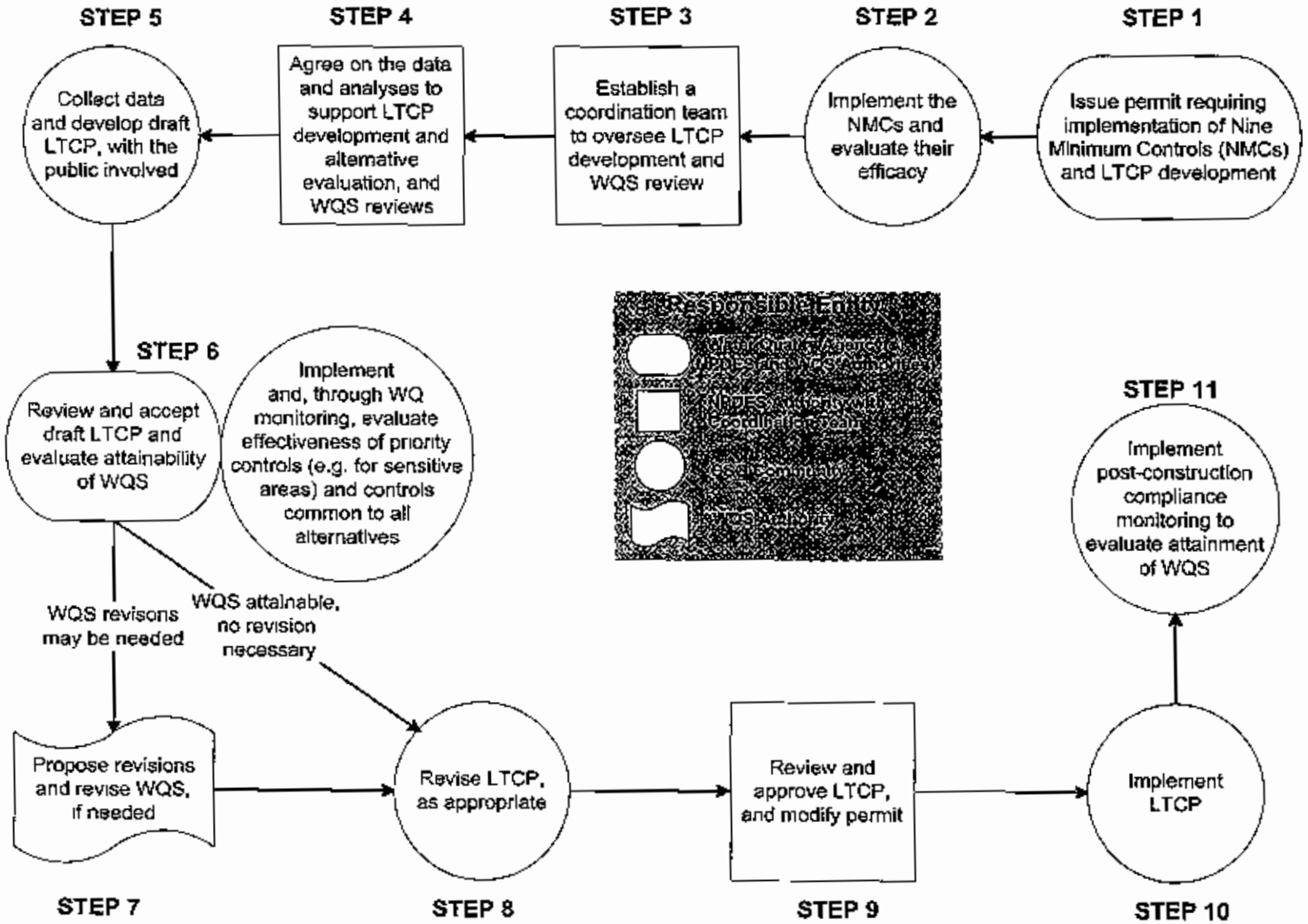

EXHIBIT B

EXHIBIT C

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

SEP 0 5 2002

Ms. Nancy Stoner
Mr. Jim Woodworth
Natural Resources Defense Council
1200 New York Avenue, N.W.
Suite 400
Washington, D. C. 20005

Dear Ms. Stoner and Mr. Woodworth:

Thank you for your August 16, 2002 letter to Regional Administrator Donald Welsh. In that letter you make several recommendations concerning the District of Columbia (D.C.) Long Term Control Plan (LTCP) for combined sewer overflows (CSO's).

I believe that the U. S. Environmental Protection Agency (EPA) and the Natural Resources Defense Council agree on the most critical issues impacting water quality in D.C. It has been most useful to exchange insights on the important aspects of the developing CSO plan through several meetings and conference calls we have had over the recent months, most recently on July 11 in Philadelphia. We agree with D.C. and with you that the highest priority is the Anacostia River. We also agree that an effective means to get this problem under full control in the Anacostia would involve the early construction of tunnels as suggested by the D.C. Water and Sewer Authority (WASA). We further agree that the implementation of Low Impact Development (LID) techniques has significant potential to reduce CSO and storm water flows, to improve low flow stream conditions, and to improve upon the "greening" of the city. We have read with interest your recent report entitled *"Out of the Gutter,"* and support the kind of efforts you recommend, which could be applied through the efforts of a number of city, state, federal and other agencies working in partnership.

It is EPA's view that the techniques incorporated into an LTCP can change and be refined, over the years that the plan is implemented, so long as those changes meet with D.C. and EPA approval, as appropriate, in the context of NPDES permit and enforcement document obligations. Particularly with respect to the use of LID in the Rock Creek and Potomac River sewer drainage areas, work to implement those phases of the LTCP, as you know, will not start for a number of years. Given that, we expect that any subsequent EPA approval of the LTCP will provide a clear opportunity for the Rock Creek and Potomac River elements of the LTCP to be updated to reflect developments in LID at the time. The 5-year NPDES permit renewal cycle provides a clear check point for EPA in ensuring that significant advances in technology and or our understanding of best management practices are incorporated in the Plan as appropriate.

Let me review for you our perspective on the LID aspects of this Plan and EPA's leadership position on the implementation of Low Impact Development techniques. First, EPA is serving as the reviewer of this locally developed WASA CSO Plan which has been the subject of considerable stakeholder input spanning several years. It is not our role to finally select for locals authorities and stakeholders the specific measures to be used in the final plan so long as the requirements of the Clean Water Act are met. Second, EPA Region III has provided considerable support and leadership on the implementation of LID techniques through the years through a combination of financial and technical assistance, development of technical support materials, and outreach to communities within the Region and nationally. Our early efforts began with the CSO Special Expert Panel which Rebecca Hanmer and I convened in the mid 1990s in order to advance thinking on CSO, trash and source controls in DC. It continues today through the funding of a national conference on LID by Region III to be held in the DC/MD area in FY 2003, $1 million of federal funding for significant LID projects in the Anacostia watershed in FY 2002 matched by local dollars, working in earnest with federal property managers to complete on-the-ground demonstration projects such as exist at the Washington Navy Yard and Southeast Federal Center, partnering with the Anacostia Waterfront Initiative, and providing financial support to the documentation of LID technical specifications and evaluations of effectiveness.

With respect to requiring WASA to adopt an incentive-based approach for LID, it is our belief that the greening of the City using LID and other source control techniques is a tremendous partnership opportunity for many agencies, public and private. LID is an approach with multiple benefits, not limited to CSO or storm water management. Launching a partnership initiative in our view would be the best way to fully realize the potential while considering the many barriers that come with an advanced stage of urbanization and multiple landholding entities. WASA's funding investment to LID in the LTCP and more importantly their commitment to seek changes in local DC ordinances to remove barriers to LID implementation are solid commitments toward this partnership effort. We are greatly encouraged by the partnership approaches of the Anacostia Watershed Toxics Alliance, which EPA convened, and the Anacostia Waterfront Initiative which are serving to expand the reach of environmental management to many non-traditional partners, and melding economic development and environmental objectives. We are hopeful we can work with you to apply this model to the LID challenge in DC.

Before leaving this subject, we would like to repeat a caution on LID that one of the national leaders on LID, Larry Coffman, said in a recent Washington Post article on the subject: "My preference is to take baby steps and make sure we know exactly what we're doing." From a technical standpoint, CSO controls must by necessity be designed for peak flow conditions and repeat storm conditions. While LID can prove useful for filtering flows and dampening the effects during smaller storm conditions, it may not be nearly as effective in handling the peak flows of major storms which are the design conditions for the virtual elimination of overflows contained in the LTCP. Further, ground water recharge in the DC environs is made difficult by the soil types and a legacy of fill material. These are subjects for serious, continuing evaluation.

We do not share your opinion that the LTCP can be approved without establishing that it is in accord with water quality standards (WQS). EPA's Combined Sewer Overflow Policy (the CSO Policy), which as you know has the effect of Federal law, reads, in part:

"...the permittee should demonstrate each of the following:

i. *the planned control program is adequate to meet WQS and protect designated uses* (emphasis added), unless WQS or uses cannot be met as a result of natural background conditions or pollution sources other than CSOs;

ii. *the CSO discharge remaining after implementation of the planned control program will not preclude the attainment of WQS or the receiving waters' designated uses* (emphasis added) or contribute to their impairment...

iii. the planned control program will provide the maximum pollution reduction benefits reasonably attainable; and

iv. The planned control program is designed to allow cost effective expansion or cost effective retrofitting if additional controls are subsequently determined to be necessary to meet WQS or designated uses."

The CSO Policy makes it inappropriate for EPA to approve an LTCP which fails short of WQS. LTCP's must provide the degree of CSO control adequate to meet the water quality required by WQS. Conversely, if a state government decides that the degree of CSO control required to meet existing WQS is not reasonably attainable, then the state may propose changes to WQS which would allow a reasonable LTCP to be implemented. This debate should occur with the understanding that the WQS process is dynamic, and as a result, the content of the LTCP may be adjusted over time. EPA regulations require a triennial review of WQS, which could affect CSO (and other pollution sources) planning in the future.

Given the above, the citizens of the District of Columbia, expressed through the D. C. Department of Health, have to decide how much CSO control is necessary and affordable, given knowledge available today. WQS should not drive a community to implement a LTCP without a means of meeting the intended goal of the plan. As we understand, DC has no current plans to modify the designated uses or overarching goals of their water quality standards.

Implementation of the current proposed LTCP is estimated to eliminate 96% of the CSO volume on an annual basis, and 98% of the discharge to the Anacostia River. The remaining overflows are not expected to be raw, first flush discharges of untreated sewage but secondary discharges from the tunnels when they are full due to repeat storm conditions. And, current TMDL estimates place the CSO contribution to bacteria loading in the Anacostia at 61% of the total load. Clearly, any remaining overflows will not be the controlling factors in the attainment of water quality standards for bacteria on the mainstem of the River.

The cost of the present plan is estimated at $1.26 billion. If the WQS require the elimination of all CSO (for conditions such as were studied in the LTCP), the LTCP estimates that the cost will be higher, at $2.24 billion. If the WQS require the elimination of all CSO's under all conditions, which would require the separation of the sanitary and storm sewers, the cost would be even more, at $4,46 Billion. Those higher levels of control may well be beyond the affordable means of the District of Columbia. Time is also an important issue, and is inextricably tied to cost. Clearly, the citizens of the District of Columbia should be concerned about the cost benefit decision, a matter to be decided in large part through WQS choices by the District of Columbia.

It is my hope, given our many common interests, that we can join forces to support the early implementation of the LTCP and work in partnership to realize the full potential of source controls in the area. I have taken the initiative to schedule a conference call with you September 11, 2002 to discuss these and other points and to answer your questions.

Sincerely,

Jon M. Capacasa, Acting Director
Water Protection Division

cc: Jerry Johnson, WASA
Jim Collier, DCDOH

EXHIBIT D

Earthjustice
Anacostia Riverkeeper
Audubon Naturalist Society
Friends of the Earth
Natural Resources Defense Council
Sierra Club, District of Columbia Chapter

November 21, 2001

BY e-mail: Mohsin_Siddique@dcwasa.com

Dr. Mohsin Siddique
CSO Control Program Manager
D.C. Water and Sewer Authority
5000 Overlook Avenue, SW
Washington, DC 20002

RE: Combined Sewer System Long Term Control Plan, Draft Report, June 2001

Dear Dr. Siddique:

We have the following comments on the above-referenced plan. These comments supplement the comments submitted by the Clean Water Campaign, in which we also participated.

Compliance with water quality standards:

The draft LTCP does not ensure compliance with water quality standards as required by the Clean Water Act and EPA's CSO policy. The recommended alternative would still allow numerous sewage overflows every year, comprising hundreds of millions of gallons of untreated sewage mixed with runoff. WASA's own modeling shows that these discharges would cause violations of the District of Columbia's numeric criteria for bacteria and dissolved oxygen. Moreover, such discharges would violate the District of Columbia's narrative prohibition on the discharge of untreated sewage and litter. 21 DCMR 1104.3. They would also violate other D.C. narrative water quality standards, including 21 DCMR 1104.1 and 1104.4.

The LTCP analysis focuses primarily on compliance with: 1) the District's monthly geometric mean standard for fecal coliform; 2) the District's daily minimum criteria for dissolved oxygen. The LTCP acknowledges that the recommended alternative would not produce compliance with these standards at all times. In the "average" year, CSOs alone would continue to cause violations of the fecal coliform standard on all three rivers, and would continue to contribute to dissolved oxygen violations on the Anacostia. In wetter years or more severe rain events, the number of instances in which CSOs cause or contribute to violations of these standards would certainly be greater, due both to

greater CSO frequency and volume, and less favorable receiving water conditions (due to heavier wet weather pollution loads from other sources).[1]

The LTCP implies that compliance with the above-referenced numeric criteria for fecal coliform and dissolved oxygen should be the principal measure of whether various CSO control strategies are worthwhile. Although any LTCP must certainly assure compliance with these criteria, such compliance is plainly not sufficient to comply with all of the District's standards. Among other things, D.C. quality standards also require that Class A waters (which include all of the CSO receiving waters) "shall be free of discharges of untreated sewage." 21 DCMR 1104.3 (emphasis added). Thus, the District's standards prohibit raw sewage discharges even where those discharges do not cause an exceedance of the monthly geometric mean of 200 n/mL fecal coliform, or a violation of dissolved oxygen criteria.

District standards also require surface waters to be free from substances attributable to point or nonpoint sources discharged in amounts that cause injury to or produce adverse physiological changes in humans. 20 DCMR 1104.1(d). The standards further require protection of designated uses, which for all of the affected D.C. waters include primary contact recreation. These standards are not met solely by limiting fecal coliform levels to a 200 n/mL geometric mean, or by meeting dissolved oxygen criteria. For example, a geometric mean standard for bacteria does not protect against high, short term bacteria levels that are typical of CSO events. A person who swims or kayaks near a CSO outfall during or immediately after a CSO event is not exposed to the monthly geometric mean level of bacteria, but to the much higher levels associated with the CSO discharge.

According to the CSO monitoring reports prepared by Greeley and Hansen, bacteria levels in individual CSO discharges far exceed levels that are safe for human exposure. For example, Greeley and Hansen reports that the "typical" range of E. Coli levels in WASA's CSO discharges is 2,000 – 1,600,000 mpn/100ml. These levels far exceed EPA water quality criteria for single sample maximum bacteria levels. Under EPA criteria, the maximum allowable E.Coli level in a single sample for primary contact recreation waters is 576 mpn/100 mL. This assumes only infrequent use and still leaves a risk of gastroenteritis. EPA, Quality Criteria for Water 1986, EPA 440/5-86-001 (5/1/87). EPA criteria are even more stringent to protect waters for moderate use - 298 mpn/100 mL. A monthly geometric mean limit for fecal coliform does not prevent bacteria levels that exceed these single sample EPA criteria.

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[1] In this regard, the LTCP does not appear to provide separate projections of water quality impacts from CSOs in the design "wet" year, or in years with more rainfall (or more intense events) than the design wet year. Although not entirely clear from the text, it appears that the water quality projections in the LTCP assume receiving water quality conditions in an "average" year – meaning an average of conditions over the 3 design years. If our assumption on this score is incorrect, please explain the assumptions concerning receiving water conditions that underlie the water quality impacts projected in Appendices B, C, and D of the LTCP. In any event, to demonstrate that the plan will assure compliance with water quality standards, WASA must project water quality impacts under all potential weather conditions, not just the design years. We call upon WASA to provide such projections.

For all the foregoing reasons, continued CSO discharges would also unlawfully interfere with designated and existing uses on the Anacostia, the Potomac and Rock Creek. The extremely high levels of bacteria and other pathogens in CSO discharges are completely incompatible with primary contact recreation such as swimming and kayaking. See, e.g., 21 DCMR 1104.6; EPA, Ambient Water Quality Criteria for Bacteria - 1986. All three of the foregoing rivers are designated for primary contact recreation, and such recreation is an existing use on the Potomac and the Anacostia. See attached affidavits. High pathogen levels in CSO discharges also interfere with secondary contact recreation, which is both a designated and an existing use on all three rivers. No adjustment in D.C. water quality standards can allow interference with existing uses.

For the same reasons, the Plan's proposal to revise DC water quality standards would not be legally acceptable under the Clean Water Act. The Act requires water quality standards to always protect existing uses. 40 C.F.R. §§131.10(g), 131.12(a)(1). Allowing the discharge of raw sewage into waters currently used for primary and secondary contact recreation would violate that mandate. Moreover, WASA's specific proposal would establish waste transport or assimilation as the designated use of the receiving waters whenever combined sewer system flows exceeded the capacity of the CSS system. Such a result is prohibited by the Clean Water Act and EPA rules. 40 CFR §131.10(a).

We are aware that the D.C. Department of Health (DOH) has recently proposed revisions to D.C. water quality standards. We contend that the proposed revisions are unlawful and unacceptable, for reasons set forth in the attached comments dated November 13, 2001. Further, even if these revised standards are adopted, approved by EPA, and allowed to stand, the LTCP would not be sufficient to assure compliance with water quality standards. As noted above, combined sewer overflows impair existing and designated uses in all 3 rivers, and this would still be true regardless of whether DOH revises numeric and narrative criteria. Moreover, the LTCP does not assure compliance with the proposed numeric criteria for enterococci. Although the LTCP does not have data for enterococci, it shows that the recommended alternative would continue to produce unsafe levels of fecal coliform and e coli. There is every reason to expect similar results with respect to enterococci. See EPA, Ambient Water Quality Criteria for Bacteria - 1986. Even under the scenario apparently assumed by DOH in proposing the standards revisions – a system designed to achieve 12 overflows per year on the Potomac, and zero overflows on the Anacostia and Rock Creek in the design "dry" and "average" years – compliance with the numeric criteria is not shown. With respect to at least the Anacostia and Rock Creek, the DOH analysis apparently looked only at the impact on water quality of CSOs alone. Although that it certainly a necessary analysis to assure compliance with standards, it is not sufficient. In the real world, there will be pollutant contributions from other sources such as separate storm sewer discharges. The LTCP monitoring documents this. The plan must therefore assume that CSO loads will be additive to pollutant loads from other sources. Given that these other pollutant loadings are sometimes significant, CSOs can and will contribute to violations of standards even in situations where CSOs alone would not.

Moreover, the DOH analysis apparently assumes rainfall no greater than that in the design "wet" year. The reality is that there have been and will be more intense rain storms, and wetter years, than experienced in the design year. As noted above, compliance with standards has to be shown at all times, not just in the design years. For all these reasons, compliance with water quality standards has not been shown, even under the scenario assumed by DOH.

Model under prediction of overflows

We are very concerned about instances in which the CSO system model predicted no overflows at times when overflows in fact occurred at various CSO outfalls. These instances are shown in Table 5-8 of Study Memorandum LTCP-5-4: Combined Sewer System Model Documentation, Draft, August 2001 (prepared for WASA by Greeley and Hansen). Outfalls showing actual overflows where the model predicted none include numbers 10, 19 (swirl by-pass), 20, 21 and 49. In a number of instances the actual overflows at these times were very substantial. For example, event number V19 involved an overflow of more than 10 million gallons at outfall 019 (swirl by-pass) when the model predicted no overflow at all. Such instances raise very serious questions about whether the model is accurately predicting the number and volume of overflows under various scenarios. WASA must explain if and how it can rely on the model under these circumstances. If WASA intends to rely on the model despite these inaccuracies, we ask WASA to explain how it has or will account for model under prediction in its design of CSO control strategies relevant to the affected outfalls. Where the model under predicts overflows, WASA must provide additional storage or other CSO control measures to compensate for that under prediction.

