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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,
et. al.,

Plaintiffs,

v.

CITY AND COUNTY OF
HONOLULU,

Defendant.

Civil No. 94-00765 DAE-KSC

CONSENT DECREE

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WHEREAS:

Plaintiff, the United States of America, by the authority of the Attorney General of the United States and through its undersigned counsel, acting at the request of and on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), and Plaintiff State of Hawaii, acting at the request of and on behalf of the State of Hawaii Department of Health (“DOH”) (collectively, the United States and the State of Hawaii are referred to herein as the “Governments”), have filed a Supplemental Complaint in this action against Defendant City and County of Honolulu (“CCH”), seeking civil penalties and injunctive relief pursuant to the Clean Water Act (“CWA” or the “Act”) and State law. The Supplemental Complaint alleges that CCH is violating the Act and State law by discharging untreated sewage from its Wastewater Collection System without a permit. The Supplemental Complaint further alleges that CCH is violating the Act and State law by discharging sewage from its Sand Island and Honouliuli Wastewater Treatment Plants in violation of National Pollutant Discharge Elimination System (“NPDES”) permits regulating discharges from these facilities.

CCH, a county in the State of Hawaii, owns and operates a publicly owned treatment works (“POTW”) that collects, treats, and disposes of sanitary sewage for a large portion of the island of Oahu within the District of Hawaii. The Supplemental Complaint in this action addresses only violations associated with the Wastewater Collection System and two of the POTW’s Wastewater Treatment Plants (Sand Island and Honouliuli).

CCH does not admit any liability to the United States or the State for the transactions or occurrences alleged in the Supplemental Complaint.

On May 15, 1995, the Court entered a Consent Decree requiring CCH to undertake certain steps to remedy CWA violations alleged in the original Complaint filed in this action by the United States and the State of Hawaii on

October 3, 1994 (hereinafter, “the 1994 Complaint” and “the 1995 Consent Decree”). The 1995 Consent Decree required CCH to undertake specific actions to improve conditions in its Wastewater Collection System, through, among other things, implementing comprehensive collection system maintenance and capacity programs, and to undertake two Supplemental Environmental Projects (“SEPs”).

On May 24, 2007, Sierra Club, Hawai’i Chapter, Hawai’i’s Thousand Friends, and Our Children’s Earth Foundation (collectively, “Intervenors”) intervened in this action, subject to certain conditions established by this Court and described in May 4, 2007 Findings and Recommendations, entered by this Court on May 24, 2007.

On July 29, 2004, Intervenors filed a separate complaint under the citizen suit provision of the CWA, 33 U.S.C. § 1365, also based on spills from CCH’s Wastewater Collection System. Intervenors’ Complaint also included claims based on alleged violations of NPDES permits for CCH’s Sand Island and Honouliuli Wastewater Treatment Plants (“WWTPs”). Intervenors amended their complaint on January 10, 2005 (as amended, “Intervenors’ 2004 Complaint”).

In their continuing oversight over CCH’s Wastewater Collection System and Wastewater Treatment programs, the United States and the State filed a complaint against CCH on May 8, 2007, asserting a single CWA claim for injunctive relief as a result of a spill referred to as the Beachwalk Force Main Spill (the “2007 Complaint”). Concurrently with the filing of the 2007 Complaint, the United States and the State lodged a Stipulated Order to resolve the claim (the “2007 Stipulated Order”).

The Court entered the 2007 Stipulated Order on October 10, 2007. Intervenors also intervened in that action pursuant to a June 28, 2007 Findings and Recommendations, entered by this Court on July 26, 2007. The Court allowed intervention subject to certain conditions established by and described in a November 21, 2007 Findings and Recommendations, entered by this Court on

December 13, 2007.

The United States, the State, CCH, and the Intervenors (collectively, the “Parties”) have agreed that this Consent Decree will replace the 1995 Consent Decree and the 2007 Stipulated Order, and will terminate Intervenors’ 2004 Complaint, the 2007 Complaint, and all outstanding litigation and administrative compliance orders concerning CCH’s Wastewater Treatment Plants and Wastewater Collection System.

