

UNITED STATE DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

R. ALLEN KIPP, JR., et al.,)
Plaintiffs,)

and)

CAHABA RIVER SOCIETY, INC., a)
non-profit corporation,)

Intervenor,)

v.)

JEFFERSON COUNTY, ALABAMA; and)
the JEFFERSON COUNTY COMMISSION,)

Defendants,)

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

JEFFERSON COUNTY, ALABAMA)
JEFFERSON COUNTY COMMISSION,)
STATE OF ALABAMA)

Defendants.)

CIVIL ACTION NO.
93-G-2492-S

CIVIL ACTION NO.
94-G-2947-S

CONSOLIDATED

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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 and on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this action on December 6, 1994 alleging that defendants, Jefferson County, Alabama and the Jefferson County Commission (hereinafter the "County" or "Defendant") are in violation of the Clean Water Act, 33 U.S.C. § 1251 et seq. ("the Act"). Citizen Plaintiffs R. Allen Kipp, Jr., Edward E. Angwin and Betsy B. Angwin, filed their complaint on November 11, 1993, and the Cahaba River Society filed its Motion to Intervene and Complaint in Intervention on March 9, 1994. R. Allen Kipp, Jr., Edward E. Angwin and Betsy B. Angwin and Citizen Plaintiff Cahaba River Society will hereinafter be collectively referred to as "Citizen Plaintiffs." Plaintiffs are seeking injunctive relief and the assessment of civil penalties, pursuant to Sections 301, 309(b) and (d), and 402, of the Clean Water Act, 33 U.S.C. § 1311, 1319(b) and (d), and 1342. The complaints allege that the County has discharged pollutants without the required National Pollutant Discharge Elimination System (NPDES) permits and has violated the terms and conditions of its NPDES permits.

Defendant Jefferson County, Alabama is a political subdivision of the State of Alabama, is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5), and a

"municipality" within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4).

Defendant Jefferson County Commission is the governing body of Jefferson County and is the permit holder of NPDES permits which are the subject of this action, and as such the Jefferson County Commission is responsible for operating the County's wastewater collection system and treatment plants.

The State of Alabama has been joined as a defendant pursuant to Section 309(e) of the Clean Water Act, 33 U.S.C. § 1319(e), and shall be liable for payment of any judgment, or any expenses incurred as a result of complying with any judgment entered against the County, to the extent that the laws of the State prevent the County from raising revenues needed to comply with such judgment.

The County is charged with the responsibilities of operating and maintaining the sanitary sewage collection and treatment system for all unincorporated areas of Jefferson County, providing sewage treatment to Municipalities and incorporated areas within the County, and providing connections to such County facilities pursuant to such rules, regulations, directions and control as are established by the County.

Plaintiffs allege that the County has caused or contributed to the unpermitted discharge of untreated wastewater containing raw sewage into the Black Warrior and Cahaba Rivers and their tributaries, which are "navigable waters" of the United

States, as that term is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7).

The United States, Citizen Plaintiffs, the State of Alabama, and the County have consented to the entry of this Decree without further adjudication of any issues raised by the complaints herein. The Court, on January 20, 1995, entered Partial Summary Judgment against the County and in favor of the Citizen Plaintiffs on the issue of liability. The United States moved for summary judgment on the issue of liability with respect to allegations in its complaint that are identical to allegations contained in the Citizens' complaints. The County agrees that, as to allegations in the United States' complaint that are identical to those contained in the Citizen Plaintiffs' complaints, the January 20, 1995 Partial Summary Judgment extends to, and in favor of, the United States. The parties hereby stipulate to the Court that in order to resolve the issues stated in the United States' and the Citizen Plaintiffs' complaints relating to penalties and injunctive relief, this Consent Decree should be entered. The parties further stipulate that this Consent Decree furthers the public interest and is in accord with the Clean Water Act.

The parties also hereby acknowledge their prior agreement that the objectives of this Consent Decree would be better served by the County commencing during the negotiation of this Consent Decree various activities required under Section VII hereof. As a result, many of the investigatory, planning and

reporting requirements of this Consent Decree have been fully satisfied prior to entry of this Decree. In the interest of completeness, however, the provisions addressing those requirements have been retained in the text of this Decree.

NOW THEREFORE, without admission by the County or the State of Alabama of the non-jurisdictional allegations in the complaints, without further adjudication of any issue of fact or law pertaining to this action, and upon the consent and agreement of the parties to this Consent Decree, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I.

JURISDICTION

This Court has jurisdiction over the subject matter herein and the parties to this action pursuant to Sections 309 of the Act, 33 U.S.C. § 1319, and 28 U.S.C. §§ 1331 and 1345. The complaints state claims upon which relief may be granted against the Defendants under Sections 309 and 505 of the Act, 33 U.S.C. §§ 1319 and 1365, for injunctive relief and civil penalties. The complaints state a claim upon which relief may be granted against the State of Alabama under Section 309(e) of the Act, 33 U.S.C. § 1319(e). Authority to bring suit herein on behalf of the United States is vested in the United States Department of Justice by 28 U.S.C. §§ 516 and 519, and 33 U.S.C. §§ 1366 and 1369. Authority to bring the Citizen Plaintiffs' suits is pursuant to 33 U.S.C. § 1365(b).

II.

VENUE

Venue is proper in the United States District Court for the Northern District of Alabama, Southern Division, pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b) and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because it is the judicial district in which the County is located, and in which the alleged violations occurred.

III.

PARTIES

A. Plaintiff, United States of America, is acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency.

B. Plaintiffs R. Allen Kipp, Jr., and Edward E. Angwin and Betsy B. Angwin are natural persons, residents and taxpayers who are recreational users of the Cahaba and Black Warrior Rivers. These plaintiffs obtain their drinking water from the Cahaba River and enjoy canoeing, hiking, viewing the river and wildlife and other recreational pursuits involving the Cahaba and Black Warrior Rivers and the land adjacent thereto. The Angwins live and own property on the Cahaba River.

C. Plaintiff Cahaba River Society is a nonprofit corporation organized under the laws of the State of Alabama. It has over two thousand four hundred (2,400) members, most of whom live within Jefferson County, Alabama, or near the Cahaba River. One of the purposes of the Society is to promote the

conservation, preservation and protection of the Cahaba River, which is one of Alabama's unique outstanding natural resources. The quality of the waters of the Cahaba River has an impact on and directly affects the property, recreational, aesthetic and environmental interests of the Society and its members and their use and enjoyment of the Cahaba River. Additionally, the Society's objectives and purposes include promoting a high standard of water quality in other rivers and waters of the State of Alabama, including the Black Warrior River and its tributaries.