Reducing system inflow

According to recent WASA studies, there is up to 118 mgd of extraneous flow in the sewage system consisting of wasted potable water, pumped foundation dewatering, and conventional sewer line infiltration and inflow. WASA, Wastewater Flow Reduction Plan, September 1999, at 1-1 (Prepared for WASA by PEER Consultants, P.C.). That amounts to more than 2/3 of the total daily District flow to Blue Plains. Reduction of these extraneous flows would reduce base flow and thereby reduce CSOs. Unfortunately, the draft LTCP does not contain any measures to reduce wastewater flows, even though the cost of doing so is relatively modest. The plan appears to assume a reduction of approximately 12 mgd through flow reduction measures, but does not actually commit to implement any specific such measures as part of the LTCP.

WASA's refusal to include an aggressive flow reduction program in the plan is indefensible. WASA's own water conservation plan shows that base flows could be reduced by 10% with a very modest conservation program. WASA, Water Conservation Plan, Water Conservation and Flow Reduction Program, Task 1, DCFA #357-WSA, September 2000, at 7-4 (Prepared by PEER Consultants). The maximum annual cost of

this program is $2.6 million, a very modest amount compared with most other measures in the plan. Moreover, substantial additional flow reductions are achievable through a more aggressive program. New York City has achieved flow reductions of 17% through a conservation program, and expects to achieve another 10% in the next 5-8 years. Among other things, New York offered much higher rebates for low flow fixtures than proposed by WASA. WASA's Water Conservation Plan itself also identifies numerous additional strategies that could achieve significant further reductions. Id. Table 6-5, Group 2 and 3 measures. WASA could also achieve substantial savings by adopting conservation billing, and approach already used by WSSC. The LTCP offers no reasons for failing to include all of the above-described measures as part of the CSO control strategy.

Substantial savings could also be realized through an aggressive inflow reduction program. WASA's own Wastewater Flow Reduction Plan identifies the following potential reductions (daily average reduction over an entire year):

* 8.6 mgd from eliminating pumped groundwater from the system

* 3.5 mgd through targeted storm sewer disconnects from the combined system

* 4.1 mgd through infiltration and inflow (I&I) reduction.

Wastewater Flow Reduction Plan at 9-1. Moreover, the above estimates represent only average daily reductions. During peak flows of the type that produce CSOs, the reductions from targeted storm sewer disconnects and I&I controls would be much more substantial. Assuming rainfall approximately once every 5 days, it is reasonable to expect flow reductions 5 times the above estimates (i.e., 5 times the average) during a peak event. That would translate to a wet weather flow reduction of 38 mgd from just two of the above measures, an extraordinary reduction in flows that would otherwise contribute to CSOs. The cost of all three of the above measures is estimated to be about $106 million – a relatively modest expense compared with other more intensive engineering approaches – and a cost that will also produce non-CSO related benefits in terms of reduced-base flow treatment costs.

All together, the potential wet weather flow reductions from just some of the measures recommended in the above-referenced WASA plans total more than 56 mgd. Plainly, the LTCP must include much more substantial wastewater flow reduction measures.

Failure to comply with CSO Policy

The draft LTCP fails to satisfy the following requirements of EPA's CSO Policy, 59 Fed. Reg. 18688 (April 19, 1994):

a. "The selected controls should be designed to allow cost effective expansion or cost effective retrofitting if additional controls are subsequently determined to be necessary to meet WQS, including existing and designated uses." Id. at 18691/2. WASA's plan does not meet this requirement. WASA has not even considered how it would expand or retrofit the recommended system if additional controls are later found to be necessary to meet water quality standards. This is a critical deficiency in the plan that must be fully corrected before EPA can approve it.

b. "The Plan should also include both fixed-date project implementation schedules (which may be phased) and a financing plan to design and construct the project as soon as practicable." Id. at 18691/3. The draft LTCP does not have fixed-date implementation schedules for each of the measures included in the plan. The LTCP does include projected time frames for some of the measures, but these are stated in terms of months or years after approval of the LTCP. Moreover, WASA has not shown that its plan provides for design and construction as soon as practicable. As noted elsewhere, the 20-year time frame for this plan is grossly excessive, and has not been rationally justified by WASA either on financial or technological grounds. Atlanta has proposed a comparable CSO LTCP with a 7 year completion schedule. City of Atlanta, CSO Remedial Measures Report, April 2001 (CH2Mhill). The Atlanta plan includes substantial sewer separation, 2 very large tunnels, construction of new treatment facilities, and other features. Moreover, WASA has failed to justify the extraordinarily long times frames for individual components of this plan. For example, the plan provides 6 years to rehabilitate the Potomac Pump station and 8 years for the Main and O station. There is no reason that these projects could not be completed in the half the time.

c. "Eliminate or relocate overflows that discharge to sensitive areas wherever physically possible and economically achievable, except where elimination or relocation would provide less environmental protection than additional treatment." 59 Fed Reg. at 18692/2. The Policy defines "sensitive areas" as including "waters with primary contact recreation" and "waters with threatened or endangered species and their habitat." As indicated above, both the Anacostia and the Potomac are waters with primary contact recreation. Rock Creek is home to an endangered species. Accordingly, WASA must eliminate or relocate the CSO outfalls on these rivers, unless WASA can demonstrate that this is not physically possible or economically achievable, or that it would provide less environmental protection than additional treatment. WASA has not made such a demonstration here.

Even if WASA were able to credibly make such a demonstration, the CSO Policy requires that WASA then "provide the level of treatment for remaining overflows deemed necessary to meet WQS for full protection of existing and designated uses." Id. WASA has not met this requirement because its recommended control alternative provides no level of treatment for remaining overflows to these rivers, and treatment would be necessary for full protection of existing and designated uses. Among other things, the remaining overflows under the recommended alternative will contain extremely high levels of bacteria that will make these rivers unsafe for primary and secondary contact recreation. Treatment of such overflows would be necessary to protect existing and

designated uses. We believe the CSO policy requires such treatment for any remaining overflows, whether to sensitive areas or elsewhere. This treatment must include primary treatment or better, including solids removal and disinfection to the degree necessary to fully protect existing and designated uses, and removal of harmful chemical residuals. See 59 Fed. Reg. at 18692-94. High rate physical chemical treatment would provide even more effective protection of water quality standards than traditional primary treatment and disinfection/dechlorination, and is included in the Atlanta CSO Plan.

d. The plan should include a post-construction water quality monitoring program adequate to verify compliance with water quality standards and protection of designated uses as well as to ascertain the effectiveness of CSO controls. This program should include a plan that details the monitoring protocols to be followed, including the necessary effluent and ambient monitoring and, where appropriate, other monitoring protocols such as biological assessments, whole effluent toxicity testing, and sediment sampling. WASA's draft LTCP does not meet these requirements. Although the plan states that post construction monitoring will be conducted, it provides almost no details on how, when, and where such monitoring will be conducted. To comply with the CSO policy, the monitoring provisions of the plan must identify the specific outfalls and instream locations that will be monitored, the parameters that will be measured, the frequency of monitoring, the manner in which results will be reported, the monitoring methods to be used, and similar details. The plan must also specify schedules for commencing such monitoring, as individual components of the LTCP are completed. The plan must also show how the chosen monitoring program will be adequate to verify compliance with water quality standards, protection of uses, and the effectiveness of CSO controls.

We support the proposal to provide a visual notification system, as discussed on page ES-15. However, there must be a schedule for installing and implementing this system. Given that the need for notification is a current one, the schedule should require completion of the notification system within the next 12 months.

Other measures: A majority of dry weather flow and a significant portion of wet weather flow in the WASA sewer system comes from outside District -- all of this is from separate sanitary sewers. A substantial part of this gets dumped into the District's combined system lines. According to Greeley and Hansen, 17% of the combined sewer overflow volume District-wide is attributable to flows from Maryland and Virginia. Greeley and Hansen states that, if flows from Maryland and Virginia were stopped, CSO volume would be cut by 12% in the Anacostia, 27% in the Potomac, and 8 % in Rock Creek. WASA must consider the option of requiring the Virginia and Maryland jurisdictions to build new interceptors to carry that sanitary flow directly to Blue Plains, thereby relieving loading on the combined system. Alternatively, Virginia and Maryland jurisdictions must be required to pay the cost of reducing overflows by these amounts. Virginia and Maryland jurisdictions must also be required to institute stronger measures to reduce peak flows through infiltration/inflow control programs.

WASA has sometimes asserted that it is obligated under the Inter-municipal Agreement (IMA) to handle and treat flows from Maryland and Virginia up to the maximum allocations under that agreement. However, the IMA also specifically obligates Maryland and Virginia jurisdictions to "take all reasonable precautions to exclude surface water, rain water and groundwater" from their sewer systems. IMA §3.B.7. Moreover, the flow allocations under the IMA expire in 2010. IMA §3.A. Now is therefore an apropos time to re-evaluate the handling of these flows, and consider whether WASA should propose off-loading some or all of the suburban flows from the Blue Plains system.

Sincerely,

Earthjustice
David S. Baron

Anacostia Riverkeeper
Damon Whitehead

Audubon Naturalist Society
Neal Fitzpatrick

Friends of the Earth
Brent Blackwelder

Natural Resources Defense Council
Nancy Stoner

Sierra Club, District of Columbia Chapter
Marchant Wentworth

DRAFT FACT SHEET
NPDES PERMIT MODIFICATION
DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
WASTE WATER TREATMENT PLANT AT BLUE PLAINS
WASHINGTON, DC

March 18, 2004

NPDES Permit Number: DC0021199

1. NOTICE OF PERMIT MODIFICATION.

The United States Environmental Protection Agency, Region III (EPA) has decided to modify the permit issued on January 24, 2003 to the District of Colombia Water and Sewer Authority (WASA), for the discharge of treated municipal wastewater from the Blue Plains Wastewater Treatment Plant and treated and untreated storm water through the District of Columbia's combined sewer system as described in the permit application and herein. As discussed below, EPA finds modification to be appropriate in light of certain issues raised by the permittee, as well as Friends of the Earth and the Sierra Club, each of which filed petitions with the Environmental Appeals Board, requesting review of certain provisions of the January 24, 2003 permit. In addition, modifications are appropriate, to reflect that the permittee has completed its long term CSO control plan (LTCP) and making this a Phase II permit under the 1994 CSO Policy by adding requirements for the permittee to immediately implement its LTCP and reflecting the requirements of the District of Colombia total maximum daily load (TMDL) requirements for parameters in the Anacostia River and Rock Creek and its Piney Branch tributary. Permit requirements are based on the Clean Water Act (33 U.S.C. 1251 et seq.), hereinafter referred to as the Act, and NPDES regulations (40 CFR Parts 122, 124 and 133).

2. PERMITTING AUTHORITY.

The NPDES Permitting authority is: U.S. Environmental Protection Agency, Region III ("EPA"), Office of Watersheds (3WP13), 1650 Arch Street, Philadelphia, PA 19103. The permit writer is: Mary Letzkus (215-814-2087), MD/DC Branch.

3. APPLICANT.

The applicant is: District of Columbia Water and Sewer Authority (WASA), Blue Plains Wastewater Treatment Plant, 5000 Overlook Avenue, Washington, DC 20032. The contact person is: Walter Bailey (202-787-4172).

4. EFFECTIVE DATES.

The modifications to the permit will become effective 30 days after the final determinations are made, unless a request for an evidentiary hearing is submitted within 30 days

after receipt of the final determination. The modified permit shall expire on February 25, 2008.

5. PUBLIC NOTICE.

All persons wishing to comment on any condition of the draft modifications to this NPDES permit, or the Director's tentative decision to issue this modified permit, are required to raise all reasonably ascertainable issues and submit all reasonable arguments supporting their position in writing on or before the public notice expiration date.

During this period, any person may request a public hearing to clarify issues involved in the permit decision.

A copy of the modified permit, this fact sheet and the administrative record are available at the Martin Luther King, Jr. Library, 901 G Street, N.W. Washington, DC 20001 during normal business hours. In addition, copies of the final permit and fact sheet will be mailed as requested in writing or by telephone call to Mary Letzkus, telephone number (215-814-2087), U.S. Environmental Protection Agency, Region III, Office of Watersheds, MD/DC Branch (3WP13), 1650 Arch Street, Philadelphia, PA 19103.

6. BRIEF DESCRIPTION OF THIS ACTION.

A. Background

On January 24, 2003, the Director, Office of Water, made final determinations with respect to permit issuance and a final permit was issued to the permittee.

On February 24, 2003, WASA filed a petition for review of the Blue Plains permit with the Environmental Appeals Board (EAB). On March 3, 2003, the Friends of the Earth and the Sierra Club filed a joint petition for review of the Blue Plains permit with the EAB. In addition, by letter dated February 26, 2003, WASA requested that EPA make certain minor modifications of the permit to correct several items WASA identified as errors.

As required by 40 C.F.R. §124.16, on March 21, 2003, EPA notified the EAB and the petitioners that the contested provisions of the permit have been stayed pending final agency action on those provisions. Those portions of the permit which were stayed include: 1) Part I. Section A., requirement to monitor fecal coliform and enterococci at Outfall 001; 2) Part I, Section A. Footnote 7; 3) Part I. Section A., Footnote 8; 4) Part III. Section B. 1., 5) Part III. Section B. 1.a., 6) Part III. Section B. 1. d.(I); 7) Part III, Section B. 1. e.; 8) Part III.. Section B. 1. f.(iv); 9) Part III.. Section C.; 10) Part III. Section D.; 11) Part I. Section B. Footnote 10 and Part IV. Section E.; 12) Part I. Section B. footnotes (1a)b. (1b) and (1c), 13) Part III. Section B. 1. d.,.12) Part I. Section C. footnote 6, and 13) Part III. Section B.1. c.(ii).

In addition, the stay notice identified several provisions of the permit which the permittee contends contain clerical errors: 1) certain references in the table and footnotes for Outfall 019 Part I. Section C. relating to sampling frequency requirements for fecal coliform, enterococci,

nitrate, nitrogen and phosphorous; 2) reference to CSO Outfall 052 in Part III. Section B.1.(v) should be CSO Outfall 041; 3) record of material removed referenced in Part III. Section E.2. j. should refer to CSO Outfall 041 rather than CSO Outfall 052; and 4) total nitrogen sampling frequency in Part I. Section B. for Outfall 002 should be listed as daily rather than once every eight hours. All other provisions of the permit have been and continue to be in full force and effect.

In order to provide an opportunity for the parties to resolve issues raised in their appeals, the parties requested, and the EAB granted, extension of EPA's deadline for filing a response to the petitions. Following a period of negotiations, on November 19, 2003, the EAB granted EPA's request to withdraw all of the contested permit conditions, except Part III.C. , which was contested by the permittee. The EAB also granted the parties' request to stay the permit appeals in order to give the agency time to attempt to resolve the contested issues, except for Part III.C., through a permit modification.

In addition to the permit appeals, compliance with the 1994 CSO Policy, including implementation of the Nine Minimum Controls and the LTCP are the subject of a citizen's lawsuit, Anacostia Watershed Society, et al. v. District of Columbia Water and Sewer Authority, et al, Civ. Action No: 1:00CV00183TFH, filed in the United States District Court for the District of Colombia on October 10, 2003. Further, on December 20, 2002, the United States filed a Complaint against WASA and the District of Colombia , alleging, *inter alia*, that the permittee has failed to fully implement the Nine Minimum Controls and violated Water Quality Standards. U. S. v. District of Colombia Water and Sewer Authority, et al., Civil Action No: 1:002CV02511 (Dist. Ct. D.C.). On October 10, 2003, a Consent Decree among the United States, the Permittee and the citizen's groups, was entered resolving a number of issues in the litigation, particularly those issues related to implementation of the nine minimum controls. The Consent Decree, to which WASA is obligated, includes CSO control requirements in addition to those contained in the permit. WASA is bound by the Consent Decree provisions regardless of whether they are also stated in the permit. Other issues, including the appropriate time frame for implementation of the LTCP, remain unresolved.

B. Modifications

The modified provisions are designed to resolve issues raised by the permittee (EAB Appeal No. 03-01) and Friends of the Earth and the Sierra Club (EAB Appeal No 03-02) in their respective appeals of the January 24, 2003 permit, make the permit consistent with the 1994 CSO Policy requirements for Phase II permits, and to make the permit consistent with the Consent Decree in the litigation referenced above.

This draft permit modifies the following conditions:

- Part I. A - the requirement to monitor fecal coliform and enterococci at Outfall 001 has been modified to require the first sample to be taken within 2 hours of the beginning of the discharge. The January 24 permit required the sample to be

taken within 30 minutes of the beginning of the discharge. In addition, this requirement has been modified to clarify that the 2 hour delay does not apply to flow monitoring.

- Part I. A - Footnote 7, contains a typographical error, requiring the permittee to "report and substantiate" changes in the volume or character of pollutants introduced to the wastewater treatment plant. This provision was intended to read "report any substantial" changes. The provision has been modified to correct the typographical error, and to follow the language regarding CSO-related bypasses contained in the 1994 CSO Policy.

- Part I .B - The monitoring frequency for total nitrogen has been changed from every 8 hours to daily to conform to the 24-hour composite sample type.

- Part I. B - Footnote (1b)c. has been modified to clarify that any extension of the June 28, 2007 expiration date for the provisions of Part I.B.(1c)b can be for a period no longer than is justified by circumstances beyond the permittee's control.

- Part I., B - Footnote 10, which requires the permittee to use best efforts to meet the nitrogen reduction goal under the Chesapeake Bay Agreement has been revised, however, the intent and effect remain the same.

- Part I .C - the requirement to monitor fecal coliform and enterococci at Outfall 019 has been modified to require the first sample to be taken within 2 hours of the beginning of the discharge. The January 24 permit required the sample to be taken within 30 minutes of the beginning of the discharge. This modification is necessary to allow manual sampling.

- Part I. C. - Footnote 8 which described how composite samples should be taken for carbonaceous biological demand has been removed. The compositing protocol in Footnote 4 has replaced Footnote 8 for these samples.

- Part I. C. - Footnote 4 has been modified to specify that grab samples be taken within 2 hours of the start of sampling. This modification is necessary to allow offsite personnel time to arrive at the site to begin sampling.

- Part I. C. - Footnote 6 has been modified to clarify that samples are not required for discharges lasting less than two hours.

- Part II . A.13, Reopener Provision has been modified to clarify that if the CSO controls fail to meet the District of Columbia's Water Quality Standards the permit may be reopened, and has generally been revised to provide more clarity.

- Part III.B.1.a. Operation and Maintenance has been clarified; the intent remains the same.

- Part III.B.1.a.viii - new provision has been added which requires Main, "O" Street. Potomac, Poplar Point and Eastside pumping stations to be rehabilitated and to provide pumping capacities of 240 mgd, 45 mgd, 460mgd, 45 mgd and 45 mgd ,respectively.

- Part III.B.1.c (ii) - Pretreatment Program. A requirement has been added to conduct an annual inspection of significant industrial users and, if necessary establish procedures to limit batch discharges into the combined sewer system during wet weather, whenever possible, except when to do so would create a safety hazard.

- Part III.B.1.d - Maximize Flows to Blue Plains. Former (I) which stated that there shall be no combined sewer overflows when there is sufficient treatment capacity at Blue Plains has been deleted. This issue is addressed in the LTCP.

- Part III.B.1.e.i - Eliminate Dry Weather Overflows - the requirement to report all dry weather overflows immediately to the permitting authority has been eliminated because these requirements are redundant, given similar requirements found at III.B.1.e.iii.

- Part III.B.1.f.iv - language requiring cleaning of 100% of catch basins every 2 years has been modified to reflect the requirement in the above-referenced Consent Decree.

- Part III.B.1.f.vi - is a new requirement providing that the permittee shall work with the Public Works Department and the National Park Service to maximize litter controls in the combined sewershed.