Intervenors agree to dismiss with prejudice their claims in intervention in this action and in United States of America, et al., v. City and County of Honolulu, Civ. No. 07-00235 DAE-KSC as well as their claims as plaintiffs in Sierra Club, et al., v. City and County of Honolulu, Civ. No. 04-00463 DAE-BMK (“2004 Case”) in consideration of the agreement and future actions required of CCH, which are reflected in the Memorandum of Understanding pertaining to SEPs in the 2004 Case, and in this Consent Decree. So as not to impede settlement, Intervenors’ claims for attorneys fees and costs are reserved until after the lodging of this Consent Decree, and will be resolved by Magistrate Judge Kevin Chang of this Court in accordance with applicable principles of law, provided that Intervenors bring a motion for such fees and costs within the time and otherwise in accordance with the Local Rules.

Pursuant to the terms of this Consent Decree, CCH will withdraw its appeals of EPA’s decisions to deny renewal of NPDES permits for the Sand Island WWTP and the Honouliuli WWTP that had previously been issued pursuant to CWA section 301(h). As a result, the State of Hawaii will have responsibility for issuing NPDES permits for these WWTPs that require compliance with effluent limitations consistent with secondary treatment requirements in 40 C.F.R. Part 133. Discharges from these WWTPs will not comply with secondary treatment effluent limitations [specifically, discharge parameters for total suspended solids (“TSS”) and biochemical oxygen demand (5-day) (“BOD5”)] until CCH Completes

Construction of the facilities required to be constructed pursuant to Paragraphs 30 and 31. The operation of the provisions set forth in Section VII (Compliance Requirements: Wastewater Treatment Plants) of this Decree is intended to resolve anticipated noncompliance with secondary treatment effluent limitations for TSS and BOD₅ and resolve any civil and administrative claims for failing to meet secondary treatment effluent limitations for TSS and BOD₅ until the final compliance milestones set pursuant to Paragraphs 30 and 31 for the Honouliuli and Sand Island WWTPs.

The Parties seek to avoid further litigation and to work cooperatively on issues relating to CCH's Wastewater Treatment Plants and Wastewater Collection System by entering into this Consent Decree as set forth herein. Nothing in this Consent Decree shall be deemed an admission by any party of any fact or of any liability with respect to any issue addressed in the Consent Decree.

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

NOW, THEREFORE, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367, and sections 309(b) and 505(a) of the Act, 33 U.S.C. §§ 1319(b), 1365(a), and the Court has jurisdiction over the Parties. Venue lies in this District pursuant to sections 309(b) and 505(c) of the Act, 33 U.S.C. §§ 1319(b), 1365(c), and 28 U.S.C. §§ 1391(b) and 1395(a) because this is the District in which CCH is located. For purposes of this Decree, or any action to enforce this Decree, Defendant consents to the Court's jurisdiction over this Decree and any such action and over Defendant and consents to venue in

this judicial District.

2. For purposes of this Consent Decree, Defendant agrees that the Supplemental Complaint states claims upon which relief may be granted pursuant to section 309(b) of the Act, 33 U.S.C. § 1319(b), and HRS sections 322-9 and 342D-11.

3. Notice of commencement of this action was provided to the State of Hawaii pursuant to section 309(b) of the Act, 33 U.S.C. § 1319(b).

II. APPLICABILITY

4. The provisions of this Consent Decree shall apply to and be binding upon the United States, the State of Hawaii, Intervenor, CCH, and any successors or other entities or persons otherwise bound by law.

5. CCH shall provide a copy of this Consent Decree to all managers whose responsibilities include the management of the implementation of the material components of the work required to be performed under this Consent Decree. CCH shall make copies of the Consent Decree available to any contractor retained to perform work required under this Consent Decree.