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

E. Defendant Jefferson County Commission is the governing body of Jefferson County and is the holder of the NPDES permits which are the subject of this action. As such, it is responsible for operating the County's wastewater treatment plants.

F. The State of Alabama is a defendant pursuant to Section 309(e) of the Clean Water Act, 33 U.S.C. § 1319(e), which provides for liability for payment of any judgment or any expense incurred as a result of complying with any judgment against Jefferson County, to the extent the laws of the State prevent the County from raising revenues needed to comply with such judgment.

IV.

BINDING EFFECT

A. The provisions of this Consent Decree shall apply to, and be binding upon the County and its officers, directors, employees, agents, servants, successors and assigns, and upon all persons, firms and corporations in active concert or participation with the County and assigns, and upon the United States and its representatives and upon the State of Alabama and its representatives when liability is incurred pursuant to Section 309(e) of the Act, 33 U.S.C. § 1319(e).

B. Effective seven (7) days from the Date of Lodging of this Consent Decree until its termination, the County shall give written notice of this Consent Decree to any successors in interest prior to transfer of ownership or operation of any portion of its wastewater treatment and collection system and shall provide a copy of this Consent Decree to any successor in interest. The County shall notify EPA Region IV and counsel and designated representatives for the Citizen Plaintiffs in writing, as specified in Section XX, of any successor in interest at least twenty-one (21) days prior to any such transfer.

C. The County shall provide a copy of this Consent Decree to each engineer, consultant and contractor to be retained to perform investigatory or remediation activities or any portion thereof herein described upon execution of any contract relating to such work, and shall provide a copy to each engineer, consultant and contractor already retained for such purpose no

later than thirty (30) days after the Date of Lodging of this Consent Decree.

V.

OBJECTIVES

It is the express purpose of the parties entering into this Consent Decree to further the objectives set forth in Section 101 of the Clean Water Act, 33 U.S.C. § 1251, and to resolve certain issues alleged by the United States and the Citizen Plaintiffs in their complaints herein. In light of these objectives, the County agrees, inter alia, to comply with all conditions of the Consent Decree, to use good engineering practices to design and construct improvements to individual Complete Waste Treatment Systems, and to achieve expeditious implementation of the remedial measures as herein set forth in accordance with the schedules applicable under this Consent Decree for the purpose of (1) eliminating further bypasses and un-permitted discharges of untreated wastewater containing raw sewage to the Black Warrior and Cahaba River Basins, (2) eliminating sewer system overflows, (3) achieving full compliance with its NPDES permits, and (4) achieving full compliance with the Clean Water Act.

VI.

DEFINITIONS

A. Unless otherwise defined herein, 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., and the regulations promulgated thereunder.

B. The following terms used in this Consent Decree shall be defined as follows:

1. "Automatic Bypass" shall mean a wastewater collection system relief valve, flap gate or other device that operates automatically during periods of high flow when the collection line is surcharged and which allows untreated wastewater to be diverted to the receiving stream without reaching a wastewater treatment plant.

2. "Bypass" shall mean any diversion of wastewater away from or around a secondary treatment facility or portion of such facility in order to limit the flow delivered to such facilities or portions thereof, except that a wastewater flow that is diverted to a peak handling facility at a County wastewater treatment plant shall not constitute a bypass for purposes of this definition, provided that such diverted wastewater flow either (1) receives the equivalent of secondary treatment, as defined in 40 C.F.R. 133.102, prior to its discharge, or (2) is subsequently returned to the secondary treatment facility for complete treatment, or (3) is otherwise legally permissible.

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

4. "Collection System" shall mean the wastewater collection and transmission system, including all force mains, gravity sewer lines, manholes, and appurtenances that are

associated with a specific Municipality, wastewater treatment facility, or subarea of such, as specified in this Consent Decree.

5. "Complete Waste Treatment System" shall mean all the treatment works, as defined in 40 CFR § 122.2 (July 1, 1992), necessary to meet the requirements of Title III of the Act, and which involve: (a) the transport of wastewaters from individual homes or other buildings (not including individual service lines that are owned and maintained by the owners of the homes or other buildings that are connected to such service lines) to a plant or facility where treatment of the wastewater is accomplished; (b) the treatment of the wastewaters to remove pollutants; and (c) the ultimate disposal, including recycling or reuse, of the treated wastewaters and residues which result from the treatment process. A complete waste treatment system will typically include at least one treatment plant or facility, but may also include two or more connected or integrated treatment plants.

6. "Consent Decree" shall mean this Consent Decree.

7. "County" shall mean Jefferson County, Alabama and the Jefferson County Commission.

8. "County Collection System" shall mean the wastewater collection and transmission system, including all force mains, gravity sewer lines, manholes, and appurtenances that are owned and operated by the County, and shall also include the wastewater collection and transmission systems, including all force mains, gravity sewer lines, manholes and appurtenances of

the Municipalities and the unincorporated areas that are serviced by the County. Expressly excluded from this definition are individual service lines that are owned and maintained by the owners of the homes or other buildings that are connected to such service lines.

9. "Critical Path" shall mean the progression of multiple construction activities within a collection system or wastewater treatment plant, from commencement to completion of Phase III activities, likely consisting of several interconnected and dependent projects, such that a delay at any point therein is likely to directly result in at least an equivalent delay in completion of all subsequent Phase III activities in the subject collection system or wastewater treatment plant. As used herein the term "Phase III activities" shall include design, right-of-way, rehabilitation and construction activities. The Critical Path for Phase III activities within a given collection system or wastewater treatment plant will not be determined until all Waste Treatment System Capital Improvement Plan ("WTSCIP") amendments applicable thereto have been submitted by the County and approved by EPA.

10. "Critical Path End Date" shall mean a single date, as specified in final WTSCIP amendments, by which all Phase III activities are to be completed for a given collection system or wastewater treatment plant which is identified in Subparagraph 11.3 of Section VII; provided, however, that such dates must be the same as or precede the corresponding dates set out in

Subparagraph H.3 of Section VII; provided further, however, that the provisions set forth in Subparagraphs H.4 and H.5 of Section VII shall also apply to said Critical Path End Dates, or resolved through the dispute resolution provisions hereof, as the case may be.

11. "Date of Entry" shall mean the date the Consent Decree is approved and signed by a United States District Court Judge.

12. "Date of Lodging" shall mean the date the Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the Northern District of Alabama, Southern Division.