- Part III.B.1.f.vii - is a new requirement providing that the permittee shall institute a bi-lingual (English and Spanish) public education program to reduce litter.

- Part III.B.1.f.viii - is a modification of the previous Part III.B.1.iv in which the permittee is required to conduct four public education workshops each year.

- Part III.B.1.i.v - Reference to CSO Outfall 052 was corrected to reference the bar rack at Outfall 041.

- Part III.C - which in the January 24, 2003 permit was Water Quality Based Requirements for CSOs has been moved to Part III.D in this modified permit. Part III.C is now Long Term Control Plan (LTCP).

- Part III.C.A. 1 - 9 - requires permittee to implement, operate and maintain the alternatives in the LTCP immediately upon the issuance of the modified permit.

- New Part III.D, Post-Construction Monitoring for CSOs has been added.

- Part III.E, Water Quality Based Requirements was previously Part III.C in the January 24, 2003 permit. These requirements have been rewritten to incorporate implementation of all EPA approved District of Columbia Total Maximum Daily Loads (TMDLs).

- Part III.F, CSO Status Reports and Schedules was previously Part III.E in the January 24, 2003 permit.

- Part III.F.1. has been revised to include a requirement for reporting progress to EPA on the Nine Minimum Controls program and the LTCP.

- Part IV.A.1.b.(I) has been added requiring that the Annual Report contain an updated industrial listing and a summary of Significant Industrial Users (SIU).

- Part IV.A.1.b.vii has been added to require the annual pretreatment report to include results of inspection, identification and evaluation of batch discharges to the CSOs during wet weather.

- Part IV.E has been modified to include the requirement that best efforts to meet the nitrogen goal require optimal operation of the nitrogen removal technology to the extent such operation does not preclude permittee's ability to meet other permit conditions.

7. FACILITY DESCRIPTION.

The Blue Plains Wastewater Treatment Plant is the largest advanced waste water treatment plant in the world. It covers 150 acres, has a design capacity of 370 million gallons per day (mgd), and a peak capacity of 1.076 billion gallons per day. The collection system includes 1,800 miles of sanitary and combined sewers, 22 flow-metering stations, nine off-site waste water pumping stations and 16 storm water pumping stations within the District. Separate sanitary and storm sewers serve approximately two-thirds of the District. In older portions of the system, such as the downtown area, combined sanitary and storm sewer systems are prevalent.

The Blue Plains Wastewater Treatment Plant serves the District of Columbia, Montgomery and Prince Georges Counties in Maryland and Fairfax and Loudoun counties in Virginia. Waste water capacity for the District of Columbia is allocated at 153 mgd; the Washington Suburban Sanitary Commission (which serves Montgomery and Prince Georges

Counties in Maryland), has an allocation of 169.6 mgd; Fairfax County, Virginia, has an allocation of 31 mgd; Loudoun County, has an allocation of 16.4 mgd; and other Potomac interceptor users share an allocation of 16.4 mgd.

During wet weather, the plant flow capacity varies depending upon whether or not the peak flow occurs for greater than or less than four (4) hours. The plant has two discharge points, Outfalls 001 and 002.

Outfall 001 functions as an excess flow conduit and is used to avoid hydraulic overloads to the plant during wet weather. Effluent from Outfall 001, which discharges to the Potomac River, receives primary treatment, disinfection and dechlorination. For the purpose of this permit, Outfall 001 has been characterized as a CSO-related by-pass, pursuant to the 1994 Combined Sewer Overflow Policy ("CSO Policy"). Outfall 002, which also discharges to the Potomac River, is the principle discharge point. Treatment for this outfall includes primary treatment, secondary treatment, nitrification, biological nitrogen removal, filtration, disinfection and dechlorination.

The treatment plant and sewer system discharge to the Potomac and Anacostia Rivers, Rock Creek and tributary waters. In its Water Quality Standards (WQS), the District of Columbia has designated these streams for primary contact recreation, aesthetic enjoyment, aquatic life, water oriented wildlife, raw water source for industrial water supply and for navigational use.

The permittee operates a Combined Sewer Overflow system which has a total of 62 outfalls. There are 15 CSOs which discharge to the Anacostia, 13 CSOs on the Potomac, and 30 CSOs that discharge to Rock Creek. This system is designed to convey waste to the treatment plant and to prevent wet weather flow from exceeding the hydraulic capacity of the sewers and/or the treatment plant. EPA requested a accounting of all outfalls in the CSO system. Included among the out falls identified in the permit are Outfalls 004, 008, 061 and 062, which are emergency relief points at pump stations. They are not authorized to discharge.

During the life of this permit, the waste water treatment plant will undergo a program of improvement and rehabilitation, which will affect most of the treatment processes at the plant. The construction has been divided into seven major phases which necessitates the removal of significant process tankage from service. During the construction period, as significant plant facilities will be out of service in nearly every plant process, an estimated 25% reduction will be required in the amount of wet weather peak flows receiving full treatment and the wet weather peak flows receiving primary/disinfection treatment.

The Blue Plains Waste Water Treatment Plant consists of the following treatment technologies:

Primary Treatment - a waste water treatment process that allows particles which float or settle to be separated from the water being treated. At Blue Plains, this process includes the following

processes: raw wastewater pumping; grit removal; grease separation and primary sedimentation. Solids removed from the process are treated by digestion, elutriation and dewatering.

Secondary Treatment - is a waste water treatment process used to convert dissolved or suspended materials into a form which can be separated from the water being treated. This process usually follows primary treatment by sedimentation. At Blue Plains, secondary treatment is accomplished by means of a modified-aeration step-feed activated sludge process. The secondary treatment facilities are comprised of aeration basins, secondary sedimentation basins, sludge return and wasting systems, the secondary blower facilities with associated blowers and diffusers and pumping stations. At Blue Plains carbon is reduced by use of coarse bubble diffused aeration and the plant uses chemical precipitation for phosphorus removal.

Biological Nitrogen Removal - a process whereby ammonia nitrogen is converted to nitrate nitrogen. The process also includes denitrification facilities for nitrogen removal, filtration for effluent polishing and chlorination for effluent disinfection. Blue Plains retrofitted existing facilities to enable full plant BNR operation in the spring of 2000.

Nitrification - an aerobic process in which bacteria change the ammonia and organic nitrogen in waste water into oxidized nitrogen (usually nitrate). The second stage BOD is sometimes referred to as the "nitrification stage," first stage BOD is called the "carbonaceous stage." Blue Plains employs sparged air turbines for oxygenation.

Denitrification - an anaerobic process that occurs when nitrite or nitrate ions are reduced to nitrogen gas and bubbles are formed as a result of this process. The bubbles attach to the biological flocs and float the flocs to the surface of the secondary clarifers. This condition is often the cause of rising sludge observed in secondary clarifers or gravity thickeners. At Blue Plains, the denitrification facilities are able to treat the entire plant flow under limited conditions of process load and temperature.

Filtration and Disinfection and Dechlorination - includes multimedia filtration of nitrified effluent and disinfection of the filtered effluent by chlorination and dechlorination prior to discharge.

Solids Process - includes gravity thickening and anaerobic digestion of primary sludges, air flotation thickening of waste activated and chemical sludges, vacuum filtration of the thickened and digested sludges and direct off-site disposal of the vacuum filter cake.

Chemical Addition - chemicals may be employed in the liquid stream treatment operations for a variety of functions. The chemicals employed and the treatment application are described briefly below.

Odor Control - Chlorine may be applied at raw wastewater pumping station numbers 1 and 2 and to the effluent from the grit removal facilities.

Settleability Enhancement - polyelectrolytes (polymers) may be added as follows: Influent to primary sedimentation; Influent to secondary sedimentation; and Influent to nitrification sedimentation

Phosphorus Removal - iron salts including ferric chloride, ferrous sulfate and liquid alum may be added to the unit process as follows: primary sedimentation, secondary treatment, nitrification and effluent filtration.

Metal Salts - are used for the precipitation of phosphorus and as an aid in enhancing Settleability of sludges and mixed liquors.

pH - lime is applied to the effluent to nitrification in order to maintain an adequate pH level for the nitrification process.

Foam Control - Commercial defoamant compounds can be added to secondary treatment and nitrification as needed.

Disinfection - the process used to kill most microorganisms in wastewater including essentially all disease causing bacteria. At Blue Plains, chlorine is used to disinfect effluent discharged from both plant outfalls.

Dechlorination - as noted above, chlorine is used to disinfect effluent discharged at both plant outfalls, however, excess chlorine is removed from the effluent by the addition of sulfur dioxide.

Solids Processing - polymers are used in the dissolved air floatation thickening process as stabilization along with ferric chloride for aiding dewatering during vacuum filtration and at the centrifuges as a dewatering aid.

8. PERMIT EFFLUENT LIMITS.

The following reflect the proposed modifications to the existing permit conditions. All other conditions remain the same:

A. Outfall 002 - This is the primary outfall for treated wastewater from the Blue Plains WWTP. The Potomac River is the receiving water for the effluent from Outfall 002.

Total Nitrogen. The January 24 permit established a nitrogen goal of not greater than 8,467,200 lbs per year for Blue Plains. This goal is intended to be sufficiently stringent to comply with the Bay narrative standards and is to be achieved by operating the Biological Nitrogen Reduction (BNR) process at the facility on a limited year round basis. The modified permit changes the monitoring frequency from every 8 hours to daily, which is consistent with the other sampling requirements in the permit.

B. Outfall 001 - Outfall 001 is a discharge point on the Potomac River which functions as an excess flow conduit and is used to avoid hydraulic overloads to the plant during wet weather. At Blue Plains, excess flows receive primary treatment, chlorination and dechlorination prior to discharge. Depending upon the amount of rainfall in a given year, Outfall 001 generally discharges approximately 3 - 4 times per year.

In addition to the existing requirements for discharge from Outfall 001, the modified permit requires the permittee to take a first sample for fecal coliform and enterococci within 2 hours of the beginning of the discharge. The January 24 permit required the sample to be taken within 30 minutes of the beginning of the discharge. This change was made because the permittee requested the additional time to facilitate manual sampling, since personnel responsible for taking the samples may travel from distant locations or late at night. The two hour delay does not apply to flow monitoring.

Footnote 7, in the existing permit contains a typographical error. It read, that the permittee must "report and substantiate" changes to the pollutants introduced to the POTW. It was intended to read "report any substantial" changes. That provision has now been modified to track the requirements of the 1994 CSO Policy and reads: "Authorization of CSO-related bypasses under this provision may be modified or terminated when there is a substantial increase in the volume or character of pollutants being introduced into the POTW" and reflects the Agency's original intent.

C. Outfall 019 - Outfall 019 is located at the south end of the RFK Stadium parking lot, on the west bank of the Anacostia River and adjacent to the East Side Pump Station. The purpose of this facility is to achieve maximum diversion of flow at the Structure 24 dams on the Northeast Boundary Sewer, and to concentrate the pollutants in that flow to a smaller flow which can be handled by the available capacity of the Eastside Pump Station. The Northeast Boundary Swirl Concentrator Facility provides treatment and disinfection for up to 400 mgd of combined sewer overflow before it discharges to the Anacostia River at Outfall 019.

The Northeast Boundary Sewer (NEB) is a combined sewer which serves 4,250 acres and is the largest drainage area in the District. The amount of flow necessary to trigger the Northeast Boundary Swirl is 15 mgd. Treatment at this facility includes mechanical screening of combined sewage influent, concentration of solid materials in the three swirl concentrator tanks, disinfection of the treated influent and dechlorination.

Monitoring requirements continue to be imposed upon Outfall 019 to assess the impact of the discharge on the receiving stream and the effectiveness of the swirl treatment system. The monitoring requirements have been modified as follows:

- Part I. C - the requirement to monitor fecal coliform and enterococci at Outfall 019 has been modified to require the first sample to be taken within 2 hours of the beginning of the discharge. The January 24 permit required the sample to be taken within 30 minutes of the beginning of the discharge. This change was

made because the permittee has stated that personnel responsible for taking the samples may travel from distant locations or late at night.

- Part I. C. - Footnote 8, which described how composite samples should be taken for carbonaceous biological demand has been removed. The compositing protocol in Footnote 4 is more explicit and has replaced Footnote 8 for these samples. This modification provides greater clarity to personnel taking samples and greater conformity in sample technique.

- Part I .C. - Footnote 4 has been modified to specify that grab samples be taken within 2 hours of the start of sampling. This modification is necessary to allow offsite personnel time to arrive at the sampling site to begin sampling.

- Part I. C. - Footnote 6 has been modified to clarify that samples are not required for discharges lasting less than two hours. This is simply intended to make the language more clear. The two hour delay does not apply to flow monitoring which is continuous.

9. GENERAL PERMIT CONDITIONS.

General conditions are requirements that must be incorporated into every permit, in accordance with 40 CFR Sections 122.41 and 122.42. These requirements delineate the legal, administrative and procedural requirements of the permit.

Part II Section A paragraph 13, Reopener Provision has been modified to specify that if the CSO controls fail to meet the District of Columbia's Water Quality Standards the permit may be reopened. This was intended, but not specified in the existing permit. The reopener provision has been revised to provide more clarity. All other provisions of Part II are carried over from the January 24 permit.

10. COMBINED SEWER SYSTEM PERMIT CONDITIONS.

These conditions are designed to comply with the 1994 CSO Policy.

A. Nine Minimum Controls (NMC) - require permittees to immediately implement technology-based requirements. They are achieved through best available technology economically achievable (BAT)/best conventional pollutant control technology (BCT), as determined on a best professional judgement (BPJ) of the permitting authority. The permittee's NMC program is ongoing and all of the requirements contained in the January 24, 2003 permit remain in effect.

The modifications to the January 24, 2003 permit are as follows:

- Part III.B.1.a.viii, Operation and Maintenance, requires that the Main, "O", Potomac, Poplar Point and Eastside pumping stations be operated and maintained and establishes firm pumping capacities for each. These requirements are based on BCT and BPJ and reflect requirements in the Consent Decree.

- Part III.B.1.c - Pretreatment Program, requires the permittee to conduct an annual inspection of significant industrial users and establish procedures as necessary to control batch discharges into the combined sewer system during wet weather. This requirement is based on BPJ.

- Part III.B.1.d - Maximize Flows to Blue Plains. Former (I) which stated that there shall be no combined sewer overflows when there is sufficient treatment capacity at Blue Plains has been deleted. Measures to maximize flow to Blue Plains are required in the above-referenced Consent Decree and are also addressed in the LTCP. This requirement is BPJ.

- Part III.B.1.e.i - Eliminate Dry Weather Overflows - the requirement to report all dry weather overflows immediately to the permitting authority has been eliminated because this requirement is already stated at found at III.B.1.e.iii. This requirement is BPJ.

- Part III.B.1.f.iv - language requiring cleaning of 100% of catch basins within 2 years has been modified to require cleaning of 85 percent of the 8200 basins at lease annually, paralleling requirements of the Consent Decree. This requirement is based on BPJ.

- Part III.B.1.f.vi - is a new requirement providing that the permittee shall work with the Public Works Department and the National Park Service to maximize litter controls in the combined sewershed. This requirement is based on BPJ.

- Part III.B.1.f.vii - is a new requirement providing that the permittee shall institute a bi-lingual (English and Spanish) public education program to reduce litter. This requirement is based on BPJ.

- Part III.B.1.f.viii - is a modification of the previous Part III.B.1.iv in which the permittee is required to conduct four public education workshops each year. This requirement is based on BPJ.

B. Long Term Control Plan

Consistent with the 1994 CSO Policy, the modified permit requires implementation of

the LTCP immediately upon issuance of this permit.

In accordance with Section 301(b)(1)(C) of the Act, 42 U.S.C. §1311(b)(1)(C), publicly-owned treatment works (POTWs), were required to control their discharges to the extent necessary to protect state water quality standards by no later that July 1, 1977. Where that has not occurred, the 1994 CSO Policy, incorporated into the Act with the addition of Section 402(q) through the Wet Weather Water Quality Control Act of 2000, provides a framework for POTWs to achieve compliance, including the development and implementation of a Long Term CSO Control Plan (LTCP). Accordingly, this permit reflects the requirement that the permittee has a present duty to comply with water quality standards by immediately implementing its LTCP.

As noted in the January 24 permit, the permittee submitted to EPA a proposed LTCP, using the "demonstration" approach, which was made available to the public for review and comment, in accordance with the 1994 CSO Policy. EPA and members of the public submitted comments on the proposed LTCP to the permittee. The permittee submitted a revised LTCP to EPA in July of 2002. By letter dated August 28, 2003, the DC Department of Health stated that the CSO discharges remaining after implementation of the LTCP will not preclude the permittee from meeting the water quality-based effluent limits which are consistent with the wasteload allocations for various pollutants in the TMDLs developed by the District of Colombia and approved by EPA. This is subject to post-construction monitoring adequate to verify compliance with water quality standards, in accordance with Sections II.C.4.b. and II. C. 9. of the 1994 CSO Policy.

The 1994 CSO Policy provides, since implementation schedules for compliance deadlines which have passed may not generally be included in permits, that the Phase II permit reflecting the requirements of the LTCP will be accompanied by a separate enforceable mechanism- in the case of a major facility, a judicial order - containing compliance dates on the fastest practicable schedule. The LTCP has now been finalized, with the exception of the overall schedule for completion of the projects. The LTCP itself proposes alternate time frames for completion of the LTCP, including a 15-year and a 40-year proposed schedule. In the ongoing litigation in federal district court (U. S. v. District of Colombia Water and Sewer Authority, et al., Civil Action No: 1:002CV02511 (Dist. Ct. D.C.), EPA seeks a judicial order requiring the permittee to implement its LTCP as expeditiously as practicable.

Section III. C., D. and F. of the revised permit set forth the narrative requirements which insure that the selected CSO controls are implemented, operated and maintained as described in the LTCP, as required by Section IV B. 2.b. of the 1994 CSO Policy.

C. Water Quality-Based Requirements.

Part III.E, Water Quality-Based Requirements for CSOs was previously Part III.C of the January 24, 2003, permit. This section has been modified to reflect that the permit is now a

Phase II permit under the 1994 CSO Policy, reflecting the water quality based effluent limits for a Phase II permit.

Section IV.B.2 c..of the CSO Control Policy provides that Phase II permits should contain "Water quality-based effluent limits under 40 C.F.R. 122.44(d)(1) and 122.44(k), requiring, at a minimum, compliance with, no later than the date allowed under the State's WQS, the numeric performance standards for the selected CSO controls requiring , at a minimum, compliance with, no later than the date allowed under the State's WQS, the numeric performance standards for th selected CSO controls, based upon average design conditions..." Where a permittee has elected to pursue the "demonstration" approach under the policy, the limits are to reflect performance standards and requirements consistent with Section II.C.4.b. of the Policy. That section of the Policy, which outlines the "demonstration" approach, provides for the use of total maximum daily loads (TMDLs) and wasteload allocations in establishing performance standards.

On December 14, 2001, EPA approved the District of Columbia's Total Maximum Daily Loads (TMDLs) for BOD and on March 1, 2002, EPA issued a TMDL for TSS. Both of these TMDLs were for the Anacostia River. Both of these TMDLs are presently subject to judicial challenge in Friends of the Earth v. Whitman, DC Circuit Court of Appeals No. 02-1123, consolidated with 02-1124.

On August 28, 2003, EPA approved the District of Columbia's TMDL for bacteria. On October 31, 2003, EPA approved the District of Columbia's TMDL for oil and grease, and on August 29, 2003, EPA approved the District's TMDL for organics and metals. All of these TMDLs were for the Anacostia River.

On February 27, 2004, EPA approved the District of Columbia's TMDLs for organics and metals for Piney Branch.

On February 27, 2004, EPA approved the District of Columbia's TMDLs for organics, bacteria and metals for Rock Creek.

The effluent limits set forth in Part III. E. reflect the TMDLS which have been adopted for the Anacostia River and Rock Creek and its Piney Branch Tributary. Where TMDLS have not been established, the permittee may not discharge any pollutant at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above District of Colombia water quality standards, including numeric or narrative criteria for water quality.

11. SPECIAL CONDITIONS.

The Special Conditions remain unchanged from the January 24 permit with the exception of the following:

- New Part IV.A.1.b.(1) has been added to the Pretreatment requirements and

requires that the Annual Report contain an updated industrial listing and a summary of Significant Industrial Users (SIU). This requirement is based upon BPJ.