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

7. CCH shall provide a copy of this Consent Decree to any successor in interest at least thirty (30) Days prior to transfer of that interest, and simultaneously shall verify in writing to EPA that such notice has been given. Absent agreement of the Parties or order of the Court, any sale or transfer of CCH's interests in, or operating role with respect to, CCH's "treatment works" or "POTW," as those terms are defined in 33 U.S.C. § 1292(2)(A) and 40 C.F.R. § 403.3(o), shall not in any manner relieve CCH of its responsibilities for meeting the terms and conditions of this Consent Decree.

III. OBJECTIVES

8. It is the goal of the Parties to eliminate Sanitary Sewer Overflows. In entering into this Consent Decree, the Parties intend to further the objectives set forth in the CWA, to set out measures that CCH will implement to reduce the frequency and impact of Sanitary Sewer Overflows, and to set out measures for construction of secondary treatment upgrades to the Sand Island and Honouliuli Wastewater Treatment Plants to comply with effluent limitations regulating discharges from the Sand Island and Honouliuli WWTPs.

IV. DEFINITIONS

9. Unless otherwise defined herein, terms used in this Consent Decree shall have the meaning given to those terms in the Act, 33 U.S.C. §§ 1251-1387, and the regulations promulgated thereunder. Whenever terms set forth below are used in this Consent Decree, the following definitions shall apply:

“Act” or “CWA” shall mean the Clean Water Act, 33 U.S.C. §§ 1251-1387.

“CCH” shall mean the City and County of Honolulu.

“Complete Construction” shall mean:

(i) for pump stations, force mains, treatment plants, and other improvements that include significant mechanical, electrical, and/or instrumentation equipment, that: (a) all equipment testing has been satisfactorily performed under normal operating range; (b) CCH personnel have been trained in proper operation; (c) substantial completion has occurred, equipment is functionally operational, and CCH is able to use all necessary equipment; and (d) the contractor has delivered a complete operations and maintenance manual to CCH or, in the case of force mains, CCH has prepared a complete operations and maintenance manual; and

(ii) for gravity mains and other improvements that do not include significant mechanical, electrical, and/or instrumentation equipment, that substantial completion has occurred such that CCH is able to utilize the product of the construction work to transport wastewater in accordance with the design intent.

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

“Defendant” shall mean CCH.

“Deliverable” shall mean any written report or other document required to be prepared and/or submitted pursuant to this Consent Decree.

“DOH” shall mean the State of Hawaii Department of Health.

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

“Food Service Establishment” shall mean any commercial or public entity located within the jurisdiction of CCH that: (i) operates in a permanently constructed structure such as a room, building, or place, or portion thereof; (ii) is maintained, used, or operated for the purpose of preparing, serving, or otherwise handling food for sale to other entities, or for consumption by the public, its members or employees; and (iii) discharges fats, oils, and/or grease in quantities and quality sufficient to qualify for regulation pursuant to CCH ordinances, rules, policies, and guidelines.

“Force Main Condition Assessment” shall mean an inspection and evaluation program that includes, but is not limited to, all of the elements of the program listed in Appendix D to this Decree.

“Governments” shall mean the United States and the State of Hawaii.

“Grease Removal Device” shall mean any CCH-permitted grease interceptor, grease trap or other mechanism, device, or process, which attaches to, or is applied to, a Food Service Establishment’s wastewater plumbing fixtures and lines, the purpose of which is to trap or collect or treat fats, oils, and grease from the waste stream of a Food Service Establishment prior to discharge into the Wastewater Collection System.

“Grease Removal Device Permittee” or “GRD Permittee” shall mean an individual, entity, or business to which a CCH Industrial Wastewater Discharge Permit for a Grease Removal Device is issued.

“Honouliuli Wastewater Treatment Plant” or “Honouliuli WWTP” shall mean the treatment works located at 91-1501 Geiger Road, Ewa Beach, Oahu, Hawaii, for improving the quality of wastewater prior to its discharge to the Pacific Ocean, appurtenant fixtures, and facilities located on site for processing byproducts of the treatment processes (e.g., biosolids or sludge), and any facility constructed to replace the existing treatment works.

“Intervenors” shall mean Sierra Club, Hawai’i Chapter, Hawai’i’s Thousand Friends, and Our Children’s Earth Foundation.