13. Unless otherwise indicated, the term "day" or "days" as used herein shall mean a calendar day or calendar days. When the day a report or other deliverable is due under this Consent Decree falls on a Saturday, Sunday, federal holiday or legal holiday for the County, the County shall have until the next calendar day that is not one of the aforementioned days for submittal of such report or other deliverable.

14. The phrase "Designated Rivers" shall mean the segments of the Cahaba and Black Warrior Rivers and/or their tributary streams located within Jefferson County, Alabama.

15. "Excessive Infiltration/Inflow" shall mean the quantities of infiltration/inflow which can be cost-effectively eliminated from a sewer system by rehabilitation, as determined by a cost-effectiveness analysis that compares the costs for

correcting the infiltration/inflow conditions with the total costs for transportation and treatment of the infiltration/inflow.

16. "Exfiltration" shall mean the leakage of sewer flows into the ground through pipes, joints, manholes, or other sewer system structures.

17. "Greenway(s)" shall mean a protected open space that is managed for conservation and for restoring, protecting and enhancing the water quality of, and reducing or preventing erosion and non-point source pollution into, the Black Warrior and Cahaba Rivers and their tributaries. In some cases it may also link nature reserves, parks, cultural and historic sites with each other. A Greenway protects environmentally sensitive lands and wildlife and also provides access to outdoor recreational and educational opportunities.

18. "Infiltration" shall mean the water entering a sewer system and service connections from the ground, through such means as, but not limited to, pipes, pipe joints, connections, or manhole walls.

19. "Inflow" shall mean the water discharged into a sewer system, including service connections, from such sources as, but not limited to: roof leaders; cellars, yard and area drains; foundation drains; cooling water discharges; drains from springs and swampy areas; manhole covers; cross connections from storm sewers; surface run-off; street wash waters; or drainage.

20. "I/I" shall mean the total quantity of water from both infiltration and inflow without distinguishing the source.

21. "Municipality" shall mean a city, town, district, association, or other public body created by or pursuant to State law and having jurisdiction over the collection, transportation, or disposal of sewage or industrial waste.

22. "Public Document Repository" shall include the Birmingham Public Library - Main Branch and the offices of the Alabama Department of Environmental Management located in Jefferson County, Alabama. Documents sent to a Public Document Repository pursuant to this Consent Decree are intended to be available for public review and copying. The County shall bear sole responsibility for depositing documents in the Public Document Repository.

22. "Rainfall-Induced Infiltration" shall mean a form of infiltration that occurs during or immediately after rainfall events caused by the seepage of percolating rainwater into manholes, pipes, and lateral defects that lie near or are readily reached from the ground surface.

24. "Sanitary Sewer Overflow," "SSO," and "Overflow" shall mean any discharge of wastewater from the County Collection System prior to treatment at a permitted treatment facility. SSO's include, but are not limited to, discharges from manholes, pipes, or pump stations.

25. "Sewer Impact Connection Permit" shall mean a sewer connection permit issued to the property owner, builder, or

plumber at the time a structure is to be connected to a public sewer line, and which records the number of plumbing fixtures or equivalent plumbing fixtures within the structure which will generate wastewater and contribute flow to the County Collection System.

26. "State Indirect Discharger" (SID) shall mean an industrial user of any of the County's complete waste treatment systems having an average flow of 25,000 gallons per day or more or which is otherwise defined as a SID by the state of Alabama.

27. "Subsystem" shall mean a portion of a collection system.

28. "Waste Treatment System Capital Improvement Plan" or "WTSCIP" shall mean the Waste Treatment System Capital Improvement Plan developed pursuant to Paragraph G of Section VII hereof, as at the time in effect taking into account all amendments thereto, it being understood that the WTSCIP shall consist of components respectively developed for each drainage basin, treatment plant or other major undertaking for which a completion date is scheduled in Subparagraph H.3 of Section VII hereof.

VII.

REMEDIAL ACTIONS

A. Summary of Remedial Action, Three-Phased Approach

1. This remedial action section sets forth a detailed plan of action to be undertaken by the County to meet the objectives of this Consent Decree. It is the intent of this

Consent Decree that, whenever legally required, the County shall provide secondary treatment, an equivalent treatment to secondary treatment, or a standard of treatment otherwise permissible under the Act, to all discharges from the County's wastewater treatment plants. A three-phased approach to remediation is used. Such an approach will result in a thorough analysis and evaluation of all aspects of the County's Complete Waste Treatment Systems, the identification of deficiencies, and the plan of actions which will be undertaken to correct those deficiencies.

2. Phase I will consist of the development of a series of planning documents which will identify the scope, methodologies, time frame, and resources to be allocated by the County to evaluate the condition and capacity of the County Collection System, identify sources of I/I, and develop remedial measures. Phase I will include the Preliminary Sewer System Analysis (PSSA), the Infiltration and Inflow (I/I) Plan, the Sewer System Evaluation Survey (SSES) Plan, the Capacity Analysis Plan, the Comprehensive Performance Evaluation (CPE) Plan, the Water Quality Monitoring Plan, the initial Waste Treatment System Capital Improvement Plan (WTSCIP), and requirements for reporting unauthorized discharges. Each plan shall be subject to EPA approval, as set forth in the individual sections of this Consent Decree. Upon EPA approval of each such plan, or following dispute resolution with respect to such plan and for which the dispute resolution provisions of Section XIII hereof have been invoked, the applicable plan shall be incorporated into and

become enforceable under this Consent Decree; provided that the provisions of the initial WTSCIP described in Paragraph G hereof, as they relate to a given Collection System or treatment plant and to the extent that such provisions are subject to amendment in accordance with the provisions of Paragraph G hereof, shall not be incorporated into or become enforceable under this Consent Decree with respect to such a Collection System or treatment plant until all such amendments have been approved by EPA or determined through the dispute resolution process, as the case may be.

3. Phase II will consist of analyses and reports undertaken and/or prepared by the County to determine the extent of rehabilitative needs and corrective actions necessary to meet the objectives of this Consent Decree within the County Collection System and the County's wastewater treatment plants. Phase II will include the following reports, plans and schedules: Infiltration/Inflow Analysis Reports, Sewer System Evaluation Survey (SSES) Reports, Capacity Analysis Reports, Capacity Improvement Schedules, Comprehensive Performance Evaluation (CPE) Reports, and Performance Improvement (PI) Plans. The results of the Phase II analyses will be used to amend the principal Phase II planning document, the Waste Treatment System Capital Improvement Plan (WTSCIP). With the exception of Capacity Analysis Reports, each Phase II report, plan and schedule shall be subject to EPA approval, as shall each WTSCIP amendment, as set forth in the individual Paragraphs of Section VII of this

Consent Decree. Upon EPA approval of each such report, plan, schedule or amendment, or following resolution with respect to such a report, plan, schedule or amendment for which the dispute resolution provisions of Section XIII hereof have been invoked, the applicable report, plan, schedule or amendment shall be incorporated into and become enforceable under this Consent Decree; provided that the provisions of any such report, plan, schedule or amendment, as they relate to a given Collection System or treatment plant and to the extent that such report, plan, schedule, or amendment is subject to further amendment in accordance with the terms of this Consent Decree, shall not be incorporated into or become enforceable under this Consent Decree with respect to such a Collection System or treatment plant until all such reports, plan, schedules or amendments have been approved by EPA or determined through the dispute resolution process, as the case may be.