- New Part IV.A.1.b.(vii) has been added to the pretreatment requirements and specifies that the annual pretreatment report include results of inspection, identification and evaluation of batch discharges to the CSOs during wet weather. This requirement is based upon BPJ.

- Part IV.E has been modified to include the requirement that best efforts to meet the nitrogen goal require optimal operation of the nitrogen removal technology to the extent such operation does not impair the permittee's ability to meet other permit conditions. This requirement is based on BPJ.

Consolidated Civil Action No. 1:00CV00183TFH
Final and executed version of Consent Decree

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ANACOSTIA WATERSHED SOCIETY, et al., **Plaintiffs**	)
v.	)
DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY, et al., **Defendants.**	)
and	)
THE UNITED STATES, **Plaintiff**	)
v.	)
DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY	) **Consolidated**) **Civil Action No. 1:00CV00183TFH**
and	)
THE DISTRICT OF COLUMBIA,	)
Defendants.	)

CONSENT DECREE

WHEREAS, on February 2, 2000, the Plaintiffs, Anacostia Watershed Society, Kingman Park Civic Association, American Canoe Association, Friends of the Earth, Sierra Club, and Mary Stuart Bick Ferguson ("Citizen Plaintiffs") filed an action, Civil Action No. 1:00CV00183TFH, against the District of Columbia Water and Sewer Authority (hereinafter "WASA") and its General Manager, Jerry Johnson, pursuant to Sections 309(b) and (d), and 505 of the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987 ("Clean Water Act" or "the Act"), 33 U.S.C. §§ 1319(b) and (d), and

1365;

WHEREAS, on December 20, 2002, Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), filed a Complaint against WASA and the District of Columbia, which case has been consolidated with the pending matter against WASA for the alleged violations of the Clean Water Act;

WHEREAS, the Complaints allege that WASA violated the Clean Water Act, 33 U.S.C. §§ 1251 et seq. (the "Act"), by failing to comply with the District of Columbia Water Quality Standards, effluent limitations and other conditions established in the National Pollutant Discharge Elimination System ("NPDES") Permit No. DC0021199 issued to WASA by the Environmental Protection Agency ("EPA") under Section 402 of the Act, 33 U.S.C. § 1342, and by failing to properly manage, operate and maintain all collection, pumping facilities, treatment and/or combined sewer overflow (CSO) control facilities or combined sewer systems ("CSS") owned and/or operated by WASA;

WHEREAS, the United States further asserts inter alia a claim against the District of Columbia pursuant to Section 309(e) of the Act, 33 U.S.C. § 1319(e) and Fed. R. Civ. P. 19(a);

WHEREAS, the United States, the Citizen Plaintiffs, and WASA have resolved the claims for alleged violations of the Nine Minimum Controls and for the performance of certain projects in a partial consent decree, entered by the Court on October 10, 2003;

WHEREAS, in that partial consent decree, WASA agreed to pay a civil penalty and to perform Supplemental Environmental Projects and a Citizen Community Project;

WHEREAS, on April 26, 2004, Plaintiffs and Defendants entered into a stipulation which provided in essence that Defendants would not contest their liability for certain claims; that Plaintiff United States waived its claims for any additional civil penalties and dismissed with prejudice its claims under Count Three of its Complaint; and that Citizen Plaintiffs also waived their claims for civil penalties;

WHEREAS, WASA submitted a draft Long Term Control Plan to EPA in June, 2001. Thereafter, WASA finalized the Long Term Control Plan in July 2002 ("LTCP") and submitted it to EPA in August, 2002;

WHEREAS, WASA has provided for public participation in development of the Long Term Control Plan through public hearings at various locations throughout the District of Columbia, stakeholder meetings, and other means;

WHEREAS, the recommended control plan in Section 13 of the LTCP provides for, inter alia, three or more underground storage tunnels to hold up to 193 million gallons of the combined wastewater and storm water during wet weather and to thereby reduce CSOs significantly;

WHEREAS, the Parties and the Citizen Plaintiffs have stipulated and agreed, and on September 22, 2004, the Court ordered that issues pertaining to the scope of Section 402(q) of the Clean Water Act, including whether the measures proposed in WASA's August, 2002 LTCP conform to the water quality standards of the District of Columbia, would not be addressed in this consolidated action, but rather EPA agreed to address such issues outside the context of this lawsuit, in, inter alia, the modification of WASA's NPDES permit that was pending at that time;

WHEREAS, EPA is the permitting agency and noticed an NPDES Permit containing Phase II conditions for public comment on March 18, 2004. EPA has issued, or is anticipated to issue shortly, the final version of the Permit. The Fact Sheet to the final permit states that "EPA has determined that, based upon current information, including but not limited to documentation in the LTCP and the District of Columbia Department of Health's analysis and interpretation of its water quality standards, WASA has demonstrated, pursuant to Section II.C.4.b of the 1994 CSO Policy, that the CSO control program will not preclude the attainment of water quality standards or the receiving waters' designated uses or contribute to their impairment." The Fact Sheet further provides that this determination is subject to post-construction monitoring adequate to verify compliance with water quality standards, in accordance with Section II.C.4.b and II.C.9 of the CSO Policy;

WHEREAS, since WASA is unable to comply with the water quality based CSO effluent limits in the Phase II conditions of its NPDES Permit until such time as it has completed implementation of the CSO controls in its LTCP, the Parties have agreed to enter into this Consent Decree to establish a judicially enforceable schedule for implementation of the CSO controls in the LTCP;

WHEREAS, WASA contends that, pursuant to Section 202 of its enabling legislation, which provides, with certain exceptions not applicable here, that WASA is subject to all laws applicable to offices, agencies, departments, and instrumentalities of the District government, WASA is subject to the requirements of the Anti-Deficiency Act, 31 U.S.C. §§1341 et seq., to the same extent as other agencies of the District of Columbia;

WHEREAS, the Parties agree, without adjudication of facts or law, that settlement of this matter in accordance with the terms of this Consent Decree is in the public interest and have agreed to entry of this Consent Decree without trial of any issues, and the Parties hereby stipulate that, in order to resolve the claims for alleged violations of water quality standards stated in the Complaint of the United States, and to provide for compliance with the water quality-based effluent CSO limits in WASA's modified NPDES permit, this Consent Decree should be entered;

WHEREAS, the Court, upon consideration of the judicial record before it and review of this Consent Decree, also finds that settlement of this matter and entry of this Consent Decree is fair and in the public interest and will address the underlying causes of the violations. The Court also finds that it should exercise continuing jurisdiction over this matter to resolve disputes and, should the need arise, to modify the obligations in this Consent Decree;

AND WHEREAS, settlement and entry of this Consent Decree does not constitute an admission of liability by WASA or the District of Columbia;

NOW THEREFORE, before taking any testimony, and without any adjudication of any fact or law, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, and over the Parties hereto, pursuant to Sections 309 and 505 of the Clean Water Act, 33 U.S.C. §§ 1319, 1365 and 28 U.S.C. §§ 1331, 1345, 1355, and 1367. Venue is proper in the District of Columbia pursuant to Section 309 of the Clean Water Act, 33 U.S.C. § 1319, and 28 U.S.C. §§ 1391 and

1395(a).

II. APPLICATION AND SCOPE

2. The provisions of this Consent Decree shall apply to and be binding upon the Parties to this action, and their agents, employees, successors and assigns, as well as to all persons acting under the direction and/or control of WASA, including firms, corporations, and third parties such as contractors.

3. WASA shall provide a copy of this Consent Decree to any consultant and contractor selected or retained to perform any activity required by this Consent Decree.

4. No later than thirty (30) days prior to transfer of any ownership interest, operation, management, or other control of the CSS, WASA shall give written notice and provide a copy of this Consent Decree to any such transferee or successor in interest. WASA shall require, as a condition of any such sale or transfer, that the purchaser or transferee agree in writing to be bound by this Consent Decree and submit to the jurisdiction of this Court for its enforcement. WASA shall also notify, in writing, EPA Region III, the United States Attorney for the District of Columbia, and the United States Department of Justice, in accordance with Section XXI (Form of Notice) of this Consent Decree, of any such planned transfer at least thirty (30) days prior to the transfer.

III. OBJECTIVES

5. It is the express purpose of the Parties in entering this Consent Decree to further the objectives of the Act, as enunciated at Section 101 of the Act, 33 U.S.C. §§ 1251 et seq. All plans, reports, construction, and other obligations in this Consent Decree or resulting from the

activities required by this Consent Decree shall have the objective of achieving full compliance with the Clean Water Act, all applicable Federal and local regulations, and the terms and conditions of WASA's NPDES Permit, and to meet the objectives of U.S. EPA's April 19, 1994 CSO Policy.

IV. DEFINITIONS

6. Unless otherwise defined herein, the terms used in this Consent Decree shall have the meaning given to those terms in the Clean Water Act, 33 U.S.C. §§ 1251 et seq., the regulations promulgated thereunder, and EPA's 1994 CSO Policy.

7. The following terms used in this Consent Decree shall be defined as follows:

"Blue Plains" means the District of Columbia advanced wastewater treatment plant at Blue Plains.

"Collection System" means both the separate sanitary sewer and combined sewer systems within the District of Columbia.

"Combined Sewer Collection System" or "CSS" means the pipelines, pumping stations, treatment facilities and appurtenances in the District of Columbia which are designed to convey wastewaters and stormwater through a single pipe system to combined sewer overflow outfalls and/or treatment works. It includes the CSS and CSO facilities described in the NMC Report, as well as any future additions or modifications required by this Consent Decree and the Partial Consent Decree.

"Combined Sewer Overflow" or "CSO" means a discharge from the CSS at a CSO outfall designated in the Permit.

"Consolidation" or "Outfall Consolidation" means elimination of a CSO permitted outfall by routing the discharge so that it is joined with one or more other outfalls, or by connecting it with a storage/conveyance tunnel. Consolidation of outfalls does not reduce the volume of the overflow but does allow its location to be changed.

"Contract Award" or "Award Contract" means the date on which a contract is signed by both WASA and the other party to the contract.

"Construction" means the act of building a facility.

"1994 CSO Policy" means EPA's April 19, 1994 CSO Control Policy, published at 59 Fed. Reg. 18,688, and incorporated into the Clean Water Act pursuant to the Wet Weather Water Quality Act, Section 402(q) of the Clean Water Act, 33 U.S.C. § 1342(q).

"Detailed Design" means the final stage of preparing contract documents to be used to receive bids for construction of a facility.

"Excess Flow Treatment Facilities" means those facilities at Blue Plains providing treatment to influent flows in the east primary treatment facilities followed by chlorination and dechlorination with discharge from Outfall 001. Influent flows receive screening and grit removal prior to receiving excess flow treatment.

"Facility Plan" or "Facility Planning" means preparing an engineering study to develop additional definition of the Selected CSO Controls as may be necessary for preliminary design. Examples of Facility Planning activities include, but are not limited to, planning level geotechnical investigations, developing proposed alignments for the tunnels, identifying land acquisition and required approvals, establishing bases for design, establishing system hydraulics,

siting shafts, regulators and pumping stations, and other elements needed to define the function and interaction of the Selected CSO Controls in the LTCP.

"Long Term Control Plan" or "LTCP" means the plan for controlling CSOs from WASA's CSS that was prepared by WASA pursuant to the 1994 CSO Policy and submitted to EPA as a final report in August, 2002, and all supplements thereto.

"Low Impact Development" or "LID" means design and techniques that store, infiltrate, evaporate and detain runoff, to mimic predevelopment site hydrology. LID has the potential to reduce both the volume of storm water generated by a site and its peak overflow rate, thereby improving the quality of the storm water. Low Impact Development Retrofit refers to the modification of an existing site to accomplish LID goals. In this Decree, LIDR will refer to both techniques or technologies.

"MGD" means million gallons per day.

"NMC Report" means the report entitled District of Columbia Water and Sewer Authority, EPMC III-Sewer System, "Combined Sewer System Nine Minimum Controls Summary Report", Draft, July 1999 (Engineering Program Management Consultant III, Greeley and Hansen – Program Manager).

"NPDES Permit" means National Pollutant Discharge Elimination System (NPDES) permit number DC0021199 issued to WASA pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342, and any future, extended, modified or reissued permit.

"Partial Consent Decree" means the Consent Decree in this consolidated action entered by this Court on October 10, 2003, resolving, inter alia, Plaintiffs' claim for failure to

implement Nine Minimum Controls.

"Parties" means the United States, WASA and the District of Columbia.

"Person" means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.

"Place in Operation" means to achieve steady state operation and to operate consistently in such a way as to accomplish the intended function, even though all construction close-out activities (such as completion of a punchlist and resolution of contract disputes or close-outs) may not yet be completed.

"Required Approvals" means approvals and/or permits required from agencies of the District of Columbia government (other than WASA itself), the federal government or any other governmental or private entity or person.

"Selected CSO Controls" or "Selected Controls" means the controls and projects that comprise the recommended control plan in Section 13 of the LTCP and are enumerated in Section VI of this Decree.

"Separation" or "Sewer Separation" means separation of sewers carrying storm water and sanitary wastes, so that storm water and sanitary wastewater each are conveyed through a separate system of pipes. For those CSO outfalls that are separated in this Decree, the permitted CSO outfall may remain as a discharge point but shall discharge only storm water after its separation.

"Settling Defendants" means WASA and the District of Columbia.

"WASA" means the District of Columbia Water and Sewer Authority and any

successors thereto.

V. OVERVIEW

8. The LTCP provides for control of CSO discharges to the Anacostia River, the Potomac River, and to Rock Creek and its Piney Branch tributary. The Selected CSO Controls are comprised of a system of underground storage tunnels and pumping stations designed to reduce the discharge of CSO to the receiving waters and to convey stored combined flow to Blue Plains for treatment. Other elements of the LTCP include LTDR, Sewer Separation, Outfall Consolidation, CSO monitoring, public notification, intercepting sewers, regulator improvements and improvements to Excess Flow Treatment Facilities at Blue Plains.

VI. SELECTED CSO CONTROLS AND SCHEDULES

WASA agrees to and is ordered to implement the following Selected CSO Controls, which shall be operated in accordance with the NPDES Permit and shall have the minimum elements and capacities set forth below. Nothing herein shall be deemed to be inconsistent with the NPDES Permit and, in the event of a conflict, the NPDES Permit shall control.

A. Anacostia River Projects

WASA shall plan, design, and Place in Operation the following projects to control CSO discharges to the Anacostia River, at any time up to but no later than the schedules set forth below, and thereafter to operate them.

9. WASA shall start the Facility Plan for the Anacostia River Projects no later than six (6) months from entry of this Consent Decree. No later than three years and six months from

entry, WASA shall submit to EPA pursuant to Section X of this Consent Decree a summary report and detailed implementation schedule for the Anacostia River Projects. That detailed implementation schedule shall set forth anticipated completion dates for stages of work and shall include appropriate deadlines for filing all applications for all permits that WASA knows will be necessary, and dates for notices to proceed with work and construction starts. Except for the milestones in this Section, the deadlines in the detailed implementation schedule shall serve to track and report progress and shall not be enforceable obligations of this Consent Decree.

10. **Rehabilitation of Main, "O" Street, and Eastside Pumping Stations.** These projects are being implemented pursuant to the requirements of the Partial Consent Decree.

11. **Separate Fort Stanton Drainage Area (Outfall 006).** WASA shall separate the combined sewer area tributary to CSO Outfall 006 on the east side of the Anacostia River, eliminating it as a CSO outfall at any time up to, but no later than the following schedule:

1) Award Contract for Detailed Design: one (1) year from entry

2) Award Contract for Construction: three (3) years from entry

3) Place in Operation: five (5) years from entry

12. **Fort Stanton Interceptor.** WASA shall design and construct an interceptor pipeline to carry flows from CSO Outfalls 005 and 007 on the east side of the Anacostia to the Storage/Conveyance Tunnel at Poplar Point. The interceptor shall have sufficient capacity to provide the degree of control specified in the LTCP. WASA shall design, construct and Place in Operation this interceptor at any time up to, but no later than the following schedule:

1) Award Contract for Detailed Design: eight (8) years from entry

2) Award Contract for Construction: eleven (11) years from entry

3) Place in Operation: thirteen (13) years from entry

13. **Storage/Conveyance Tunnel From Poplar Point to Northeast Boundary.** WASA shall construct a Storage/Conveyance Tunnel from Poplar Point to Northeast Boundary which shall store combined sewer flow from the Main and O Street Pumping Station site, the CSOs along the Navy Yard and M Street, and the Northeast Boundary CSO, in accordance with WASA's NPDES Permit. This tunnel will be designed and operated to provide CSO storage and conveyance for CSO Outfalls 004, 009, 010, 011, 011a, 012, 013, 014, 015, 016, 017, 018, and 019 on the west side of the Anacostia River. The storage capacity of the tunnel shall be at least forty nine (49) million gallons. The location of the tunnel shall be finalized during Facility Planning and design but its approximate location is depicted in Page ES-9 of Appendix A. After the tunnel is Placed in Operation, in the event of wet weather causing the tunnels to be used for storage, WASA shall dewater the tunnel to the CSS as soon as practicable, but in no event longer than 59 hours, and shall convey the contents of the tunnel to Blue Plains for treatment in accordance with its NPDES permit. WASA shall plan, design, construct, and Place in Operation the tunnel at any time up to, but no later than the following schedule:

1) Award Contract for Detailed Design: four (4) years from entry

2) Award Contract for Construction: seven (7) years from entry

3) Place in Operation: thirteen (13) years from entry

14. **Poplar Point Pumping Station.** Under the Partial Consent Decree, WASA is required to make certain interim improvements to the existing Poplar Point Pumping Station. In

addition, WASA shall replace the existing Poplar Point Pumping Station with a new facility which shall include a low lift pumping station and a tunnel dewatering pumping station. The firm wastewater pumping capacity of the low lift pumping station shall be not less than 45 MGD and the tunnel dewatering pumping station shall be capable of dewatering the contents of the Storage/ Conveyance Tunnel at Poplar Point when full within 59 hours. WASA shall design, construct and Place in Operation both the new low lift and dewatering portions of the new pumping station at any time up to, but no later than the following schedule:

1) Award Contract for Detailed Design: seven (7) years from entry

2) Award Contract for Construction: ten (10) years from entry

3) Place in Operation: thirteen (13) years from entry

15. **Storage/Conveyance Tunnel Parallel to Northeast Boundary Sewer.** WASA shall construct a Storage/Conveyance Tunnel generally parallel to Northeast Boundary Sewer to provide additional storage and conveyance for combined sewer flow and to relieve street and basement flooding in the Northeast Boundary area. The tunnel shall capture and store the combined sewer flow, in accordance with WASA's NPDES permit. After the tunnel is Placed in Operation, in the event of wet weather causing the tunnel to be used for storage, WASA shall dewater the tunnel to the CSS as soon as practicable, but in no event longer than 59 hours, and shall convey the contents of the tunnel to Blue Plains for treatment in accordance with WASA's NPDES permit. The storage capacity of the tunnel shall be at least seventy-seven (77) million gallons. The location of the tunnel will be finalized during Facility Planning and design but its approximate location is depicted in Page ES-9 of Appendix A. Once the tunnel and its

appurtenances are Placed in Operation, discharges to the Northeast Boundary Swirl Facility shall be directed to the tunnel and the Swirl Facility shall be abandoned. WASA shall design, construct and Place in Operation the tunnel at any time up to, but no later than the following schedule:

1) Award Contract for Detailed Design: ten (10) years from entry

2) Award Contract for Construction: thirteen (13) years from entry

3) Place in Operation: twenty (20) years from entry

16. **Northeast Boundary Side Tunnels.** WASA shall construct side tunnels from the Storage/Conveyance Tunnel in the foregoing paragraph, along West Virginia and Mt. Olivet Avenues, NE and along Rhode Island and 4th St., NE to eliminate basement and street flooding. The location of the tunnels will be finalized during Facility Planning and design but their approximate locations are depicted on Page ES-9 of Appendix A. WASA shall design, construct, and Place into Operation the side tunnels at any time up to, but no later than the following schedule:

1) Award Contract for Detailed Design: fourteen (14) years from entry

2) Award Contract for Construction: seventeen (17) years from entry

3) Place in Operation: twenty (20) years from entry

17. **Anacostia Outfall Consolidation.** WASA shall consolidate and direct all combined sewer flow from Outfalls 016, 017 and 018 in the vicinity of the Anacostia Marina to the Storage/Conveyance Tunnel from Poplar Point to Northeast Boundary, thus eliminating Outfalls 016, 017 and 018. WASA shall consolidate these outfalls at any time up to, but no later

than the following schedule:

1) Award Contract for Detailed Design: eight (8) years from entry

2) Award Contract for Construction: eleven (11) years from entry

3) Place in Operation: thirteen (13) years from entry

B. **Potomac River Projects**

WASA shall plan, design, construct, and Place in Operation the following projects on the Potomac River to control CSO discharges to that river, at any time up to but no later than the schedules set forth below, and thereafter to operate them.