“Intervenors’ 2004 Complaint” shall mean the complaint, as amended on January 10, 2005, filed by Intervenors against CCH in Sierra Club, Hawai’i Chapter; Hawai’i’s Thousand Friends; and Our Children’s Earth Foundation v. City and County of Honolulu, Civ. No. 04-00463 DAE-BMK.

“Lower Lateral” shall mean that portion of a sewer lateral line that is owned by CCH and located between: (i) the sewer main line and (ii) either the property line of a residence or business, or the boundary of an established easement.

“1994 Complaint” shall mean the original Complaint filed by the United States and the State in this case, United States of America, et al., v. City and County of Honolulu, Civ. No. 94-00765 DAE-KSC.

“1995 Consent Decree” shall mean the Consent Decree entered by this Court in this case, United States of America, et al., v. City and County of Honolulu, Civ. No. 94-00765 DAE-KSC, on May 15, 1995.

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

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

“Rehabilitation” and “Replacement” or “Rehabilitate” and “Replace” shall

include Spot Repairs, trenchless sewer rehabilitation, and sewer replacement or reconstruction.

“Sand Island Wastewater Treatment Plant” or “Sand Island WWTP” shall mean the treatment works located at 1350 Sand Island Parkway, Honolulu, Hawaii, for improving the quality of wastewater prior to its discharge to the Pacific Ocean, appurtenant fixtures, and facilities located on site for processing byproducts of the treatment processes (e.g., biosolids or sludge), and any facility constructed to replace the existing treatment works.

“Sanitary Sewer Overflow” or “SSO” shall mean an overflow, spill, or release of wastewater from or caused by CCH’s Wastewater Collection System, except that the term “Sanitary Sewer Overflow” does not include wastewater backups caused by a blockage or other malfunction in a lateral that is privately owned.

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

“Spill Contingency Plan” shall mean a site-specific plan designed to minimize the volume of spills from a force main that includes, but is not limited to, all of the elements of the plan listed in Appendix C to this Decree.

“Spot Repair” shall mean that CCH has addressed all material defects in a pipe segment so that the pipe segment would not be expected to fail or cause an SSO during the following 10 years after the attempted repair.

“State” shall mean the State of Hawaii.

“Subject SSO” shall mean any SSO in excess of 750 gallons. Subject SSOs shall exclude those caused by acts of vandalism or an error of a contractor or subcontractor not working directly or indirectly on behalf of CCH.

“Supplemental Complaint” shall mean the Supplemental Complaint filed by the United States and the State in this case, United States of America, et al., v. City and County of Honolulu, Civ. No. 94-00765 DAE-KSC, seeking injunctive relief

and civil penalties for violations of the Act and State law resulting from operation of CCH's Wastewater Collection System and the Sand Island and Honouliuli Wastewater Treatment Plants.

"2004 Case" shall refer to Sierra Club, et al., v. City and County of Honolulu, Civ. No. 04-00463 DAE-BMK.

"2007 Complaint" shall mean the complaint filed by the United States and the State in United States of America, et al., v. City and County of Honolulu, Civ. No. 07-00235 DAE-KSC.

"2007 Stipulated Order" shall mean the Stipulated Order entered by this Court in United States of America, et al., v. City and County of Honolulu, Civ. No. 07-00235 DAE-KSC, on October 10, 2007.

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

"Wastewater Collection System" shall mean all parts of the wastewater collection system owned or operated by CCH that are intended to convey domestic or industrial wastewater to CCH's wastewater treatment plants, including, without limitation, sewers, pipes, pump stations, lift stations, sewer manholes, force mains, and appurtenances to each of the above.

"Wastewater Treatment Plants" or "WWTPs" shall mean CCH's "treatment works" or "POTW," as those terms are defined in 33 U.S.C. § 1292(2)(A) and 40 C.F.R. § 403.3(o), located at Sand Island and Honouliuli.