4. Phase III is the implementation phase of the WTSCIP, in which specific improvements will be made according to the Capacity Improvement Schedules, as described in Paragraph J of this Section, and the Performance Improvement Plans, as described in Paragraph M of this Section, Depending on the Complete Waste Treatment System involved, Phase III may include, without limitation: sewer rehabilitation (e.g., grouting, sliplining), sewer replacement, construction of relief sewers, and wastewater treatment plant improvements. It is the intent of this Consent Decree to require during Phase III only those waste

treatment system capital improvements that have been determined to be necessary as a result of information and analyses developed during Phase II. Phase III will also include the development of a Collection System Operation and Maintenance Plan and will include a Water Quality Monitoring Program, as outlined in this Consent Decree. Phase III, with the exception of the Water Quality Monitoring Program and the Collection System Operation and Maintenance Plan, will be completed in accordance with the schedules and Critical Path End Dates applicable under this Consent Decree, subject to the County's right to petition for time extensions as set forth in various provisions of this Consent Decree. For each Complete Waste Treatment System, the Water Quality Monitoring Program will continue for one additional year from the completion of Phase III for the subject Complete Waste Treatment System.

5. In any case where a report is to be submitted or other action taken by a certain deadline which is measured from the date on which this Consent Decree is executed by the County ("Date of Execution"), such deadline shall be measured from June 1, 1995, unless the United States and Citizen Plaintiffs shall agree to a later date for such deadline.

6. During Phase I, specific technical references must be cited for proposed procedures, techniques, and design criteria to be used in evaluating the County's Complete Waste Treatment Systems. The I/I and SSES Plans should be compatible with EPA's Handbook: Sewer System Infrastructure Analysis and

Rehabilitation, EPA/625/6-91/030, Oct. 1991 or Water Environment Federation's Manual of Practice FD-6, Existing Sewer Evaluation & Rehabilitation, 1994. The Comprehensive Performance Evaluation Plan shall be consistent with EPA's Handbooks: Improving POTW Performance Using the Composite Correction Program Approach, EPA/625/6-84/008, Oct. 1984 and Retrofitting POTWs, EPA/625/6-89/020, July 1989. All analyses will be carried out using sound engineering practice.

B. Preliminary Sewer System Analysis: Phase I

1. Within seventy-five (75) days of the Date of Execution hereof by the County, as set forth in Subparagraph A.5 of this Section, the County shall submit to EPA for approval, and simultaneously place in the Public Document Repository, a draft Preliminary Sewer System Analysis (PSSA). The PSSA will be based on available data and the County's current understanding of the County Collection System's rehabilitative needs and will identify the County's current prioritization thereof. The PSSA will also provide preliminary overall schedules, objectives and scopes for the investigative and rehabilitative activities to be carried out under this Consent Decree, including all investigations necessary for a complete infrastructure analysis and delineation of needed improvements.

2. The PSSA will identify the County's plan for carrying out a phased evaluation of the rehabilitative needs facing the County Collection System and its plan for determining the work necessary to eliminate Bypasses and Overflows. The PSSA

will utilize, consistent with other provisions of this Consent Decree, available data to make initial judgments regarding the condition of the existing sewer system and define the specific problems within each Collection System and Subsystem. The PSSA will make use of existing surveys, evaluations, and analyses of physical damage to the sewer system infrastructure, capacity limitations, effects of corrosion, sewer system deterioration rates, and Excessive I/I, including surveys of those areas that would possibly be affected by groundwater migration and Exfiltration. The PSSA will provide information on the personnel and financial resources available to the County (including bond issuance) to address I/I, Bypasses, and SSO's.

3. To the extent possible, data used to develop the PSSA shall include, but not be limited to: as-built sewer maps, sewer system operation and maintenance (O&M) records, existing geographical, geological, climatological and topographical records, existing County, or municipal planning documents, existing treatment plant performance records, sewer system monitoring records (such as treatment plant flow records, lift station flow records, Overflow and Bypass information), historical sewer system and treatment plant flow and performance information, rainfall and groundwater records, water use records, population information, and number and type of customer accounts.

4. The PSSA, resulting from the analysis of existing data and information, shall include the following:

- a. A clear delineation of all Collection Systems and Subsystems, and the location of all existing and planned flow monitoring points. As part of the PSSA, the County shall submit maps showing the location and boundaries of each of its Collection Systems and Subsystems, and of each municipal Collection System. The County shall identify all the governmental departments or private entities responsible for operation and maintenance and capital improvements for each municipal system. The County shall submit with the PSSA a list describing the approximate size of each such system, which shall include an estimate of the linear footage of each size (diameter) of sewer pipe utilized and an estimate of the population served.
- b. A clear presentation and preliminary ranking of known rehabilitative needs within each Collection System.
- c. Identification of Collection Systems and major Subsystems believed not to have significant rehabilitative needs and a description of the information and/or data on which that belief is based.
- d. Estimates of sewer system monitoring and data needs for each Collection System and Subsystem.

- e. Identification of all State Indirect Dischargers "SIDs" discharging into the County Collection System, through submittal of a summary of their SIDs permits, including available flow characteristics.
- f. A preliminary overall schedule, objectives, and cost estimates for the implementation of the program which will be used by the County to eliminate, consistent with other provisions of this Consent Decree, Bypasses and Overflows at all overflow points, including, but not limited to: Hurricane Branch, Horse farm, Barton Branch, Tarrant Branch, Watkins Branch, and all wastewater treatment plants. These tasks shall include, but are not limited to: I/I analysis reports, preparation of an SSES report for those Collection Systems (or portions thereof) determined by the I/I analysis to have sufficient I/I to warrant further SSES evaluation, and the development of I/I reduction measures and Collection System and treatment plant upgrades to eliminate, consistent with the other provisions of this Consent Decree, Overflows and Bypasses.
- g. Identification of any SSES(s) and I/I analyses which are in progress and submittal of any SSES

reports and I/I analyses reports which have been completed, but not yet submitted to EPA.