18. WASA shall start the Facility Plan for the Potomac River Projects no later than ten years after entry of the Consent Decree. No later than thirteen years from entry, WASA shall submit to EPA pursuant to Section X of this Consent Decree a summary report and detailed implementation schedule for the Potomac River Projects. That detailed implementation schedule shall set forth anticipated completion dates for stages of work and shall include appropriate deadlines for filing all applications for all permits that WASA knows will be necessary, and dates for notices to proceed with work and construction starts. Except for the milestones in this Section VI, the deadlines in the detailed implementation schedule shall serve to track and report progress and shall not be enforceable obligations of this Consent Decree.

19. **Rehabilitation of the existing Potomac Pumping Station.** The existing Potomac Pumping Station is being rehabilitated pursuant to the Partial Consent Decree in this consolidated action.

20. **Potomac Tunnel Dewatering Pumping Station.** WASA shall construct a new

tunnel dewatering pump station that will be capable of dewatering the contents of the Potomac Storage/Conveyance Tunnel when full within 59 hours. WASA shall design, construct and Place into Operation the new dewatering pump capability at any time up to, but no later than the following schedule.

1) Award Contract for Detailed Design: fifteen (15) years from entry

2) Award Contract for Construction: eighteen (18) years from entry

3) Place in Operation: twenty (20) years from entry

21. **Potomac Storage Tunnel.** WASA shall construct a Potomac Storage/Conveyance Tunnel which shall store combined sewer flow from the Georgetown CSOs and the large CSOs downstream of Rock Creek [CSO Outfalls 020, 021, 022, 024, 025, 026, 027, 028, and 029] in accordance with WASA's NPDES Permit. The storage capacity of the tunnel will be at least fifty-eight (58) million gallons, unless the tunnel capacity is adjusted to take into account the effects of LIDR as set forth in Section IX. The location of the tunnel will be finalized during facility planning and design but its approximate location is depicted on Page ES-9 of Appendix A. After the tunnel is Placed in Operation, in the event of wet weather causing the tunnel to be used for storage, WASA shall dewater the tunnel to the CSS as soon as practicable, but in no event longer than 59 hours, and will convey the contents of the tunnel to Blue Plains for treatment in accordance with WASA's NPDES permit. WASA will design, construct and Place into Operation the tunnel at any time up to, but no later than the following schedule:

1) Award Contract for Design: thirteen (13) years from entry

2) Award Contract for Construction: sixteen (16) years from entry

3) Place in Operation: twenty (20) years from entry

22. **Outfall Consolidation.** WASA shall consolidate and direct all combined sewer flow from CSO Outfalls 024, 025, 026, 027 and 028 in the Georgetown waterfront area to the Potomac Storage/Conveyance Tunnel, thus eliminating CSO Outfalls 024, 025, 026, 027 and 028, at any time up to, but no later than the following schedule:

1) Award Contract for Detailed Design: thirteen (13) years from entry

2) Award Contract for Construction: sixteen (16) years from entry

3) Complete Consolidation and Eliminate Outfalls: twenty (20) years from entry

C. **Rock Creek Projects**

WASA shall plan, design, construct, Place in Operation and operate the following projects on Rock Creek to control CSO discharges, at any time up to but no later than the schedules set forth below, and thereafter to operate them.

23. WASA shall start the Facility Plan for the Rock Creek Projects no later than eleven years after entry of the Consent Decree. On or before fourteen years from entry, WASA shall submit to EPA pursuant to Section X of this Consent Decree a summary report and detailed implementation schedule for the Rock Creek Projects. That detailed implementation schedule shall set forth anticipated completion dates for stages of work and shall include appropriate deadlines for filing all applications for all permits that WASA knows will be necessary, and dates for notices to proceed with work and construction starts. Except for the milestones in this Section VI, the deadlines in the detailed implementation schedule shall serve to track and report

progress and shall not be enforceable obligations of this Consent Decree.

24. **CSO Outfall Separation.** WASA has certified pursuant to the Partial Consent Decree that it has separated the Luzon Valley CSS tributary to CSO Outfall 059. WASA shall separate the combined sewer areas tributary to CSO outfalls 031, 037, 053 and 058. The separation shall eliminate them as CSO outfalls, at any time up to, but no later than the following schedule:

1) Award of Contract for Detailed Design: two (2) years from entry

2) Award of Contract for Construction: four (4) years from entry

3) Complete Separation: six (6) years from entry

25. **Monitoring at CSO Outfalls 033, 036, 047 and 057.** WASA represents that it has conducted hydraulic monitoring at CSO Outfalls 033, 036, 047 and 057 to obtain data to further characterize the overflows on Rock Creek, including their frequency and volume. On or before thirty (30) days from entry of this Decree, WASA shall provide the monitoring data to EPA. EPA will review such data and determine whether it is sufficient for the characterization. If EPA concludes the monitoring data is sufficient, it will so advise WASA in writing. If EPA requires additional data or information, it will advise WASA in writing as to what further sampling or information is required. Within sixty (60) days of receipt of such written notification, WASA shall proceed to perform the additional monitoring to provide such additional information to EPA.

26. If the monitoring confirms the predictions of WASA's model for the LTCP – i.e., that overflows occur relatively infrequently in a range of one to six times per year and in

relatively small amounts – regulator improvements shall be implemented to control overflows to Rock Creek and relief of the Rock Creek Main Interceptor shall be obtained by connecting the interceptor to the Potomac Storage Tunnel. If the monitoring shows that the regulator modifications required will cause surcharging in the Rock Creek Interceptor, WASA shall design a relief interceptor parallel to the Rock Creek Interceptor, or other project to provide relief to the interceptor or to provide control of overflows to the degree specified in WASA's NDPES Permit.

27. Within six (6) months of EPA's written notice that the monitoring already performed by WASA is sufficient, or upon completion of any additional monitoring or provision of additional information, WASA shall submit to EPA for approval a report identifying the results of the monitoring and justifying which of the foregoing alternatives it selects, including a schedule for award of contract for design, award of contract for construction and placing the projects into operation that shall be no longer than six years following EPA approval. That schedule shall be incorporated into this Decree by reference and WASA shall commence to implement the plan within 90 days of EPA approval. WASA shall place into operation the alternative that it selected in no more than six (6) years.

28. **Piney Branch Storage Tunnel.** WASA shall construct a Rock Creek Storage/Conveyance Tunnel which shall store the combined sewer flow from the Piney Branch CSO, Outfall 049, in accordance with WASA's NPDES Permit. The storage capacity of the tunnel will be at least nine and one-half (9.5) million gallons, unless the tunnel capacity is adjusted to take into account the effects of LIDR as set forth below. WASA shall design the tunnel to fill and dewater by gravity in 59 hours or less when full. After the tunnel is Placed in

Operation, in the event of wet weather causing the tunnel to be used for storage, WASA shall dewater the tunnel to the CSS as soon as practicable, but in no event longer than 59 hours, and shall convey the contents of the tunnel to Blue Plains for treatment in accordance with WASA's NPDES permit. The location of the tunnel will be finalized during Facility Planning and design but it will be between CSO 049 and Rock Creek and its approximate location is depicted in Page ES-9 of Appendix A. WASA shall plan, design, construct and Place in Operation the tunnel at any time up to, but no later than the following schedule:

1) Award Contract for Detailed Design: fourteen (14) years from entry

2) Award Contract for Construction: seventeen (17) years from entry

3) Place in Operation: twenty (20) years from entry

D. **Blue Plains Wastewater Treatment Plant Projects**

WASA shall plan, design, construct, Place in Operation and operate the following projects at Blue Plains, at any time up to but no later than the schedules set forth below.

29. **Excess Flow Improvements.** WASA shall make the following improvements to the existing Excess Flow Treatment Facilities at Blue Plains in order to insure availability and improve the reliability of the full 336 MGD excess flow treatment capacity (Outfall 001) at all times: 1) Construct four additional primary clarifiers on the east side of the plant to decrease loadings on the existing clarifiers and to improve reliability by providing redundancy; 2) lengthen the weir on the Excess Flow Chlorine Contact Tank to reduce head loss through the system; 3) replace the influent sluice gates on the Excess Flow Chlorine Contact Tank with motor operated butterfly valves to improve system control; 4) incorporate a control system (and

possibly variable speed drives) into the rehabilitation of Raw Wastewater Pump Station No. 2 to improve control of wet well levels at the plant; and 5) install automated controls to facilitate record keeping, time keeping and communications during excess flow events. WASA shall make and Place in Operation said improvements at any time up to, but no later than the following schedule:

1) Award Contract for Detailed Design: four (4) years from entry

2) Award Contract for Construction: seven (7) years from entry

3) Place in Operation: eleven (11) years from entry

E. **Public Notification:**

30. A visual notification system shall be installed as part of the construction of the tunnel storage projects for the Anacostia River, the Potomac River and for Rock Creek. The system shall be installed at a minimum of three locations on each receiving water at public access locations. The system shall be designed to notify the public of the occurrence of overflows based on flow monitoring at representative CSO outfalls on each receiving water. The system shall comprise a series of colored lights, flags or pendants that shall operate as follows:

a. Color A shall be displayed as long as flow is detected from the representative outfall;

b. Other colors shall be displayed based on the overflow volume from the representative outfall. There shall be two levels of notification: one for an event with a probable impact of less than 24 hours, and another for a longer event;

c. For an event with a probable impact of less than 24 hours, Color B shall

be displayed for 24 hours after flow is no longer detected from the representative outfall;

d. For an event with a probable impact of more than 24 hours, Color C shall be displayed for 72 hours after flow if no longer detected from the representative outfall;

e. When operational, the visual notification system shall be described and explained on WASA's web site.

31. WASA shall finalize the details of the public notification system (e.g., selection of representative outfalls, locations, warning devices, and colors) during Facility Planning for each receiving water. WASA shall submit its plan with the final details to EPA for approval pursuant to Section X.

32. The foregoing visual notification Section shall be in addition to the obligations imposed regarding public notification in the Partial Consent Decree.

VII. MODIFICATIONS TO SELECTED CSO CONTROLS AND SCHEDULES

33. Defendants agree that the 20 year implementation schedule and the work set forth in Section VI are feasible and equitable, based on current information, assumptions and financial and other projections. Some of the information currently available to WASA and its current assumptions and projections are set forth in, inter alia, the LTCP appended at Appendix A. WASA's current financial assumptions and projections for the 20 year implementation schedule are set forth in, inter alia, Appendix B.

34. The Parties recognize that the information currently available to WASA as well as WASA's current assumptions and projections may change during implementation of the Selected CSO Controls. The schedule and/or the Selected CSO Controls in Section VI may be modified

based on a significant change in the information currently available to WASA or WASA's current assumptions or projections, whether or not such change is anticipated, that renders the Consent Decree no longer feasible and equitable. Unless the Parties otherwise agree, a request for modification shall not relieve WASA of its obligations pursuant to Section VI and WASA shall continue with implementation of the Selected CSO Controls until the request for modification is either agreed to by the Parties, approved by the Court, or ruled on by the Court under Section XXII of this Decree. Any dispute as to whether or not implementation of the Selected CSO Controls should continue during the pendency of the modification request shall not be subject to judicial review or to dispute resolution.

35. The United States on behalf of EPA has accepted the Selected CSO Controls and the 20 year schedule. Appendices A and B are not stipulations, however, and the United States reserves its right to disagree or to contest particular statements or facts contained therein. In the event that WASA seeks a modification to extend the schedule based upon a significant increase in costs or other changes in financial circumstances, WASA shall provide to EPA an update of the information contained in Appendix B and, at EPA's request, an update of the key financial variables listed at Appendix C.

36. The failure of WASA and/or the District to seek, approve, or enact timely and adequate rate changes or to obtain bond or other financing to implement the work according to the schedule contained herein based on current information, assumptions and projections shall not constitute a significant change in circumstances under this Section nor shall such failure by itself justify any change in or reassessment of the interim milestones or the 20 year schedule in

this Decree.

37. **Grant Funding.** The schedules contained herein assume no federal appropriations, grants, or funding from sources other than WASA, for performance of the work described in Section VI. In the event that WASA receives grant funding from federal or other sources for such work, it shall report to EPA in writing the source, amount, and timing of any such grant funding when it learns that it will be appropriated or otherwise received. WASA has the option but is not required to accelerate the schedule contained in Section VI based on grant funding.

38. Modifications made pursuant to this Section shall follow the procedures set forth in Section XXII (Modification) of this Decree.

39. In the event that WASA, after consultation with the District, requests a modification to the schedule or to the Selected CSO Controls, and the United States does not agree to the proposed modification, WASA and/or the District may invoke the dispute resolution procedures of Section XIV of the Decree.

40. If WASA, after consultation with the District, requests a modification because it has decided that it needs to rebid a contract to construct a project, and if WASA has made best efforts to communicate with the appropriate personnel at EPA Region 3 to obtain a response to a request for modification, and has promptly responded to any requests for information from EPA Region 3 related to the requested modification, but EPA does not act on the request for modification within sixty (60) days after receiving the modification request, WASA may initiate informal dispute resolution and issue a notice of the dispute under the dispute resolution

procedures. For all other requests for modification, if WASA has made best efforts to communicate with the appropriate personnel at EPA Region 3 to obtain a response to a request for modification, and has promptly responded to any requests for information from EPA Region 3 related to the requested modification, but EPA does not act on the request for modification within one hundred twenty (120) days after receiving the modification request, WASA may initiate informal dispute resolution and issue a notice of the dispute under the dispute resolution procedures.

41. Compliance with the terms of this Decree is not conditioned upon the receipt of federal or state grant funds and WASA's failure to comply is not excused by the lack of federal or state grant funds, or by the processing of any applications for the same, subject solely to a force majeure event due to the Anti-Deficiency Act provisions in Section XIII (Force Majeure).

VIII. CONTROL SYSTEM COMPLIANCE AND POST-CONSTRUCTION MONITORING

A. **Individual Construction Project Certification.** Within sixty (60) days of Placing in Operation each project required under Section VI, WASA shall certify under Section XX (Certification) that such project has been designed, constructed and will be operated in accordance with the terms of this Consent Decree and its NPDES permit.

B. **Post-construction monitoring.**

42. When the Selected Controls set forth in Section VI have been Placed in Operation, WASA shall comply with the post-construction monitoring program set forth in its NPDES permit.

IX. LOW IMPACT DEVELOPMENT RETROFIT

43. WASA shall promote LIDR in the District of Columbia by performing projects as set forth in this Section. Such projects shall constitute additional work which WASA agrees to perform in addition to the injunctive relief set forth in Section VI.

44. As set forth in the LTCP, WASA shall incorporate LIDR techniques into new construction or reconstruction on WASA facilities for demonstration projects up to a total expenditure of $3 million and shall maintain the LIDR projects for at least five (5) years after each project is Placed into Operation. WASA shall monitor such projects to obtain data regarding the effectiveness of LIDR in reducing run-off reaching combined sewers and surface waters. These LIDR projects shall be in addition to those constructed as a Supplemental Environmental Project or financed as a Citizen Environmental Project pursuant to the Partial Consent Decree.

45. WASA shall submit a plan to EPA for approval and a schedule for implementing and monitoring LIDR on its own property within two (2) years from entry of this Decree. WASA shall Place in Operation all LIDR projects within six (6) years from approval of that plan by EPA. WASA shall monitor the LIDR projects for twelve (12) months after Placing in Operation all LIDR facilities.

46. WASA shall review the results of demonstration projects on its own property, other current LID and LIDR information and data from other projects in the District and elsewhere as part of its design of the Storage/Conveyance Tunnels for Rock Creek and for the Potomac River set forth in Section VI of this Consent Decree. Its design of those tunnels must

take such data into account and address whether the data permit it to reduce the capacity of those tunnels from that set forth in Section VI. It shall submit its review and analysis of the data concerning LIDR and, upon request by EPA, the proposed design for the Storage/Conveyance Tunnels for Rock Creek and for the Potomac River to EPA for approval pursuant to Section X of this Consent Decree.

X. EPA APPROVAL OF PLANS AND SUBMISSIONS

47. After review of any plan, report, or other item that is required to be submitted pursuant to this Consent Decree (with the exception of requests for modification pursuant to Section VII above), EPA shall in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission.

48. If the submission is approved, WASA shall take all actions required by the plan, report, or other item, as approved. If the submission is conditionally approved or approved only in part, WASA shall, upon written direction of EPA, take all actions required by the approved plan, report, or other item that EPA determines are technically severable from any disapproved portions, subject to WASA's right to dispute only the specified conditions or the disapproved portions, under Section XIV of this Decree (Dispute Resolution).

49. If the submission is disapproved in whole or in part, WASA shall, within 45 days or such other time as the Parties agree in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval. Any Stipulated Penalties applicable to the original submission, as provided in Section XII (Stipulated Penalties) of this

Decree, shall accrue during the 45-day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of WASA's obligations under this Decree, the Stipulated Penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

50. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA may again require WASA to correct any deficiencies, in accordance with the preceding Paragraphs, subject to WASA's right to invoke Dispute Resolution and the right of EPA to seek Stipulated Penalties, as provided in the preceding Paragraphs.

XI. REPORTING

51. Progress reports are to be provided at quarterly intervals for all milestone events one year or longer in duration. Each progress report shall summarize the status and progress of work required for completion of the next milestone and the impact of any delays on completion of said milestone, and shall be submitted on the 28th day of the month following each calendar quarter.

52. Beginning with the first CSO Quarterly Report due after entry of this Consent Decree, and for every calendar quarter thereafter until this Consent Decree terminates in accordance with Section XXVI, (Termination), below, WASA shall submit written status reports to U.S. EPA, certified pursuant to Section XX, and post them on the WASA website. In each report, WASA shall provide the following:

a. a statement setting forth the deadlines and other terms that WASA is required by

this Consent Decree to meet since the date of the last quarterly statement, whether and to what extent WASA has met these requirements, and the reasons for any noncompliance;

b. a statement tracking WASA's progress against the detailed implementation schedules required to be submitted under Section VI upon the completion of Facility Planning for each receiving water, whether there have been any delays, the reasons for the delays, and the actions WASA is taking or intends to take to overcome the delays.

c. a general description of the work completed within the three-month period, and a projection of work to be performed pursuant to this Consent Decree during the next three-month period. Notification to U.S. EPA of any anticipated delay shall not, by itself, excuse the delay.