"Year One" through "Year Ten" are defined as follows:

"Year One" - - July 1, 2010 - June 30, 2011;

"Year Two" - - July 1, 2011 - June 30, 2012;

"Year Three" - - July 1, 2012 - June 30, 2013;

"Year Four" - - July 1, 2013 - June 30, 2014;

"Year Five" - - July 1, 2014 - June 30, 2015;

"Year Six" - - July 1, 2015 - June 30, 2016;

“Year Seven” - - July 1, 2016 - June 30, 2017;
“Year Eight” - - July 1, 2017 - June 30, 2018;
“Year Nine” - - July 1, 2018 - June 30, 2019; and
“Year Ten” - - July 1, 2019 - June 30, 2020.

V. CIVIL PENALTY

10. Within 30 Days after CCH receives notice from the United States that this Consent Decree has been lodged, CCH shall deposit the sum of \$800,000 as a civil penalty into an escrow account bearing interest on commercially reasonable terms, in a federally chartered bank (the “Escrow Account”). If the Consent Decree is not entered by the Court, and the time for any appeal of that decision has run or if the Court’s denial of entry is upheld on appeal, the money placed in escrow, together with accrued interest thereon, shall be returned to CCH. If the Consent Decree is entered by the Court, CCH shall, within 10 Days after CCH receives notice from the United States thereof, cause the money placed in the Escrow Account, together with accrued interest thereon but less any associated bank or escrow fees, to be paid to the United States in accordance with subparagraph a. below.

a. Payment of \$800,000 plus accrued interest to the United States shall be made by Fedwire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with instructions to be provided to CCH, following lodging of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney’s Office for the District of Hawaii. At the time of payment, CCH shall simultaneously send written notice of payment and a copy of any transmittal document, which shall reference DOJ case number 90-5-1-1-3825/1 and Civil Action No. 94-00765 DAE-KSC, to the United States in accordance with Section XVI (Notices) of this Decree.

b. Payment of \$800,000 to the State shall be made within 30 Days after the Effective Date of this Decree by check made payable to the “State of

Hawaii,” referencing Civil Action No. 94-00765 DAE-KSC, and mailed to Clean Water Branch, Attn: Alec Wong, Department of Health, 919 Ala Moana Boulevard, Room 301, Honolulu, Hawaii 96814. The check shall be deposited into the Environmental Revolving Fund as specified by HRS section 128D-2. Among other things, monies from the Fund may be used to support environmental protection and natural resource protection programs. At the time of payment, CCH shall simultaneously send written notice of payment and a copy of any transmittal document, which shall reference Civil Action No. 94-00765 DAE-KSC, to the State in accordance with Section XVI (Notices) of this Decree.

**VI. COMPLIANCE REQUIREMENTS:
WASTEWATER COLLECTION SYSTEM**

11. **Force Main Spill Contingency Program.**

a. **Small Force Mains.** For small force mains identified in Appendix A to this Decree, as a compliance milestone, CCH shall maintain no less than 1.6 million gallons per day (“mgd”) in tankering capacity in good working order at all times to respond to releases of wastewater from these force mains and to minimize the release of wastewater to the extent practicable in the event of force main failure. In addition, CCH, in its discretion, may rely on contractor support to respond to releases of wastewater from these force mains.

b. **Large Force Mains.** CCH shall implement programs to ensure that all large force mains identified in Appendix B to this Decree have facilities in place to divert flows to minimize the release of wastewater to the extent practicable in the event of force main failure. With regard to these force mains, CCH shall implement the following measures to assure compliance with this requirement:

i. **Backup Force Mains.** With regard to the Beachwalk Force Main, the Kaneohe/Kailua Force Main, the Ala Moana Force Main No. 2, the Hart Street Force Main, the Pearl City Force Main, the Waipahu Force Main, the Kahala Force Main, and the Kailua Heights Force Main, CCH shall maintain

existing backup force mains in good operating condition for use as a backup in the event the primary force main fails. To achieve compliance with this requirement with respect to the Beachwalk Force Main, the Ala Moana Force Main No. 2, the Hart Street Force Main, and the Kaneohe/Kailua Force Main, CCH shall implement the force main construction program set out in Paragraphs 14, 15, 16, and 17.