- h. A bibliography listing all documents used in the preparation of the PSSA.
- i. Preliminary estimates of the staff and the resources which are expected to be committed to investigatory or remedial activity covered under this Consent Decree.

5. EPA will evaluate and provide comments on the draft PSSA within thirty (30) days of receipt. The County shall respond to and address EPA's comments and submit a copy of the revised PSSA to EPA for review within thirty (30) days of receipt of EPA's comments. The revised PSSA will include EPA's comments and appropriate County responses. The revised PSSA will be subject to EPA approval or disapproval within thirty (30) days of receipt. In the event the County's revised PSSA is disapproved by EPA, the parties will proceed to dispute resolution pursuant to Section XIII of this Consent Decree. The final PSSA, as approved by EPA or as determined through the dispute resolution process, as the case may be, shall be placed in the Public Document Repository.

C. Infiltration/Inflow Plan: Phase I

1. Within one-hundred and five (105) days of the Date of Execution hereof by the County, as set forth in Subparagraph A.5 of this Section, the County shall submit to EPA for approval a draft Inflow/Infiltration Plan ("I/I Plan"). The I/I Plan will

address the County's proposed Inflow/Infiltration analysis approach for each Collection System. The I/I Plan will describe procedures and methodologies used on I/I analyses completed or underway by the County as of the Date of Execution, as set forth in Subparagraph A.5, as well as those to be used in work to be initiated after the Date of Execution by the County. Any differences in procedures and methodologies between completed work or work in progress and future work will be identified, and the reason(s) for those differences explained.

2. The I/I Plan shall be developed utilizing existing data including, but not limited to, the following: as-built sewer maps; sewer system operation and maintenance (O&M) records; geographical, geological, climatological and topographical records; County, city or municipal planning documents; treatment plant performance records; sewer system monitoring records (such as treatment plant flow records, lift station flow records, and Overflow and Bypass records or information); historical sewer system and treatment plant flow and performance information; rainfall and groundwater records; water use records; population information; and number and type of customer accounts.

3. The draft I/I Plan shall contain the following:
- a. Documentation of the methodology to be used in the County Collection System to determine the degree of Infiltration and Inflow. The plan should identify the type and duration of data to be used (e.g., plant influent flow data for a year,

including flow charts to determine diurnal flow variation and peak instantaneous (or hourly) flow rates), the analyses to be carried out, and the specific characterizations to be used to gauge the severity of low groundwater Infiltration, high groundwater Infiltration, and Rainfall-Induced Inflow/Infiltration (RII).

- b. Procedures for I/I analyses for each Collection System and, as appropriate, for Subsystems within each Collection System, to derive technically-based estimates of Collection System performance characteristics such as: 1) peak hourly inflow/RII rates; 2) peak daily inflow/RII rates; 3) peak hourly Overflow/Bypass rates; 4) peak daily overflow/Bypass rates; 5) seasonal and annual average Infiltration rates; and 6) base flow rates expressed in peak hourly, peak daily, average hourly, and average daily, as appropriate. The County will identify which characteristics will be evaluated and provide justification for those selected and/or not selected. If all characteristics will not be evaluated for all Collection Systems and Subsystems, justification for that decision will be provided.
- c. Complete descriptions of the methods to be used to measure and/or estimate Inflow/Infiltration,

Overflow/Bypass, and flow rates and details of all numerical assumptions utilized. The development of the characterization factors in Subparagraph 3(b)(1-6) must be logically presented to EPA with adequate documentation.

- d. An outline of the procedures by which the I/I analyses will address the effects of Exfiltration, migration, and corrosion.
- e. The factors identified in Subparagraph 3(b)(1-6) will be used to determine whether Infiltration and Inflow sources are significant enough in a given Collection System and Subsystem to be subjected to SSES examination. The methodologies and criteria to be used in making these determinations shall be presented.
- f. A description of how the specific flow monitoring points were identified in each Collection System and Subsystem. The I/I Plan shall provide detailed information regarding monitoring points and Collection System configuration (including maps) as required by this Subparagraph, given limitations in available information. This preliminary information shall be supplemented by detailed information on each selected monitoring point and all additional configuration information

obtained subsequent to the preparation of the I/I Plan.

- g. Methodologies and specific criteria by which it will be determined that Collection Systems and major Subsystems do not have significant rehabilitative or corrective needs, and may thus be eliminated from SSES examination.
- h. The County shall review the completed I/I Reports for the Cahaba and Village Collection Systems and document discrepancies with the I/I Plan. This documentation shall be submitted along with the I/I Plan. The I/I Reports for the Leeds and Trussville Collection systems must be prepared and submitted in accordance with Paragraph D of this Section.
- i. Preliminary schedules and cost estimates for the implementation of tasks which will be used by the County to analyze I/I.
- j. Estimates of the County and contractor personnel and other resources which are committed to the execution of each task.
- k. A listing of technical references to be used as a basis for conducting the I/I analyses. This listing shall include the specific references, citing section and/or pages, for all the procedures and methodologies to be used.

References not readily available to technical professionals and EPA shall be provided.

1. Methodologies and specific criteria for determining the necessity for field inspections to be undertaken by the County in the Subsystems exhibiting excessive Infiltration/Inflow.

4. EPA will evaluate and provide comments on the draft I/I Plan within forty-five (45) days of receipt. The County shall respond to and address EPA's comments and submit a copy of the revised I/I Plan to EPA for review within thirty (30) days of receipt of EPA's comments. The revised I/I Plan will include EPA's comments and appropriate County responses. The revised I/I Plan will be subject to EPA approval or disapproval within thirty (30) days of receipt. In the event the County's revised I/I Plan is disapproved by EPA, the parties will proceed to dispute resolution pursuant to Section XIII of this Consent Decree. The final I/I Plan, as approved by EPA or as determined through the dispute resolution process, as the case may be, shall be placed in the Public Document Repository.

D. Infiltration/Inflow Retorts: Phase II

1. The County will commence implementation of the I/I Plan and I/I analyses in accordance with the schedule and other requirements of the final I/I Plan. Draft I/I Reports for the Cahaba and Village Collection Systems shall be complete and submitted to EPA no later than February 1, 1996. Draft I/I Reports for Leeds, Trussville and Trussville Industrial Park

Collection Systems shall be complete and submitted to EPA no later than April 1, 1996. Draft I/I Reports for the Valley, Five Mile, Turkey, Prudes and Warrior Collection Systems shall be complete and submitted to EPA no later than May 1, 1996.