XII. STIPULATED PENALTIES

53. WASA shall be liable for stipulated penalties for the failure to satisfactorily achieve the deadline for the start of Facility Planning, submission of a detailed implementation schedule and summary report on Facility Planning, Award of Contract for Detailed Design and the Award of Contract for Construction in Section VI, as follows:

Period of Noncompliance	Penalty Per Day Per Violation
1st to 30th Day	$ 500
31st to 59th Day	$ 1,000
60th day until submitted	$ 1,500

54. WASA shall be liable for stipulated penalties for the failure to satisfactorily Place in Operation any of the required projects by the final deadline set forth for that project in the schedules in Section VI, as follows:

Period of Noncompliance	Penalty Per Day Per Violation
1st to 30th Day	$ 1,000
31st to 59th Day	$ 2,000
After 60 Days	$ 5,000

55. WASA shall be liable for stipulated penalties for each failure to properly perform the CSO monitoring required in its NPDES Permit after the Selected Controls are Placed in Operation, as follows:

Period of Noncompliance	Penalty Per Day Per Violation
1st to 30th Day	$ 1,000
31st to 59th Day	$ 2,000
60th day until submitted	$ 2,500

56. WASA shall be liable for stipulated penalties for failure to timely submit any progress or completion report required in Section XI (Reporting) , as follows:

Period of Noncompliance	Penalty Per Day Per Violation
1st to 30th Day	$ 500
31st to 59th Day	$ 1,000
60th day until submitted	$ 2,000

57. Other Violations: If WASA fails to comply with a requirement or provision of this Decree not expressly listed above, it shall be liable for stipulated penalties as follows:

Period of Noncompliance	Penalty Per Day Per Violation
1st to 30th Day	$ 500

31st to 59th Day	$ 1,000
60th day until submitted	$ 2,000

58. General Provisions. Stipulated civil penalties shall automatically begin to accrue on the first day WASA fails to meet any of the schedules required by this Consent Decree or to satisfy any obligation or requirement of this Consent Decree and shall continue to accrue each day until WASA achieves compliance with such schedule, obligation or requirement; provided, however, that if WASA submits an appropriately documented request for modification under Section XXII (Modification) of this Decree 180 days prior to an affected deadline or compliance date, and EPA does not act on such request for modification prior to the deadline or compliance date, stipulated penalties shall not accrue for WASA's failure to satisfy the deadline or compliance date until EPA's approval or disapproval. This provision shall not apply if WASA does not have a reasonable basis to make the request for modification or if the request is made for purposes of delay. In the event EPA approves or disapproves WASA's request for modification after passage of the affected deadline or compliance date, stipulated penalties shall begin to accrue from the time EPA acts on the request for modification.

59. Failure to Meet Award of Construction Contract Deadlines Due to Rebidding. If WASA elects to rebid a construction contract for a project described in Section VI, it may request a modification under Section VII. In the alternative, WASA may rebid and elect to have any stipulated penalties for failure to meet the Award of Construction Contract deadline due and owing but to defer their payment. If WASA meets its deadline for Placing in Operation the specific project for which penalties were deferred, stipulated penalties for failure to meet the

deadline for Award of Construction Contract will be excused. If WASA fails to meet the deadline for Placing in Operation the specific project for which penalties were deferred, stipulated penalties for the failure to meet both the Award of Construction Contract and the Placing in Operation deadlines will be due and payable on demand by the United States. When WASA elects a deferral of stipulated penalties for failure to meet an Award of Construction deadline due to rebidding a project, it shall give written notice to EPA that it intends to rebid the project and to defer stipulated penalties. When it awards the contract for construction of that project, WASA shall so notify EPA and advise it in writing of the amount of stipulated penalties accrued pursuant to Section XII that are due and owing but deferred.

60. Stipulated civil penalties shall be paid within thirty (30) days of the date of a demand for payment of stipulated civil penalties for any non-compliance with any of the schedules of performance or requirements set forth in this Consent Decree.

61. In the event that a stipulated penalty is not paid according to the instructions in a written demand from the United States, the stipulated civil penalty shall be payable with interest from the original due date to the date of payment, at the statutory judgment rate set forth at 28 U.S.C. § 1961(a).

62. Stipulated civil penalties shall be paid electronically or by submitting a certified or cashier's check payable to "Treasurer, the United States of America," and tendered to the United States Attorney for the District of Columbia. Simultaneously, WASA shall send copies of the certified or cashier's check, together with a letter describing the basis for the penalties, to Chief, Environmental Enforcement Section, United States Department of Justice, Post Office

Box 7611, Ben Franklin Station, Washington, D.C. 20044, and to Section Chief, Compliance and Enforcement Branch, Water Protection Division, US EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103. The transmittal letter shall reference the caption, the civil action number, and DOJ Number 90-5-1-1-07137.

63. Payment of stipulated civil penalties as set forth above shall be in addition to any other rights or remedies which may be available to the United States or its agencies by reason of WASA's failure to comply with the requirements of this Consent Decree and all applicable Federal, state or local laws, regulations, wastewater discharge permit(s) and all other applicable permits. Where a violation of this Consent Decree is also a violation of such laws, regulations, or permits, WASA shall be allowed a credit, in the amount of any Stipulated Penalties paid, as a set-off against any statutory penalties imposed for such violation.

64. If WASA invokes dispute resolution and the Court resolves the dispute against WASA, stipulated penalties which have accrued during the pendency of the dispute shall be payable, as set forth herein, upon resolution of the dispute; provided, however, that in the event that the Director of the Water Protection Division requires more than sixty (60) days to issue a final agency decision concerning the dispute, WASA shall be liable only for sixty (60) days of stipulated penalties for the period from submission of the Statements of Position until issuance of the final agency decision, as set forth in Section XIV (Dispute Resolution). Stipulated penalties shall begin to accrue again upon issuance of the final agency decision.

XIII. FORCE MAJEURE

65. "Force Majeure" for the purposes of this Consent Decree is defined as an event

arising from causes beyond the control of WASA or the control of any entity controlled by WASA, including its consultants and contractors, which delays or prevents the performance of any obligation under this Consent Decree. Nothing in this Section is intended to relieve WASA of its duty to use due diligence to complete the requirements of this Consent Decree in a timely manner or of WASA's obligation to meet all discharge limitations and other obligations contained in WASA's NPDES Permit. Unanticipated or increased costs or changed financial circumstances are not Force Majeure events, except as provided in Paragraph 67 (Anti-Deficiency Act) below, although in certain instances they may constitute the basis for a request for modification pursuant to Section VII.

66. **Permitting**: Failure to apply for a required permit or approval, or to provide in a timely manner all information required to obtain a permit or approval necessary to meet the requirements of this Consent Decree, are not Force Majeure events. However, failure of a permitting authority to issue a necessary permit in a timely fashion is an event of Force Majeure where the failure of the permitting authority to act is beyond the control of WASA and WASA demonstrates that it has taken all steps available to it to obtain the necessary permit, including but not limited to:

a. Promptly providing reasonably known permitting authorities with copies of this Consent Decree, when lodged, as well as briefing each such authority, both orally and with written materials if necessary, on the projects and schedules contained therein in order to coordinate permitting submittals and approvals;

b. submitting a complete permit application within two (2) months of the

date identified in the detailed implementation schedule to apply for permits that are known to be required, and in a prompt fashion for those permits not known to be required or previously identified in the schedule;

c. responding to requests for additional information by the permitting authority in a timely fashion;

d. making regular inquiry, approximately every 45 days, both verbally and in writing, with the permitting authority after initial or supplemental permit filings, to determine the status of the permit application;

e. seeking relief from higher management officials within the permitting authority where permit processing delays threaten to cause noncompliance with any deadline in this decree;

f. accepting lawful permit terms and conditions; and

g. prosecuting appeals of any unlawful terms and conditions imposed by the permitting authority in an expeditious fashion.

67. Anti-Deficiency Act Events: Nothing in this Decree shall be construed to require an expenditure, obligation or contract in violation of the Anti-Deficiency Act, 31 U.S.C. §§ 1341 et seq. Where an expenditure, obligation or contract is subject to the Anti-Deficiency Act, WASA's obligations shall be subject to the availability of appropriated funds as follows:

(a) WASA must initially identify the portion of its budget that is comprised of appropriated funds, identify the other components of its funding, and demonstrate why the unavailability of the appropriated funds will delay specific obligations;

(b) To the extent made necessary by lack of appropriated funds, WASA may obtain deferral of compliance with an obligation of this Consent Decree until its next annual budget cycle if, within sixty (60) days after WASA knew or should have known of the event described in Paragraph 68 below, it provides in writing to EPA Region III a statement which shows the following:

(i) That it included in its annual budget, which accompanies the District of Columbia budget submitted to the President for transmission to the Congress pursuant to Section 466 of the D.C. Self-Government and Governmental Reorganization Act, D.C. Code Sec. 47-304 (1990), sufficient money to carry out such objective;

(ii) That it made diligent efforts to obtain Congressional enactment of that part of the budget act;

(iii) That it expressly identified in the annual fiscal year adopted budget prepared for Congressional use such obligation (not necessarily to include reference to this Decree as such) together with the amount of money tied to performing such obligation; and

(iv) That Congress acted expressly to eliminate such amount of money or to reduce it below the level necessary to perform the obligation, or that Congress made an across the board reduction in WASA's appropriation as shown in WASA's adopted budget without expressly saving such obligation and the across the board reduction, as applied proportionately to the amount of money shown in the adopted budget for such obligation, left an insufficient amount to carry out that obligation.

68. **General Requirements:** When circumstances are occurring or have occurred

which may delay the completion of any requirement of this Consent Decree, whether or not due to a Force Majeure event, WASA shall so notify EPA, in writing, within fifteen (15) days after WASA knew, or should have known, of the delay or anticipated delay. The notice shall describe in detail the bases for WASA's contention that it experienced a Force Majeure delay, the anticipated length of the delay, the precise cause or causes of the delay, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which those measures will be implemented. Failure to so notify the United States shall constitute a waiver of any claim of Force Majeure as to the event in question.

69. If the United States finds that a delay in performance is, or was, caused by a Force Majeure event, it shall extend the time for performance, in writing, for a period to compensate for the delay resulting from such event and stipulated penalties shall not be due for such period. In proceedings on any dispute regarding a delay in performance, the dispute resolution provisions of Section XIV shall apply and WASA shall have the burden of proving that the delay is, or was, caused by a Force Majeure event, and that the amount of additional time requested is necessary to compensate for that event.

70. Compliance with a requirement of this Consent Decree shall not by itself constitute compliance with any other requirement. An extension of one compliance date based on a particular event shall not automatically extend another compliance date or dates. WASA shall make an individual showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought. WASA may petition for the extension of more than one compliance date in a single request.

XIV. DISPUTE RESOLUTION

71. This Court shall retain jurisdiction for the purpose of adjudicating, in the manner provided by this Section, all disputes between WASA and the United States that may arise under the provisions of this Consent Decree. Unless otherwise expressly provided 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. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of WASA that have not been disputed in accordance with this Section.

72. Permit actions pursuant to 40 C.F.R. Part 124, including issuance, denials, and modifications, shall not be subject to this Consent Decree, but rather shall continue to be handled through the administrative and judicial procedures set forth in those regulations.

73. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between WASA and the United States. Notice of the dispute shall be provided no later than fourteen (14) days from the date of the circumstances giving rise to the dispute. The period for informal negotiations shall not exceed twenty (20) days from the date of the original notice of the dispute, unless WASA and the United States otherwise agree in writing to extend that period.

74. If the informal negotiations are unsuccessful, the position of the United States shall control unless, within twenty (20) days after the conclusion of the informal negotiation period, WASA invokes the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, which shall set forth the

nature of the dispute with a proposal for its resolution as well as any factual data, analysis or opinion supporting that position and any supporting documentation (including the Long Term Control Plan or portions thereof) relied upon.

75. Within thirty (30) days of the receipt of a Statement of Position, pursuant to this Section, the United States may serve on WASA its own Statement of Position, which may include an alternate proposal for resolution of the dispute as well as any factual data, analysis, or opinion supporting that position and all supporting documentation (including the Long Term Control Plan or portions thereof) relied upon by the United States. Within 15 days after receipt of such Statements, WASA may serve on the United States a Reply.

76. Matters Accorded Record Review: With the exception of modification requests pursuant to Section VII, this Paragraph shall pertain to disputes subject to the procedures of this Section that concerns the adequacy or nature of the work to be performed under Section VI of this Decree, or other matters that are accorded review on the administrative record under applicable principles of administrative law. For matters subject to this Paragraph, WASA shall have the burden of showing that the position of the United States is arbitrary and capricious or otherwise not in accordance with applicable law or this Consent Decree. Plaintiff shall compile an administrative record, which shall consist of the Statements of Position and supporting documentation relied upon (including the LTCP or portions thereof that the parties incorporated into their Statements) and other documents considered and relied upon by EPA in arriving at its final administrative decision. Where appropriate, EPA may allow WASA, the District of Columbia, Citizen Plaintiffs, and/or other members of the public to make supplemental

submissions. The Director of the Water Protection Division shall issue a final administrative decision resolving the dispute based on the administrative record. Stipulated penalties for the period from submission of Statements of Position until issuance of the final administrative decision shall accrue for no more than sixty (60) days, even if EPA issues the final administrative decision after more than 60 days. The final administrative decision shall be effective in ten (10) days, unless WASA may move for judicial review within ten (10) days of its receipt of the final agency decision.

77. Modification Requests: In the case of requests for modification of the Selected CSO Controls and/or schedules pursuant to Section VII, WASA shall bear the burden of demonstrating that the requested modification should be approved in accordance with Section VII of this Consent Decree. EPA's final decision shall be binding on WASA, unless within twenty (20) days of its receipt WASA submits a modification request to the Court. If the Director of the Water Protection Division does not issue a final decision on a request for modification within one hundred twenty (120) days from the date that WASA submits its Reply to the United States' Statement of Position, WASA may elect to move in Court to modify the Consent Decree.

78. Other Matters: In the case of other matters not subject to Paragraphs 76 and 77 above, WASA shall have the burden to demonstrate that its actions or positions were taken in accordance with the terms, conditions, requirements and objectives of this Consent Decree and the Clean Water Act. The Director of the Water Protection Division will issue a final decision resolving the dispute which will be binding on WASA, unless within twenty (20) days of its

receipt WASA serves on the United States a motion for judicial review of the decision setting forth the matter in dispute, the efforts made to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. Stipulated penalties for the period from submission of Statements of Position until issuance of the final administrative decision shall accrue for no more than sixty (60) days, even if EPA issues the final administrative decision after more than 60 days.

79. Where the dispute arises from WASA's request for modification of the Selected CSO Controls and/or schedules pursuant to Section VII, the matter shall not be subject to the principles of record review in Paragraph 76. For other matters, If WASA and the United States disagree as to whether the dispute should proceed under the principles of record review or not, WASA shall follow the procedures determined by EPA to be applicable. Upon appeal, the Court shall determine which procedures are applicable in accordance with the standards set forth in this Section.

80. Submission of any matter to the Court for resolution shall not extend or stay any of the deadlines set forth in this Consent Decree unless the Parties agree to such extension in writing or the Court grants an order extending such deadline(s). Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in this Section. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that WASA does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XII (Stipulated Penalties).

XV. RIGHT OF ENTRY

81. Commencing upon the date of lodging of this Consent Decree, U.S. EPA and its representatives, contractors, consultants, and attorneys shall have the right of entry into and upon the premises of WASA at all reasonable times, upon proper presentation of credentials, for the purposes of:

(a) Monitoring the progress of activities required by this Consent Decree;

(b) Verifying any data or information required to be submitted pursuant to this Consent Decree;

(c) Obtaining samples and, upon request, splits of any samples taken by WASA or its consultants. Upon request, WASA will be provided with splits of all samples taken by the United States;

(d) Inspecting and evaluating the CSO System;

(e) Inspecting and reviewing any record required to be kept under the provisions of this Consent Decree or any NPDES Permit and the Clean Water Act; and

(f) Otherwise assessing WASA's compliance with this Consent Decree.

82. This Section XV, Right of Entry, in no way limits or affects any right of entry and inspection, or any other right otherwise held by the United States, U.S. EPA and any other governmental entity, pursuant to applicable federal or state laws, regulations.

83. WASA reserves the right to request the laboratory analytical results of samples taken from the CSS by the United States during the term of this Consent Decree, and any non-privileged reports prepared using such results.

XVI. NOT A PERMIT/COMPLIANCE WITH OTHER STATUTES/REGULATIONS

84. This Consent Decree is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, nor shall it be interpreted to be such. This Consent Decree does not relieve WASA of any obligation to apply for, obtain and comply with the requirements of any new or existing NPDES permit or to comply with any federal, state or local laws or regulations, including, but not limited to its obligations to obtain a permit for its wastewater treatment and collection system or facilities and to comply with the requirements of any NPDES permit or with any other applicable federal or state law or regulation. Any new permit, or modification of existing permits, must be complied with in accordance with federal and state laws and regulations.

XVII. FAILURE OF COMPLIANCE

85. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that WASA's complete compliance with this Consent Decree will result in compliance with the provisions of the Clean Water Act, 33 U.S.C. §§1251 et seq., or with WASA's NPDES permit. Notwithstanding EPA's review or approval of any Scope of Work, report, or plans and specifications, pursuant to this Consent Decree, WASA shall remain solely responsible for any non-compliance with the terms of this Consent Decree, all applicable permits, the Clean Water Act, and regulations promulgated thereunder. The pendency or outcome of any proceeding concerning issuance, reissuance, or modification of any permit shall neither affect nor postpone WASA's duties and obligations as set forth in this Consent Decree.

XVIII. EFFECT OF DECREE AND NON-WAIVER PROVISIONS

86. The Parties agree that this Consent Decree resolves the civil claims for violation of water quality standards and for long-term injunctive relief (Claim One) alleged in the Complaint filed by the United States through the date of lodging of this Decree.

87. The Consent Decree in no way affects or relieves Settling Defendants of any responsibility to comply with any federal, state, or local law or regulation.

88. The Parties agree that WASA is responsible for achieving and maintaining complete compliance with all applicable federal and state laws, regulations, and permits, and that compliance with this Consent Decree shall be no defense to any actions commenced pursuant to said laws, regulations, or permits.

89. The United States reserves the right to file a civil action for statutory penalties or injunctive relief against WASA for any violations of the Clean Water Act by WASA which occur after the date of lodging of this Consent Decree and any such violations occurring prior to that date that are not specifically alleged as Claims for Relief in the Complaints.

90. This Consent Decree does not limit or affect the rights of WASA, the District of Columbia, or the United States as against any third parties which are not parties to this Consent Decree.

91. The Parties reserve any and all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not limit any authority of EPA under any applicable statute, including the authority to seek information from WASA or to seek access to the property of WASA, nor shall anything in this Consent Decree be construed to limit the authority of the United States to undertake any action against any person, including WASA,

in response to conditions that may present an imminent and substantial endangerment to the environment or the public health or welfare.

92. Obligations of WASA under the provisions of this Consent Decree to perform duties scheduled to occur after the date of lodging, but prior to the date of entry, shall be legally enforceable from the date of lodging of this Consent Decree. Liability for stipulated penalties, if applicable, shall accrue for violation of such obligations as of the date of violation and payment of such stipulated penalties may be demanded by the United States upon or after entry of this Consent Decree.

93. The United States reserves the right to file a criminal action for statutory penalties or other criminal relief against WASA for any violations by WASA of the Clean Water Act or other applicable federal statutes.

94. It is the intent of the Parties hereto that the clauses hereof are severable, and should any clause(s) be declared by a court of competent jurisdiction to be invalid and unenforceable, the remaining clauses shall remain in full force and effect.

95. The United States reserves all remedies available to it for violations of Federal, State and local law.

XIX. COSTS OF SUIT

96. The Parties shall bear their own costs and attorney's fees with respect to this action and to matters related to this Consent Decree.

XX. CERTIFICATION OF SUBMISSIONS

97. WASA shall maintain copies of any underlying research and data in its

possession, custody or control for any and all documents, scope of work, reports, plans and specifications, or permits submitted to EPA pursuant to this Consent Decree for a period of five (5) years, except that WASA shall not be required to maintain copies of drafts of documents, scope of work, reports, plans and specifications, reports or permits. WASA shall require any independent contractor implementing this Consent Decree to also retain such materials for a period of five (5) years. WASA shall submit such supporting documents to EPA upon request. WASA shall also submit to EPA upon request any other documents that relate to or discuss the operation, maintenance, repair, or construction of the CSO system (or any portion thereof), or that relate to or discuss the number, frequency, volume, quality or environmental impact of CSO discharges. In all notices, documents or reports submitted to EPA pursuant to this Consent Decree, a senior management official of WASA shall sign and certify such notices, documents and reports as follows:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

XXI. FORM OF NOTICE

98. Unless otherwise specified within the terms of this Consent Decree, all reports, notices, or any other written communications required to be submitted under this Consent Decree

shall be sent to the respective parties at the following addresses:

As to the United States:

Department of Justice

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Post Office Box 7611, Ben Franklin Station
Washington, DC 20044
Reference DOJ Case No. 90-5-1-1-07137

United States Attorney
District of Columbia
Judiciary Center
555 Fifth Street NW
Washington, DC 20530

EPA

Director
Water Enforcement Division
Office of Regulatory Enforcement
U.S. Environmental Protection Agency
OECA-ORE-WED
Ariel Rios Building
12th and Pennsylvania Ave, NW
Mail Code 2243A
Washington, DC 20004

Chief
NPDES Branch (3WP31)
Water Protection Division
U.S. Environmental Protection Agency
Region III
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Yvette Roundtree (3RC20)
Office of Regional Counsel

U.S. Environmental Protection Agency
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1650 Arch Street
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As to WASA:

Jerry N. Johnson or his successor
General Manager
District of Columbia Water and Sewer Authority
5000 Overlook Avenue, SW
Washington, D.C. 20032

Deputy General Manager/Chief Engineer
District of Columbia Water and Sewer Authority
5000 Overlook Avenue, SW
Washington, D.C. 20032

As to the District:

The Attorney General of District of Columbia
One Judiciary Square
441 Fourth Street NW
Suite 600 South
Washington, DC 20001

XXII. MODIFICATION

99. This Consent Decree contains the entire agreement of the Parties and shall not be modified by any prior oral or written agreement, representation or understanding. Prior drafts of this Consent Decree shall not be used in any action involving the interpretation or enforcement of this Consent Decree.