ii. Flow Diversion. With regard to the Fort DeRussy Force Main, the Awa Street Force Main, the Kaneohe Bay Force Main #1, and the Kunia Force Main, CCH shall, within two years after the Effective Date of this Consent Decree, acquire and maintain sufficient equipment at the pump station serving each force main to divert flow so as to minimize the release of wastewater to the extent practicable in the event of any force main failure. Diverting flow may be achieved either by installing pipe sufficient to pump around any point in a force main that has failed, or by diverting flow from the failed force main to other portions of CCH's Wastewater Collection System that have sufficient capacity to transport or store the diverted flows. Flows shall not be diverted to waters of the State or waters of the United States.

iii. Flow Diversion Planning. With regard to the Kamehameha Highway Force Main, the Ewa Beach Force Main, the Waimalu Force Main, and the Halawa Force Main, CCH shall submit to EPA and DOH, for review and approval in accordance with Section IX (Review and Approval of Deliverables) of this Decree, a plan describing the methods CCH proposes to implement with regard to each of these force mains to ensure that CCH will have the capacity to divert flows in the event of failure of any of these force mains. Each plan shall be submitted in conjunction with the Condition Assessment required for each of these force mains by Paragraph 12.b., with the exception of the Waimalu Force Main, for which CCH shall submit a flow diversion plan no later than December 31, 2015, and the Kamehameha Highway Force Main, for which

CCH shall submit a flow diversion plan in conjunction with the Spill Contingency Plan required for that force main by Paragraph 11.c.ii. As part of each plan, CCH shall demonstrate that the solution proposed for each force main is a technically feasible means to ensure that, in the event of force main failure, CCH will be able to minimize, to the maximum extent practicable, any SSO resulting from such failure. Each plan shall provide schedules for any improvements to CCH's Wastewater Collection System needed to implement its proposals with regard to these force mains. The schedule submitted by CCH for approval shall provide for the expeditious completion of any improvements to its Wastewater Collection System consistent with sound engineering practices. The schedule for completion of all required flow diversion work shall extend no later than June 30, 2020. Following approval of each plan, CCH shall complete all improvements identified in the approved schedules as compliance milestones for each force main.

iv. Lualualei Force Main. As a compliance milestone, CCH shall Complete Construction of a dry parallel force main for the Lualualei Force Main by no later than December 31, 2013. CCH shall maintain the dry parallel force main in good condition so that it is available for use as a backup in the event the primary force main fails or otherwise needs to be taken out of service.

c. Spill Contingency Planning.

i. Small Force Mains. With regard to the small force mains identified in Appendix A, CCH shall, by no later than one year after the Effective Date of this Consent Decree, submit to EPA and DOH, for review and approval in accordance with Section IX (Review and Approval of Deliverables) of this Decree, a programmatic spill contingency plan describing how CCH shall respond to releases of wastewater in the event of failure of any of these force mains. This programmatic spill contingency plan shall describe how CCH receives notice of releases from these force mains and CCH's procedures for mobilizing its response to such releases. Within six months after EPA approves the programmatic spill

contingency plan for small force mains, CCH shall maintain, at each associated pump station, a copy of the approved plan. CCH shall modify the plan as necessary to reflect site-specific conditions and shall maintain a copy of the approved plan as modified at each associated pump station.

ii. Large Force Mains. CCH shall submit to EPA and DOH, for review and approval in accordance with Section IX (Review and Approval of Deliverables) of this Decree, site-specific Spill Contingency Plans to document how CCH shall respond in the event of releases of wastewater from each of the force mains addressed in this subparagraph c.ii. CCH shall submit site-specific Spill Contingency Plans consistent with the provisions of Appendix C to this Decree for the following force mains by the following dates:

- within one year after the Effective Date of this Consent Decree: Ewa Beach, Kamehameha Highway, Halawa, and Lualualei;
- within eighteen months after the Effective Date of this Consent Decree: Kailua Heights and Kailua Road; and
- within two years after the Effective Date of this Consent Decree: Ahuimanu and Niu Valley.