2. Each I/I Report must include all results of the I/I analyses performed as a requirement of Subparagraph C.3.

3. I/I Reports shall include a description of proposed SSES activities and include a preliminary schedule for implementation of SSES tasks.

4. The I/I Reports shall include maps showing all major branch, trunk, and interceptor sewers, pump stations, Overflow points, points of connection (if any) to other Collection Systems, and treatment plants. These maps should differentiate force mains from gravity sewers and indicate the size of all major sewers. The boundaries of each component of the Collection System must be clearly indicated, to the extent possible. Final detailed maps shall be submitted with each SSES Report.

5. The I/I Reports shall provide a clear presentation, with adequate documentation, of the basis of the County's conclusions regarding SSES requirements for each Collection System and Subsystem. Proposed SSES work must conform to the final SSES Plan. The I/I Reports must describe the location and equipment to be used for all permanent and temporary flow monitoring points within the subject Collection System.

6. If during the I/I investigation the County identifies specific sources of Excessive Inflow, the County agrees to initiate a visual inspection of those areas. The I/I Reports shall provide a clear presentation, with adequate documentation, of the basis for field inspections. All field inspections within a Collection System must be initiated within sixty (60) days after submittal of the I/I Reports for that Collection System. Within one hundred twenty (120) days after the submittal of each I/I Report, the County will submit a report documenting the results of field inspections and all related actions taken. Should significant and obvious deficiencies/deterioration become evident as a result of these inspections, the County agrees to perform the necessary repair(s) to any part of the County Collection System other than those owned by non-participating Municipalities (as defined in Subparagraph R.4 of Section VII), if any, without waiting for the completion of any other scheduled activities required by this Consent Decree. Should significant and obvious deficiencies/deterioration become evident as a result of these inspections in parts of the County Collection System owned by any non-participating Municipality (as defined in Subparagraph R.4 of Section VII), the County will inform the appropriate Municipality.

7. EPA will evaluate and provide comments on each draft I/I Report within forty-five (45) days of receipt. The County shall respond to and address EPA's comments and submit a copy of each revised I/I Report to EPA for review within thirty

(30) days of receipt of EPA's comments. Each revised I/I Report will include EPA's comments and appropriate County responses. Each revised I/I Report will be subject to EPA approval or disapproval within thirty (30) days of receipt. In the event such a revised I/I Report is disapproved by EPA, the parties will proceed to dispute resolution pursuant to Section XIII of this Consent Decree. Each final I/I Report, as approved by EPA or as determined through the dispute resolution process, as the case may be, shall be placed in the Public Document Repository.

E. Sewer System Evaluation Survey Plan: Phase I

1. Within one-hundred and thirty-five (135) days of the Date of Execution by the County, as set forth in Subparagraph A.5 of this Section, the County shall submit to EPA for approval a draft Sewer System Evaluation Survey Plan (SSES Plan). The SSES Plan shall be based on available information, and will provide only that Collection System-specific information possible given the limitations of existing information. The SSES Plan shall include all of the following:

a. A detailed description of the overall methodology to be used in carrying out SSES examinations. Each inspection or monitoring technique to be used shall be identified and described, and the criteria for its application discussed.

b. Preliminary estimates of the staff, resources, and contractors which are committed to the execution of each task.

c. Documentation of the techniques and methodology for physical surveys (e.g., above-ground inspections, manhole inspections, and lamping of sewer lines) and the criteria for selecting among the following± smoke testing, rainfall simulation, dyed water testing, and other proposed tests.

d. Documentation of the criteria to be used for selecting any additional flow monitoring points. For various expected types of monitoring points, the SSES Plan must outline procedures and methodology for conducting flow monitoring during dry (low groundwater) season, wet (high groundwater) season, dry weather, wet weather (peak) and night flow.

e. Documentation of the criteria for preparatory cleaning of sewer sections having I/I sources.

f. Documentation of the criteria for the use of physical and video inspection of sewer lines and manholes.

g. Documentation of the techniques and methodology to be used to quantify Rainfall-Induced Inflow and Infiltration (RII).

h. Detailed information on how identified Inflow sources will be traced to the responsible sources and parties.

i. A specific discussion of how the potential for Infiltration migration (as a result of possible existing source rehabilitation) will be considered. In particular, the SSES activities should identify those reaches of sewer likely to be hydrogeologically linked to reaches identified as having a high

rate of Infiltration, so that the potential for migration can be considered in formulating a strategy to eliminate Overflows.

j. Guidelines for conducting a cost-effectiveness analysis to consider the rehabilitation costs for Infiltration source, Inflow source and Rainfall-Induced Inflow/Infiltration source eliminations versus the cost of transportation and treatment. The SSES Plan must document the basis and criteria for rehabilitation, transportation and treatment costs. In selecting remedial measures to achieve the objectives of this Consent Decree, the County will retain discretion to choose alternatives that are the most cost-effective in the long-run.

k. Documentation on how the findings will be utilized to develop a prioritized schedule of remedial measures,

1. The SSES Report(s) in progress shall be completed and submitted in accordance with Paragraph F of this Section.

2. The SSES Plan shall also include a listing of technical references to be used as a basis for conducting the SSES's and associated cost-effectiveness analyses. The analyses shall include, but not necessarily be limited to, cost curves and cost tables. This listing shall include specific references, citing sections and/or pages, for all the procedures and methodologies to be used. References not readily available to technical professionals and EPA shall be provided.

3. EPA will evaluate and provide comments on the draft SSES Plan within forty-five (45) days of receipt. The County

shall respond to and address EPA's comments and submit a copy of the revised SSES Plan to EPA for review within thirty (30) days of receipt of EPA's comments. The revised SSES Plan will include EPA's comments and appropriate County responses. The revised SSES Plan will be subject to EPA approval or disapproval within thirty (30) days of receipt. In the event the County's revised SSES Plan is disapproved by EPA, the parties will proceed to dispute resolution pursuant to Section XIII of this Consent Decree. The final SSES Plan, as approved by EPA or as determined through the dispute resolution process, as the case may be, shall be placed in the Public Document Repository.