100. The non-material terms of this Consent Decree may be modified by a subsequent written agreement signed by all the Parties. If all the Parties agree to a material modification in writing, they may apply to the Court for approval thereof. If the Parties do not reach agreement

on such material modification, the request for modification shall be subject to the dispute resolution procedures of this Decree. All material modifications shall be in writing and approved by the Court before they will be deemed effective.

101. In the event WASA requests a material modification to the Selected CSO Controls and/or the schedule set forth in Section VI of the Consent Decree, WASA shall arrange for additional public participation prior to submitting the modification request to the United States. WASA shall initially consult with EPA concerning the modification and the scope of public participation to be obtained by WASA prior to submission of a formal request for modification from WASA to EPA.

(a) The proposed modification package shall be submitted to EPA and shall contain the following:

(i) the basis for the modification and the supporting technical and regulatory justification (including if applicable the LTCP or pertinent portions thereof);

(ii) any changes to the Selected CSO Controls and/or to the schedule in Section VI of this Consent Decree, along with any supporting data;

(iii) a demonstration of material compliance with any applicable requirements of the 1994 CSO Policy; and

(iv) a demonstration that public participation has occurred.

(b) If the United States, after consultation with the District of Columbia, agrees to the modification, the proposed changes to the Selected CSO Controls and/or the schedules shall be executed by appropriate officials on behalf of the United States, the District of Columbia, and

WASA and lodged with the Court for a period of public comment prior to entry. If the United States does not agree to the proposed modification, the matter shall be subject to the procedures of Section XIV of this Decree (Dispute Resolution).

XXIII. PUBLIC COMMENT

102. The parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the requirements of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and consideration by the United States of any comments. This paragraph does not create any rights exercisable by the Settling Defendants, and Settling Defendants shall not withdraw their consent to this Consent Decree between lodging and entry of this Consent Decree and hereby consents to entry of this Decree without further notice.

103. All information and documents submitted by Settling Defendants to U.S. EPA pursuant to this Consent shall be subject to public inspection, unless identified and supported as confidential by WASA in accordance with 40 C.F.R. Part 2.

XXIV. CONTINUING JURISDICTION OF THE COURT

104. The Court shall retain jurisdiction to enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction, modification or execution of this Consent Decree.

XXV. APPENDICES

105. Appendix A is the Long Term Control Plan and its Appendices.

106. Appendix B contains WASA's financial assumptions and projections that it sets

forth as its basis for the 20 year implementation schedule in this Consent Decree.

107. Appendix C contains a list of key financial variables to be updated in the event of a request for modification due to changed financial circumstances pursuant to Section VII of this Decree.

XXVI. TERMINATION

108. This Consent Decree shall terminate upon motion of the United States to the Court after each of the following has occurred:

(a) WASA has Placed in Operation all of the construction projects required under Section VI;

(b) WASA has demonstrated that it has achieved and maintained compliance with the water quality based CSO numerical effluent limitations and the performance standards requiring that the Selected CSO Controls be implemented, operated and maintained as described in WASA's NPDES Permit for two years after the Selected CSO Controls are Placed in Operation;

(c) WASA has satisfactorily implemented its LIDR projects and programs as required by Section IX;

(d) WASA has paid all stipulated penalties and any other monetary obligations due hereunder, and no penalties or other monetary obligations due hereunder are outstanding or owed to the United States; and

(e) WASA has certified completion to the United States, and the United States has not contested WASA's completion or compliance.

109. The Consent Decree shall not terminate if, within 90 days of certification by WASA to the United States of compliance pursuant to this Section, the United States asserts in writing that full compliance has not been achieved, or seeks further specific information in order to evaluate WASA's certification. If the United States disputes WASA's full compliance, this Consent Decree shall remain in effect pending resolution of the dispute by the parties or the Court.

110. Notwithstanding Paragraph 109 above, if WASA submits a certification to the United States that it has completed all the requirements in Paragraph 108 above, and the United States does not respond on or before 90 days, WASA may file a motion to the Court seeking termination of this Consent Decree.

XXVII. SIGNATORIES

111. The Assistant Attorney General on behalf of the United States and the undersigned representatives of the Settling Defendants certify that they are fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

Entered this _____ day of _____, 2004

_____
Chief Judge, United States District Court

FOR THE UNITED STATES OF AMERICA

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources Division

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FOR THE DISTRICT OF COLUMBIA

[INSERT DISTRICT SIGNATURE BLOCKS HERE]

Appendix A

The August, 2002 Long Term Control Plan and its Appendices A through G will be filed in hard copy in lieu of electronic filing, since the Plan exceeds 500 pages and contains numerous graphs, maps, and charts that must be reproduced in color.

APPENDIX B

APPENDIX B

Table 1, attached, presents WASA's financial projections for the impact on sewer rates of the 20-year LTCP implementation schedule as specified in the consent decree. Descriptions of the heading columns in Table 1 are presented below:

Column No.	Heading	Description
1	Year No.	Sequential count of number of years starting in 2004
2	Calendar year	Calendar year starting in 2004
3	Capital 2001 Dollars ($M)	Estimated capital costs for the CSO LTCP expressed in constant year 2001 dollars
4	Capital Actual Dollars ($M)	The estimated capital costs for the CSO LTCP expressed in the year of expenditure dollars using 3% per year to escalate the 2001 value estimate.
5	OM 2001 Dollars ($M)	Estimated operating and maintenance costs for the CSO LTCP expressed in constant year 2001 dollars.
6	OM Actual Dollars ($M)	The estimated operating and maintenance costs for the CSO LTCP expressed in the year of expenditure dollars using 3% per year to escalate the 2001 value estimate.
7	Total 2001 Dollars ($M)	The addition of CSO Costs/OM/2001 Dollars ($M) and CSO Costs/Capital/2001 Dollars ($M).
8	Total Actual Dollars ($M)	The addition of CSO Costs/OM/Actual Dollars ($M) and CSO Costs/Capital/Actual Dollars ($M).
9	Capital Costs Financed ($M)	The amount of actual capital costs that are debt financed.
10	Capital Costs PAYGO ($M)	The amount of actual capital costs that are paid from current year revenues on a pay-as-you-go-basis.
11	Debt Service ($M)	Estimated annual debt service on capital costs that are financed using 30 year term and borrowing costs of 7%.
12	O&M ($M)	Same as Column 6, OM Actual Dollars ($M)
13	Total Rate Requirements	The addition of PAYGO, Debt Service, O&M costs.
14	Other WASA Wastewater Costs Paid by DC Ratepayers	Operating and capital costs for wastewater services that are funded by retail ratepayers before the addition of CSO LTCP costs.
15	Typical Residential Bill Without CSO LTCP	Estimated annual residential wastewater bill before addition of the CSO LTCP costs.
16	Bill Increase Without CSO LTCP	Estimated annual change in residential wastewater bill before addition of CSO LTCP costs.
17	Typical Residential Bill Without CSO LTCP	Estimated annual residential wastewater bill after addition of the CSO LTCP costs.
18	Bill Increase Without CSO LTCP	Estimated annual change in residential wastewater bill after addition of CSO LTCP costs.
19	MHI	Estimated median household income (MHI) using 3% annual growth rate
20	% of MHI	Estimated residential bill as a percent of MHI.
21	Lower 20%	Household income of the most affluent household of the lower 20th percentile of households in the District.
22	% of Lower 20%	Estimated residential bill as a percent of the household income for the most affluent household of the lower 20th percentile of households in the District.

The financial projections are based on certain assumptions, which include, but are not limited to the following:

1. Billed water use is projected to decrease at 1% per year. Residential bill estimates are based on average consumption of 100 ccf per year.

2. Customers are assessed a charge for water and wastewater services based on water consumption. With the exception of certain federal government customers located outside of the District, all customers pay the same rate, regardless of account class, meter size, or size of service connection. The analysis assumes this practice will continue.

3. The analysis assumes a revenue collection rate of 97.7% of billed amounts.

4. Median Household Income in the District of Columbia is projected to increase at 3% per year. The most affluent of the lower 20th percentile of households in the District have a household income in 2004 dollars of $19,669 and this is projected to increase at the rate of inflation, which is assumed to be 3% per year.

5. Projections take into account discounts to low-income customers under the Authority's customer assistance program. The Authority's program covers 6,000 low-income customers and provides discounts of approximately $500,000 each year. Each eligible participant receives an exemption for water service charges in the amount of 4 ccf per month.

6. The financial analysis assumes an all-in borrowing cost assumption of 7 percent including cost of issuance (including bond insurance premiums, premiums for debt service reserve facility and fees and expenses related to bond issuance; approximately 2% on the Authority's 2003 revenue bond issue). The analysis assumes a debt coverage ratio of 1.40 x Term of Debt. The financial analysis utilizes fixed rate financing with a term of 30 years.

7. CSO operating and maintenance and capital costs are escalated at a rate of 3% per year from 2001 cost estimates to the year of expenditure. Non CSO-related wastewater operating and capital costs are projected to increase at approximately 5 percent per year reflecting impacts of inflation and reinvestment in capital facilities.

Table 1
20-Year LTCP Financial Projections

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
		CSO Costs						CSO LTCP Financing					Other WASA Wastewater Costs			Effect on Users					
		Capital		O&M		Total															
Year No	Calendar Year	2001 Dollars ($M)	Actual Dollars ($M)	2001 Dollars ($M)	Actual Dollars ($M)	2001 Dollars ($M)	Actual Dollars ($M)	Capital Costs Financed ($M)	Capital Costs PAYGO ($M)	Debt Service ($M)	O & M ($M)	Total Annual Rate Requirements ($M)	Other WASA WW Costs Paid by DC Ratepayers ($M)	Typical Residential Bill w/o CSO LTCP	Bill Increase without CSO LTCP	Typical Residential Bill with CSO LTCP	Bill Increase with CSO LTCP	MHI	% of MHI	Lower 20%	% of Lower 20%
1	2004	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 120.47	$ 297		$ 297		$ 40,818	0.7%	$ 19,559	1.5%
2	2005	$ 4.07	$ 4.58	$ 0.04	$ 0.04	$ 4.11	$ 4.62	$ 3.86	$ 0.18	$ 0.31	$ 0.05	$ 0.60	$ 128.53	$ 310	5%	$ 311	5%	$ 41,634	0.7%	$ 20,259	1.5%
3	2006	$ 4.48	$ 5.17	$ 0.08	$ 0.09	$ 4.64	$ 5.26	$ 1.86	$ 0.28	$ 0.48	$ 0.09	$ 0.84	$ 132.80	$ 323	4%	$ 325	4%	$ 43,089	0.8%	$ 20,287	1.6%
4	2007	$ 12.61	$ 15.06	$ 0.19	$ 0.22	$ 12.80	$ 15.28	$ 7.83	$ 0.07	$ 1.09	$ 0.22	$ 1.09	$ 138.97	$ 344	6%	$ 348	7%	$ 44,382	0.8%	$ 21,493	1.6%
5	2008	$ 13.45	$ 16.54	$ 0.31	$ 0.37	$ 13.76	$ 16.92	$ 5.86	$ 0.97	$ 1.63	$ 0.37	$ 2.97	$ 149.23	$ 369	8%	$ 376	8%	$ 45,713	0.8%	$ 22,138	1.7%
6	2009	$ 16.23	$ 19.29	$ 0.45	$ 0.56	$ 16.68	$ 19.85	$ 14.74	$ 1.23	$ 2.71	$ 0.58	$ 4.50	$ 158.08	$ 397	8%	$ 408	8%	$ 47,085	0.9%	$ 22,802	1.8%
7	2010	$ 12.87	$ 16.52	$ 0.67	$ 0.72	$ 13.23	$ 17.24	$ 14.91	$ 1.82	$ 3.92	$ 0.72	$ 6.25	$ 168.47	$ 424	7%	$ 439	8%	$ 48,497	0.9%	$ 23,486	1.9%
8	2011	$ 59.90	$ 75.12	$ 1.07	$ 1.40	$ 60.97	$ 76.52	$ 71.13	$ 3.89	$ 9.65	$ 1.49	$ 15.04	$ 173.07	$ 440	4%	$ 477	8%	$ 49,952	0.9%	$ 24,190	2.0%
9	2012	$ 60.19	$ 80.32	$ 1.62	$ 2.18	$ 61.81	$ 82.49	$ 76.77	$ 6.64	$ 15.83	$ 2.18	$ 24.65	$ 179.02	$ 459	4%	$ 520	9%	$ 51,451	1.0%	$ 24,916	2.1%
10	2013	$ 60.98	$ 85.84	$ 2.17	$ 3.01	$ 63.13	$ 88.92	$ 77.78	$ 8.14	$ 22.10	$ 3.01	$ 34.24	$ 177.45	$ 460	0%	$ 545	6%	$ 52,994	1.0%	$ 25,664	2.1%
11	2014	$ 53.43	$ 78.64	$ 2.68	$ 3.79	$ 56.21	$ 82.43	$ 67.26	$ 11.38	$ 27.52	$ 3.79	$ 42.69	$ 184.34	$ 492	5%	$ 588	8%	$ 54,584	1.1%	$ 26,434	2.2%
12	2015	$ 57.05	$ 86.29	$ 3.17	$ 4.66	$ 60.22	$ 90.96	$ 72.50	$ 13.79	$ 33.37	$ 4.66	$ 51.82	$ 191.51	$ 505	5%	$ 637	8%	$ 56,221	1.1%	$ 27,227	2.3%
13	2016	$ 81.13	$ 95.24	$ 3.73	$ 5.64	$ 84.86	$ 100.88	$ 73.62	$ 16.42	$ 39.72	$ 5.64	$ 61.77	$ 196.99	$ 530	5%	$ 686	8%	$ 57,909	1.2%	$ 28,043	2.5%
14	2017	$ 63.43	$ 101.76	$ 4.30	$ 6.71	$ 67.73	$ 108.49	$ 82.62	$ 19.17	$ 46.38	$ 6.71	$ 72.25	$ 208.69	$ 555	5%	$ 743	8%	$ 59,645	1.2%	$ 28,886	2.6%
15	2018	$ 69.02	$ 114.07	$ 4.93	$ 7.91	$ 73.95	$ 121.98	$ 91.64	$ 22.23	$ 53.78	$ 7.91	$ 83.92	$ 214.73	$ 582	5%	$ 802	8%	$ 61,435	1.3%	$ 29,751	2.7%
16	2019	$ 66.99	$ 114.04	$ 5.54	$ 9.15	$ 72.52	$ 123.19	$ 88.85	$ 25.19	$ 60.94	$ 9.15	$ 95.28	$ 223.09	$ 611	5%	$ 903	8%	$ 63,278	1.4%	$ 30,644	2.8%
17	2020	$ 70.36	$ 123.37	$ 6.18	$ 10.51	$ 76.53	$ 133.89	$ 85.02	$ 28.35	$ 68.99	$ 10.51	$ 107.48	$ 231.78	$ 640	5%	$ 928	8%	$ 65,176	1.4%	$ 31,583	2.9%
18	2021	$ 116.31	$ 210.07	$ 7.23	$ 12.65	$ 123.54	$ 222.75	$ 175.88	$ 34.21	$ 82.77	$ 12.65	$ 129.65	$ 240.78	$ 671	5%	$ 1,021	10%	$ 67,131	1.5%	$ 32,510	3.1%
19	2022	$ 125.00	$ 232.54	$ 8.58	$ 15.11	$ 133.57	$ 247.65	$ 191.84	$ 40.60	$ 98.23	$ 15.11	$ 153.94	$ 250.14	$ 704	5%	$ 1,124	10%	$ 69,145	1.6%	$ 33,485	3.4%
20	2023	$ 107.76	$ 208.46	$ 9.54	$ 17.39	$ 117.10	$ 225.85	$ 160.53	$ 46.66	$ 111.17	$ 17.38	$ 174.50	$ 259.88	$ 738	5%	$ 1,219	8%	$ 71,220	1.7%	$ 34,490	3.5%
21	2024	$ 198.12	$ 213.38	$ 10.32	$ 18.78	$ 118.44	$ 233.17	$ 162.04	$ 51.36	$ 124.23	$ 19.78	$ 195.35	$ 269.89	$ 774	5%	$ 1,318	8%	$ 73,356	1.8%	$ 35,525	3.7%
22	2025	$ -	$ -	$ 10.32	$ 20.37	$ 10.32	$ 20.37	$ -	$ -	$ 124.23	$ 20.37	$ 144.60	$ 280.50	$ 812	5%	$ 1,218	-8%	$ 75,557	1.6%	$ 36,590	3.3%
23	2026	$ -	$ -	$ 10.32	$ 20.98	$ 10.32	$ 20.98	$ -	$ -	$ 124.23	$ 20.98	$ 145.21	$ 291.42	$ 851	5%	$ 1,264	4%	$ 77,824	1.6%	$ 37,688	3.4%
24	2027	$ -	$ -	$ 10.32	$ 21.61	$ 10.32	$ 21.61	$ -	$ -	$ 124.23	$ 21.61	$ 145.84	$ 302.77	$ 893	5%	$ 1,311	4%	$ 80,158	1.6%	$ 38,819	3.4%
25	2028	$ -	$ -	$ 10.32	$ 22.26	$ 10.32	$ 22.26	$ -	$ -	$ 124.23	$ 22.26	$ 146.49	$ 314.58	$ 936	5%	$ 1,361	4%	$ 82,553	1.6%	$ 39,983	3.4%
26	2029	$ -	$ -	$ 10.32	$ 22.93	$ 10.32	$ 22.93	$ -	$ -	$ 124.23	$ 22.93	$ 147.15	$ 326.81	$ 982	5%	$ 1,413	4%	$ 85,049	1.7%	$ 41,183	3.4%
27	2030	$ -	$ -	$ 10.32	$ 23.61	$ 10.32	$ 23.61	$ -	$ -	$ 124.23	$ 23.61	$ 147.84	$ 339.53	$ 1,030	5%	$ 1,467	4%	$ 87,591	1.7%	$ 42,418	3.5%
28	2031	$ -	$ -	$ 10.32	$ 24.32	$ 10.32	$ 24.32	$ -	$ -	$ 124.23	$ 24.32	$ 148.55	$ 352.76	$ 1,080	5%	$ 1,524	4%	$ 90,219	1.7%	$ 43,691	3.5%
29	2032	$ -	$ -	$ 10.32	$ 25.05	$ 10.32	$ 25.05	$ -	$ -	$ 124.23	$ 25.05	$ 149.28	$ 366.50	$ 1,133	5%	$ 1,583	4%	$ 92,925	1.7%	$ 45,001	3.5%
30	2033	$ -	$ -	$ 10.32	$ 25.80	$ 10.32	$ 25.80	$ -	$ -	$ 124.23	$ 25.80	$ 150.03	$ 380.76	$ 1,188	5%	$ 1,645	4%	$ 95,713	1.7%	$ 46,351	3.5%
31	2034	$ -	$ -	$ 10.32	$ 26.58	$ 10.32	$ 26.58	$ -	$ -	$ 124.23	$ 26.58	$ 150.81	$ 395.62	$ 1,246	5%	$ 1,710	4%	$ 98,585	1.7%	$ 47,742	3.6%
32	2035	$ -	$ -	$ 10.32	$ 27.37	$ 10.32	$ 27.37	$ -	$ -	$ 123.92	$ 27.37	$ 151.28	$ 411.04	$ 1,307	5%	$ 1,777	4%	$ 101,542	1.8%	$ 49,174	3.6%
33	2036	$ -	$ -	$ 10.32	$ 28.20	$ 10.32	$ 28.20	$ -	$ -	$ 123.77	$ 28.20	$ 151.96	$ 427.09	$ 1,371	5%	$ 1,848	4%	$ 104,588	1.8%	$ 50,650	3.6%
34	2037	$ -	$ -	$ 10.32	$ 29.04	$ 10.32	$ 29.04	$ -	$ -	$ 123.13	$ 29.04	$ 152.16	$ 442.70	$ 1,438	5%	$ 1,921	4%	$ 107,726	1.8%	$ 52,169	3.7%
35	2038	$ -	$ -	$ 10.32	$ 29.91	$ 10.32	$ 29.91	$ -	$ -	$ 122.70	$ 29.91	$ 152.62	$ 461.00	$ 1,509	5%	$ 1,997	4%	$ 110,958	1.8%	$ 53,734	3.7%
	Total	$ 1,138.24	$ 1,896.45	$ 216.76	$ 469.93	$ 1,355.00	$ 2,366.38	$ 1,541.56	$ 333.22	$ 2,640.09	$ 469.53	$ 3,343.24									

J:\1167\Litigation\Financial Impacts\20 YR CSO LTCP Case v102904 scenario 1.xls]Vertical Table

APPENDIX C

APPENDIX C
Certain Financial Information to Perform Financial Analysis
Pursuant to Section VII

In the event that WASA seeks a modification of the Schedule pursuant to Section VII of the Consent Decree due to cost overruns or changed financial circumstances, WASA shall update its financial information. Information that may be relevant includes the following list or categories of information, and WASA agrees to provide such information in the event the United States requests it. Nothing in this Appendix in any way limits or narrows the United States' right to obtain or request other information in order to review and respond to WASA's request for a modification.