CCH shall implement the Spill Contingency Plans as approved.

iii. Spill Contingency Plans Required by 2007 Stipulated Order. Pursuant to the 2007 Stipulated Order, CCH has submitted site-specific Spill Contingency Plans designed to minimize the volume of any spills from the following force mains: Beachwalk, Ala Moana No. 2, Hart Street, Kaneohe/ Kailua, Waimalu, and Kahala. At a minimum, each Spill Contingency Plan is required to contain all of the elements for a Spill Contingency Plan listed in Appendix C to this Decree. EPA's and DOH's review and approval of CCH's Spill Contingency Plans is currently being conducted in accordance with Section IX (Review and Approval of Deliverables) of this Decree. CCH shall implement the Spill Contingency Plans as approved.

iv. As interim compliance milestones, CCH shall:

- in Years One through Ten, conduct at least one drill per year of an approved Spill Contingency Plan listed in subparagraphs c.ii. and iii. above;
- conduct a drill of all approved Spill Contingency Plans listed in subparagraph c.iii. by the end of Year Six;
- conduct a drill of all approved Spill Contingency Plans listed in subparagraphs c.ii. and iii. by the end of Year Ten; and
- review its Spill Contingency Plans as required by Appendix C on an annual basis and revise its Plans as necessary to address any pertinent changed conditions and to ensure the functionality of the Plans.

12. Force Main Condition Assessments and Follow-Up Action Plans.

a. Pursuant to the 2007 Stipulated Order, CCH has submitted Condition Assessments and follow-up action plans for the Beachwalk Force Main, the Ala Moana Force Main No. 2, the Hart Street Force Main, the Kaneohe/Kailua Force Main, the Waimalu Force Main, and the Kahala Force Main. At a minimum, these Condition Assessments are required to contain all of the elements for a force main condition assessment listed in Appendix D to this Decree. EPA's and DOH's review and approval of these Condition Assessments (including the follow-up action plan) is currently being conducted in accordance with Section IX (Review and Approval of Deliverables) of this Decree. The approved follow-up action plans for these force mains shall be incorporated by reference into this Consent Decree, and their design interim compliance milestones and construction compliance milestones shall become enforceable pursuant to this Consent Decree.

b. CCH shall submit Condition Assessments (including follow-up action plans) for the following force mains by the following dates:

- by December 31, 2010: Ahuimanu, Aliamanu #1, Aliamanu #2, and Lualualei;
- by December 31, 2013: Awa Street, Kaneohe Bay #3, Kunia, and Kailua

Road; and

- by December 31, 2014: Ewa Beach and Halawa.

At a minimum, these Condition Assessments shall contain all of the elements for a force main condition assessment listed in Appendix D to this Decree. CCH's proposed follow-up action plans shall provide a schedule for the expeditious completion of the work provided for in the follow-up action plans consistent with sound engineering practices. EPA's and DOH's review and approval of these Condition Assessments (including the follow-up action plan) shall be conducted in accordance with Section IX (Review and Approval of Deliverables) of this Decree. The approved follow-up action plans for these force mains shall be incorporated by reference into this Consent Decree, and their design interim compliance milestones and construction compliance milestones that are no later than June 30, 2020, shall become enforceable pursuant to this Consent Decree.

c. CCH reserves the right to take immediate action at its discretion to address conditions identified during the Condition Assessments as necessary to protect public health and the environment. Such actions shall not be subject to the Governments' approval or dispute resolution under this Consent Decree; provided, however, CCH's decision to take such action shall be without prejudice to the Governments' right to determine whether to approve the Condition Assessments (including follow-up action plans).

13. Force Main Maintenance and Spill Prevention Programs.

a. O&M Program. CCH shall implement the Force Main Operation and Maintenance Program attached as Appendix E to this Decree with respect to all force mains (including backup force mains) in its Wastewater Collection System.

b. Force Main Overflow Structures.

i. CCH shall delete all references to overflow structures from its force main design standards.