F. Sewer System Evaluation Survey Reports: Phase I

1. The County shall implement the tasks required for each SSES according to the technical recommendations contained in each final I/I Report and in accordance with the final SSES Plan. The SSES work will be done in several stages as indicated below. The draft SSES Report for the Cahaba Collection System shall be submitted to EPA no later than February 1, 1996. Draft SSES Reports for the Leeds and Trussville (including Trussville Industrial Park) Collection Systems shall be submitted to EPA no later than June 1, 1996. The draft SSES Report for the entire portion of the Village Collection System which lies to the east of the Village Creek WWTP, including the Subsystem that flows to the Ensley Lift Station, which represents a total of approximately 3,200,000 linear feet, shall be submitted to EPA no later than September 1, 1996. The draft SSES Report for the

remainder of the Village Collection System (i.e., the Black Creek, Second Creek, and Corbet Branch Subsystems) shall be submitted to EPA no later than January 1, 1998. The draft SSES Reports for the portion of the Valley Collection System which lies in the natural drainage basin for the Valley Creek Collection System, including Subsystems in downtown Birmingham, Southside/University of Alabama-Birmingham (UAB), Opossum Branch, Hueytown, Bessemer, and all Subsystems flowing into Five Mile Creek West Pump Station, which represents a total of approximately 2,250,000 linear feet, and the portion of the Five Mile Collection System which lies upstream of the Barton Branch diversion structure, which represents approximately 700,000 linear feet, shall be submitted to EPA no later than March 1, 1993. The draft SSES Reports for the remainder of the Valley and Five Mile Collection Systems and for all of the Turkey, Prudes and Warrior Collection Systems shall be submitted to EPA no later than July 1, 2000. If, during the review of I/I Reports, the County and EPA identify specific areas as sources of Excessive Inflow, the County agrees to initiate a visual inspection of those areas. This effort would be made to determine any obvious deficiencies/deterioration such as missing manhole lids or collapsed pipe. Should significant and obvious defects become evident as a result of these inspections, the County agrees to perform the necessary repair(s) to any part of the County Collection System other than those owned by Non-participating Municipalities (as defined in Subparagraph P.4 of Section VII),

if any, without waiting for the completion of scheduled SSES activities.

2. Each SSES Report shall include all results of the SSES analyses performed as a requirement of Paragraph E of this Section. Subject to Subparagraph E.1.k hereof, each SSES Report shall also provide a clear presentation, with adequate documentation, of the basis of the County's selection and prioritization of rehabilitation and correction efforts.

3. Each SSES Report shall include the following:

a. Quantification of the amount of inflow and infiltration in each Collection System and Subsystem and each connected municipal Collection System.

b. A characterization and quantification of the rehabilitation and corrective measures needed (e.g., feet of sewer needing to be lined, grouted, sliplined and replaced, and number of manholes repaired and replaced).

c. An estimate of the amount and percentage of infiltration and inflow expected to be removed as a result of rehabilitation and corrective measures.

d. A schedule for beginning and ending of the engineering design for the measures recommended and approved in the SSES Report. Such schedule shall include an intermediate date by which the County will submit to EPA an associated WTSCIP amendment, pursuant to Paragraph C of this Section.

4. EPA will evaluate and provide comments on each draft SSES Report within forty-five (45) days of receipt. The County shall respond to and address EPA's comments and submit a copy of each revised SSES Report to EPA for review within thirty (30) days of receipt of EPA's comments. Each revised SSES Report will include EPA's comments and appropriate County responses. Each revised SSES Report will be subject to EPA approval or disapproval within thirty (30) days of receipt. In the event such a revised SSES Report is disapproved by EPA, the parties shall proceed to dispute resolution pursuant to Section XIII of this Consent Decree. Each final SSES Report, as approved by EPA or as determined through the dispute resolution process, as the case may be, shall be placed in the Public Document Repository.

G. Waste Treatment System Capital Improvement Plan:
Phase I

1. Within one-hundred and fifty (150) days of the Date of Execution hereof by the County, as set forth in Subparagraph A.5 of this Section, an initial Waste Treatment System Capital Improvement Plan ("WTSCIP") shall be submitted to EPA for approval. The initial WTSCIP shall be amended upon approval of: each SSES Report, Capacity Improvement Schedule, and Performance Improvement Plan, as set forth in Paragraphs F, J and M of this Section. The recommendations of each SSES Report, Capacity Improvement Schedule and Performance Improvement Plan shall be incorporated into the respective amendments to the WTSCIP.

2. The WTSCIP will identify all on-going waste treatment system projects, including relief, replacement, rehabilitation, and expansion projects, and indicate how these projects relate to the goal of eliminating, consistent with the other provisions of this Consent Decree, Bypasses and Overflows. The WTSCIP will include all projects which the County has scheduled and will also identify all reasons for which the projects are being undertaken (e.g., elimination of Bypasses and Overflows, Infiltration/Inflow reduction, structural improvements, and expansion of the Collection System).

3. Amendments to the WTSCIP shall demonstrate how the proposed measures will achieve the benefits claimed. Depending on the project involved, this demonstration shall include analyses which directly link the proposed actions with the elimination of Bypasses or Overflows, consistent with other provisions of this Consent Decree.

4. The WTSCIP shall be amended to include schedules and estimated costs for the design, construction and rehabilitation activities reflected in the final SSES Reports, Capacity Improvement Schedules and Performance Improvement Plans. Such schedules shall be formulated so as to prioritize activities in order to address the areas with the most significant rehabilitative needs first. The WTSCIP and schedules will be laid out in a logical manner based on Collection Systems and Subsystems. The WTSCIP shall also include approximate schedules for other capital improvements.

5. Although projects (e.g., system expansions) not designed to eliminate Bypasses or Overflows, or essential for maintaining structural integrity, shall be included in the initial WTSCIP, nothing in this Consent Decree is intended to address such projects or their schedules. However, any projects undertaken shall not in any way limit the County's ability to comply with this Consent Decree. Furthermore, in the event that any such project increases the number or severity of Bypasses and Overflows, EPA reserves all of its enforcement rights.

6. EPA will evaluate and provide comments on the draft initial WTSCIP within forty-five (45) days of receipt. The County shall respond to and address EPA's comments and submit a copy of the revised initial WTSCIP to EPA for review within thirty (30) days of receipt of EPA's comments. The revised initial WTSCIP will include EPA's comments and appropriate County responses. The revised initial WTSCIP will be subject to EPA approval or disapproval within thirty (30) days of receipt. In the event the County's revised initial WTSCIP is disapproved by EPA, the parties will proceed to dispute resolution pursuant to Section XIII of this Consent Decree. The final initial WTSCIP, as approved by EPA or as determined through the dispute resolution process, as the case may be, shall be placed in the Public Document Repository.