1. DC population, current and projected

2. Number of households, current and projected
   - Single-family residence
   - Multi-family buildings

3. Median household income

4. Wastewater billings and volume billed for past three years, broken out for all user classes

5. Wastewater revenues and expenditures for past three years.

6. WASA financial statements for past three years.

7. Prospectuses issued within the past three years.

8. Rate studies prepared within the past three years related to wastewater or stormwater programs.

9. Per household wastewater metering fee and ROW fee

10. Average per household volume billed for
    - Single-family residence
    - Multi-family residence

11. Current baseline revenues and expenditures.

12. LTCP costs
    - Capital costs incurred to date
    - Capital costs projected by year
    - Additional operations and maintenance costs projected by year
    - Costs to date financed with grants (amount and interest rate by year)
    - Costs to date financed with low interest, non-market loans (amount and interest rate by

year)

13. Projected costs other than those required by this consent decree that should be considered in addition to baseline costs. Identify and project by year.
- Costs necessary to comply with regulations or other legal requirements.
- Projected sewer system assessment and rehabilitation costs
- Other increases that would cause total annual expenditures to rise at a rate greater than inflation

14. Debt coverage ratio

15. Bond interest rate and term

16. Rate of inflation

17. PAYGO assumption

18. Current wastewater rate per ccf for single-family residential customers.

19. History of rate adjustments or rate recovery approach during the past five years. Identify the current basis for recovery of LTCP costs and any expected changes in the basis for the recovery of these costs. If rates are recovered through other than the wastewater rate, identify the mechanism, and the amount of costs born by each user class.

20. Projection over twenty years estimating per household impact of LTCP.

21. Current programs to provide relief to low-income residents.

22. Other documentation or analysis that EPA and/or WASA deems relevant for the particular circumstances.

Exhibit E

108TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
108–792

MAKING APPROPRIATIONS FOR FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2005, AND FOR OTHER PURPOSES

CONFERENCE REPORT

TO ACCOMPANY

H.R. 4818

NOVEMBER 20 (legislative day, NOVEMBER 19), 2004.—Ordered to be printed

108TH CONGRESS 2d Session } HOUSE OF REPRESENTATIVES { REPORT 108-792

MAKING APPROPRIATIONS FOR FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2005, AND FOR OTHER PURPOSES

NOVEMBER 20 (legislative day of NOVEMBER 19), 2004.—Ordered to be printed

Mr. YOUNG of Florida, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 4818]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4818) "making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 2005, and for other purposes", having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Consolidated Appropriations Act, 2005".

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

CONFERENCE TOTAL—WITH COMPARISONS

The total new budget (obligational) authority for the fiscal year 2005 recommended by the Committee of Conference, with comparisons to the fiscal year 2004 amount, the 2005 budget estimates, and the House and Senate bills for 2005 follow:

[In thousands of dollars]

New budget (obligational) authority, fiscal year 2004	$46,141,907
Budget estimates of new (obligational) authority, fiscal year 2005	43,748,430
House bill, fiscal year 2005	43,540,159
Senate bill, fiscal year 2005	44,052,003
Conference agreement, fiscal year 2005	43,993,116
Conference agreement compared with:	
New budget (obligational) authority, fiscal year 2004	−2,148,791
Budget estimates of new (obligational) authority, fiscal year 2005	+244,686
House bill, fiscal year 2005	+452,957
Senate bill, fiscal year 2005	−58,887

DIVISION I—DEPARTMENTS OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT, AND INDEPENDENT AGENCIES APPROPRIATIONS ACT, 2005

The language and allocations set forth in House Report 108–674 and Senate Report 108–353 should be complied with unless specifically addressed to the contrary in the conference report and statement of the managers. Report language included by the House which is not changed by the report of the Senate or the conference and Senate report language which is not changed by the conference is approved by the committee of the conference. The statement of the managers, while repeating some report language for emphasis, does not intend to negate the language referred to above unless expressly provided herein. In cases where the House or Senate have directed the submission of a report, such report is to be submitted to both House and Senate Committees on Appropriations.

OPERATING PLAN REPROGRAMMING PROCEDURES

The conferees continue to have a particular interest in being informed of reprogrammings which, although they may not change either the total amount available in an account or any of the purposes for which the appropriation is legally available, represent a significant departure from budget plans presented to the Committees in an agency's budget justifications, the basis of this appropriations Act.

Consequently, the conferees direct the departments, agencies, boards, commissions, corporations and offices funded at or in excess of $100,000,000 in this Act, to consult with the Committee on Appropriations in both the House and Senate prior to each change from the approved budget levels in excess of $500,000 between programs, activities, object classifications or elements unless otherwise provided for in the statement of the managers accompanying this Act. For agencies, boards, commissions, corporations and offices funded at less than $100,000,000 in this Act, the reprogramming threshold shall be $250,000 between programs, activities, object classifications or elements unless otherwise provided for in the statement of the managers accompanying this Act. Additionally,

95-744

108TH CONGRESS

Report

HOUSE OF REPRESENTATIVES

2d Session

108-674

--DEPARTMENTS OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT, AND INDEPENDENT AGENCIES APPROPRIATIONS BILL, 2005

September 9, 2004- Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WALSH, from the Committee on Appropriations, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany H.R. 5041]

The Committee on Appropriations submits the following report in explanation of the accompanying bill making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2005, and for other purposes.

The Committee recommends $128,037,084,000 in new budget (obligational) authority for the Departments of Veterans Affairs and Housing and Urban Development, and 21 independent agencies and offices.

The following table summarizes the amounts recommended in the bill in comparison with the appropriations for fiscal year 2004 and budget estimates for fiscal year 2005.

ENVIRONMENTAL PROGRAMS AND MANAGEMENT

Fiscal year 2005 recommendation	$2,241,476,000
Fiscal year 2004 appropriation	2,280,046,000
Fiscal year 2005 budget request	2,316,959,000
Comparison with fiscal year 2004 appropriation	-38,570,000
Comparison with fiscal year 2005 budget request	-75,483,000

The Environmental Programs and Management account encompasses a broad range of abatement, prevention, and compliance activities, and personnel compensation, benefits, travel, and expenses for all programs of the Agency except Science and Technology, Hazardous Substance Superfund, Leaking Underground Storage Tank Trust Fund, Oil Spill Response, and the Office of Inspector General.

Abatement, prevention, and compliance activities include setting environmental standards, issuing permits, monitoring emissions and ambient conditions and providing technical and legal assistance toward enforcement, compliance, and oversight. In most cases, the states are directly responsible for actual operation of the various environmental programs. In this regard, the Agency's activities include oversight and assistance in the facilitation of the environmental statutes.

In addition to program costs, this account funds administrative costs associated with the operating programs of the Agency, including support for executive direction, policy oversight, resources management, general office and building services for program operations, and direct implementation of all Agency environmental programs--except those previously mentioned--for Headquarters, the ten EPA Regional offices, and all non-research field operations.

For fiscal year 2005, the Committee has recommended $2,241,476,000 for Environmental Programs and Management, a decrease of $38,570,000 below the budget request and a decrease of $75,483,000 below the fiscal year 2004 funding level. For this account only, the Agency may transfer funds of not more than $500,000 between programs and activities without prior notice to the Committee, and of not more than $1,000,000 without prior approval of the Committee. All other reprogramming procedures as outlined earlier shall apply.

The Committee's recommendation includes the following:

	FY 2004 enacted	FY 2005 r
Great Lakes Legacy Act	$9,941,000	$45,0

IT / Data Management	103,077,700	103,1
Facilities Infrastructure and Operations	307,035,400	326,7
Surface Water Protection	184,222,700	191,7
Federal Support for Air Quality Management	86,631,800	93,2
Pesticides: Review / Reregistration of Existing Pesticides	51,714,400	58,0
Pollution Prevention Program	16,822,800	22,4
Human Resources Management	39,109,000	44,1
Drinking Water Programs	93,186,900	97,9
Regulatory Innovation	17,338,300	21,9
Exchange Network	21,801,400	25,4
RCRA: Waste Minimization & Recycling	10,828,400	14,3
Financial Assistance Grants / IAG Management	17,179,000	20,3
Brownfields	24,938,500	28,0
Stratospheric Ozone: Multilateral Fund	10,935,100	13,5
Geographic Program: Great Lakes	18,837,400	21,1
National Estuary Program / Coastal Waterways	24,348,100	19,2
Environmental Justice	5,810,600	4,2
Environmental Education	9,109,400	
Toxic Substances: Lead Risk Reduction Program	14,821,100	11,0
Geographic Program: Long Island Sound	2,286,300	4

The Committee's recommended appropriation also includes the following increases to the budget request:

1. +$1,000,000 for the Lake Pontchartrain Basin Restoration Program;

2. +$17,640,000 for rural water technical assistance activities and groundwater protection with distribution as follows: $9,800,000 for the NRWA; $4,165,000 for RCAP, to be divided equally between assistance for water programs and assistance for wastewater programs; $735,000 for GWPC; $1,960,000 for Small Flows Clearinghouse; $980,000 for the NETC;

3. +$1,470,000 for the Water Systems Council Wellcare Program;

4. +$980,000 for implementation of the National Biosolids Partnership Program;

5. +$2,000,000 for source water protection programs;

6. +$2,000,000 for the Water Information Sharing and Analysis Center (Water ISAC) to gather, analyze, and disseminate sensitive security information to water and wastewater systems;

7. +$2,940,000 for EPA's National Computing Center to provide for the remote mirroring of all critical information and related systems to achieve a Continuity of Operations (COOP)/Disaster Recovery capability;

8. +$5,000,000 to support a demonstration project for deployment of idle reduction technology including advanced truck stop electrification, as part of the Agency's Smartway Transport Program.

9. $1,000,000 to the Environmental Monitoring and Assessment Program within the State of Alaska;

10. $100,000 to the Salton Sea Authority in Salton Sea, California for air quality mitigation projects;

11. $75,000 for Operation Clean Air for the Hot Spot Pilot Program in the Town of Malaga, California;

12. $250,000 to Calleguas Municipal Water for the Calleguas Creek Watershed Management Plan Implementation in Ventura County, California;

13. $100,000 to the University of Redlands in California for the Salton Sea Database;

14. $300,000 for the City of Highland, California for the City of Highland Environmental Learning Center;

15. $200,000 for the Operation Clean Air Advocates, Inc. in San Joaquin Valley, California for Operation Clean Air;

16. $100,000 for the California State University--Fullerton, California for the National Center for Water Hazard Mitigation;

17. $100,000 to the University of Connecticut Health Center to implement a model asthma intervention program for the State of Connecticut;

18. $250,000 to the University of North Florida for the Real-Time Regional Environmental Modeling in Jacksonville, Florida;

19. $900,000 to Osceola County, Florida for abatement and prevention of hydrilla and hygophila;

20. $400,000 to the Georgia Water Conservation Team for the development and implementation of the Georgia Water Planning and Policy Center, Offset Banking Water Quality Improvement program;

21. $150,000 to the Spokane Region Chamber of Commerce for the Rathdrum Prairie/Spokane Valley Aquifer Study in Spokane County, Idaho;

22. $1,700,000 to Boise State University for research projects aimed at developing and demonstrating multi-purpose sensors to detect and analyze contaminants and time-lapse imaging of shallow subsurface fluid flow;

23. $300,000 for the Selenium Information System Project at the Idaho National Engineering and Environmental Laboratory;

24. $100,000 to the City of Rexburg, Idaho for the Teton River Mill Site Redevelopment and Learning Project;

25. $150,000 to the City of Chicago, Illinois for the Beach Contamination Identification/Elimination Study;

26. $200,000 to the Ohio River Valley Water Sanitation Commission for the Ohio River Watershed Pollutant Reduction Program;

27. $100,000 for PRIDE in the 2nd District of Kentucky for PRIDE in the Heartland of Kentucky;

28. $500,000 to the Olmsted Parks Conservancy in Louisville, Kentucky to remove invasive species and correct erosion in Cherokee and Seneca Parks;

29. $1,000,000 to the Olmsted Parks Conservancy in Louisville, Kentucky to correct riverbank erosion in Chickasaw Park;

30. $550,000 to the Olmsted Parks Conservancy in Louisville, Kentucky to correct erosion in Iroquois Park;

31. $850,000 to the Louisville Waterfront Development Corporation, Kentucky for anti-erosion strategies;

32. $200,000 to the Louisiana State University in Shreveport, Louisiana for the Red River Watershed Management Institute;

33. $100,000 to Prince George's County, Maryland for the Low Impact Development demonstration project in the Anacostia River Watershed;

34. $100,000 to Wayne County, Michigan for the Lead Prevention Initiative;

35. $100,000 to Wayne County, Michigan for the lead prevention initiative;

36. $200,000 for the Michigan Biotechnology Institute in East Lansing, Michigan for the Michigan Biotechnology Institute International's Nanocomposite Surfaces;

37. $850,000 for the North Carolina Central University for research initiative to assess environmental exposure and impact in communities of color and economically disadvantaged communities in Durham, North Carolina;

38. $100,000 to the New Hampshire Department of Environmental Services to develop a statewide water resources management plan;

39. $250,000 to the Ten Towns Great Swamp Watershed Management Committee in New Jersey for a water quality monitoring program in the Great Swamp National Refuge;

40. $100,000 to Monmouth University for the Coastal Watershed Program in West Long Branch, New Jersey;

41. $150,000 for Monmouth University for the Center for Coastal Watershed Management in West Long Beach, New Jersey;

42. $200,000 to Madison County, New York for the Landfill Gas to Electricity Project;

43. $250,000 for the New York University in Bronx, New York for health disparity studies;

44. $1,500,000 for continued work on water management plans for the Central New York Watersheds in Onondaga and Cayuga counties;

45. $750,000 to Cortland County, New York for continued work on the aquifer protection plan, of which $350,000 is for continued implementation of the comprehensive water quality management program in the Upper Susquehanna Watershed;

46. $250,000 to Wayne County, New York for continued work on a county-wide lakeshore embankments resource preservation and watershed enhancement plan;

47. $250,000 to the Central New York Regional Planning and Development Board for continued research and planning for the Oneida Lake Watershed Management Program;

48. $200,000 for the NADO (National Association of Development Organizations) Research Foundation for environmental training and information dissemination related to rural brownfields, air quality standards and water infrastructure;

49. $250,000 to Lake Erie Coastal Ohio for planning, research, and analysis of coastal Lake Erie community, environmental, and educational efforts;

50. $200,000 to the Oklahoma State University, the University of Oklahoma, the University of Tulsa, and the University of Arkansas for the Integrated Petroleum Environmental Consortium in Tulsa, Oklahoma;

51. $1,500,000 to the American Cities Foundation (ACF) for the Neighborhood Environmental Action Team program and other community environmental efforts;

52. $700,000 to Caribbean American Mission for Education Research and Action, Inc. (CAMERA), to support a youth environmental stewardship program in Bala Cynwyd, Pennsylvania;

53. $700,000 to the Environment and Sports Inc., of Philadelphia to continue support of an environmental awareness program in Philadelphia, Pennsylvania;

54. $350,000 for the Concurrent Technologies Corp for the Small Partner Environmental Information Exchange Network;

55. $100,000 to Cabrini College in Radnor, Pennsylvania for the Center for Science Education and Technology;

56. $100,000 to the University of Memphis for Environmental Programs Hazard Management in Memphis, Tennessee;

57. $250,000 to the Tarrant County Watershed District in Tarrant County, Texas to develop and implement an integrated watershed protection plan;

58. $750,000 to the University of Texas at Austin for environmental resource management and technical assistance activities for the Rio Bravo-Rio Grande Physical Assessment Program;

59. $250,000 to the University of North Texas for the Texas Institute for Environmental Assessment and Management;

60. $200,000 to the City of Lubbock, Texas for a comprehensive study to address regional water and wastewater concerns;

61. $75,000 to the Brazos River Authority for the Brazos/Navasota Watershed Management Project in Texas;

62. $200,000 to the Puget Sound Action Team of Hood Canal, Washington for the Hood Canal Depleted Oxygen Study;

63. $100,000 for the Spokane Regional Chamber of Commerce for the Spokane Valley/Rathdrum Prairie Aquifer Study;

64. $200,000 to the Upper Kanawha Valley Enterprise Community for the Shrewsbury Riverbank Erosion Project in Shewsbury, West Virginia;

65. $2,000,000 for on-going activities at the Canaan Valley Institute, including activities relating to community sustainability;

66. $1,500,000 to support and implement the Highlands Action Program (HAP) of the Agency, including, but not limited to, federal personnel and related costs;

67. $150,000 for Marshall University, Center for Environmental, Geotechnical and Applied Sciences for Environmental Management Incubator in Huntington, West Virginia.

The Committee has recommended a general reduction of $20,859,000 in this account.

The Agency has been provided $9,200,000 for Environmental Education programs. The Agency is directed to distribute funds under the Environmental Education program proportionally in a manner

consistent with the provisions of the National Environmental Education Act.

The Committee has provided $2,000,000 for source water protection programs. The Committee intends that these funds be used to continue and to expand the statewide grassroots sourcewater protection programs being carried out by state rural water associations.

EPA Brownfields funding is the same as FY 2004; while this account's portion is reduced by $2,000,000 additional resources are available for the Brownfields revolving loan fund in the State and Tribal Assistance Grants.

The Committee commends the Agency for resolving a large number of pending Title VI environmental justice cases and has restored funds so that the program can continue to address the backlog of cases.

The Committee clarifies that `shall conform' in Clean Water Act (CWA) Sec. 402(q) means that National Pollutant Discharge Elimination System (NPDES) permitting authorities should evaluate the facts and circumstances of each CSO community's program against the CSO Control Policy's themes of flexibility, site specificity, cost effectiveness, and water quality standards achievement after long-term control plan implementation (LTCP). NPDES permits should be used to impose LTCP obligations whenever possible. In authorized states, state administrative orders or state judicial orders should be the primary alternative implementation mechanism to NPDES permits for imposing LTCP obligations. This clarification does not preclude state and/or federal enforcement actions where appropriate.

According to recent data