7. WTSCIP amendments required upon EPA's approval of SSES Reports, Capacity Improvement Schedules and Performance Improvement Plans shall be submitted to EPA for approval by the

dates identified in such SSES Reports, Capacity Improvement Schedules and Performance Improvement Plans. Any modification of the WTSCIP necessitated by a change in project priority must be fully documented, Upon submittal of the WTSCIP amendments for the initial portion of the Valley Creek and Five Mile Creek Collection Systems, for which the draft SSES Reports are due by March 1, 1998, the County may petition EPA for an extension of the Phase III completion date. Such extensions will be limited to specific sewer replacement projects in the Valley Creek and Five Mile Creek Collection Systems. To obtain an extension, the County shall demonstrate that additional time is required because logistical or other factors make a staggered schedule necessary to reduce disruption to businesses and other concerns within the project area. Any approved extensions will be incorporated into the WTSCIP, as an amendment thereto, and will become enforceable under this Consent Decree.

8. The County may, at its own discretion and according to its own schedule, make modifications to the WTSCIP for projects not specifically covered by this Consent Decree (e.g., system expansions). These modifications are not subject to EPA approval, but shall be submitted to EPA and placed in the Public Document Repository. In the event that any such project increases the number or severity of Bypasses and Overflows, EPA reserves all of its enforcement rights.

9. EPA will evaluate and provide comments on each draft WTSCIP amendment within thirty (30) days of receipt, The

County shall respond to and address EPA's comments and submit a copy of each revised WTSCIP amendment to EPA for review within thirty (30) days of receipt of EPA's comments. Each revised WTSCIP amendment will include EPA's comments and appropriate County responses and will be subject to EPA approval or disapproval within fifteen (15) days of receipt. If any such revised WTSCIP amendment submitted by the County shall be disapproved by EPA, the parties will proceed to dispute resolution pursuant to Section XEII of this Consent Decree. Each final WTSCIP amendment, as approved by EPA or as determined through the dispute resolution process, as the case may be, shall be placed in the Public Document Repository.

H. Implementation of Phase III

1. Upon final approval of each Performance Improvement Plan and its associated amendment to the WTSCIP, the County shall implement all capital improvements and operational changes necessary to achieve permit compliance and to provide, whenever legally required, secondary treatment, an approved equivalent to secondary treatment, or other treatment in conformity with the Clean Water Act for all discharges from the County's wastewater treatment plants in accordance with the schedules approved under this Consent Decree.

2. Upon final approval of each SSES Report and Capacity Improvement Schedule and associated amendments to the WTSCIP, the County shall implement the rehabilitation and correction tasks within the County Collection System in

accordance with the schedules applicable under this Consent Decree.

3. Subject to Subparagraph A.4. of this Section VII, the County shall complete Phase III according to the following schedule:

September 1, 2003 -- The Cahaba, Leeds, and Trussville (including Trussville Industrial Park) Collection Systems and treatment plants.

September 1, 2003 -- The Village Creek treatment plant.

September 1, 2002 -- Projects for the elimination of the Barton Branch and Tarrant Branch diversion structures.

September 1, 2006 -- The entire portion of the Village Creek Collection System which lies to the east of the Village Creek WWTP, including the Subsystem that flows to the Ensley Lift Station.

September 1, 2004 --- The remainder of the Village Creek Collection System.

September 1, 2005 --- The Valley Creek and Five Mile Creek treatment plants.

September 1, 20426 -- The Valley Creek Collection System.

September 1, 2005 — The portion of the Five Mile Collection System which lies upstream of the Barton Branch diversion structure.

September 1, 2006 -- The remainder of the Five Mile Collection System.

September 1, 2007 -- The Turkey Creek, Prudes, and Warrior Collection systems and treatment plants.

4. The dates contained in subparagraph 3 above are based on the following assumptions: it will be necessary for the County to reline 30% of the sewers covered by this Consent Decree; a minimum of 15 relining crews will be continuously available to the County; the most time-consuming Phase III activity in each Complete Waste Treatment system will be those projects that require relining technology; and one crew can rehabilitate 40,000 linear feet of sewer line per year. If the County as a result of information contained in or obtained from completed SSES's, actual field work performed, or actual experience attempting to contract for sewer rehabilitation, can document that any one of the assumptions described above, or another factor pertinent to design and construction for Phase III work activities which significantly affects the time necessary for completion of such activities, is substantially unreasonable such that any applicable Phase III completion date is thus not

reasonably attainable, the County shall have the right to request a modification of such schedule. EPA shall evaluate the request, and may agree to change the schedule if it is persuaded that the County's experiences warrant the alteration. Within thirty (30) days of receipt of a request for such modification, EPA may inform the County whether such modification is approved or disapproved. If EPA does not respond within thirty (30) days, the request shall be deemed disapproved. If EPA disapproves a request pursuant to this Subparagraph, the County shall have thirty (30) days from the date of such disapproval to invoke the dispute resolution provisions of Section XIII of this Consent Decree. Nothing in this Subparagraph shall be deemed to permit an extension of any date in Subparagraph 11.3 beyond February 1, 2008.

5. After the completion of Phase III at each wastewater treatment plant and in each Collection System, the County shall evaluate the effectiveness of the rehabilitative work completed. The County shall have one year after the last scheduled completion date, for each such wastewater treatment plant and Collection System, to evaluate system performance. Based upon the results of these evaluations, the County may, during each such one year period, petition EPA for an extension of the then applicable Phase III completion dates. In the event that EPA denies such a petition, the dispute resolution provisions of Section XIII shall apply. Nothing in this

Subparagraph shall be deemed to permit an extension of any date in Subparagraph H.3 beyond February 1, 2008.

I. Capacity Analysis Plan: Phase I

1. Within one-hundred and sixty-five (165) days of the Date of Execution by the County, as set forth in Subparagraph A.5 of this Section, the County shall submit to EPA for approval a draft Capacity Analysis Plan. This Capacity Analysis Plan will describe how the County will, concurrent with its SSES activities; undertake an engineering study to comprehensively evaluate the hydraulic capacities of each Collection System. The comprehensive analyses will be carried out so that not only existing limitations on flow through each Subsystem will be identified, but also peak capacity of all significant portions of each Collection System will be estimated.

2. These analyses shall be carried out using sound engineering practice. The County shall provide details on the methodology to be used (e.g., Manning/Chezy) and whether that methodology will be carried out using manual computations or computerized modeling. If computerized modeling is to be used for some or all of these analyses, the software package(s) to be used shall be described in detail. In either case, both the overall approach proposed, and the specific analyses to be applied to each "category" of Collection System component shall be described in detail.

3. EPA will evaluate and provide comments on the draft Capacity Analysis Plan within forty-five (45) days of receipt.

The County shall respond to and address EPA's comments and submit a copy of the revised Capacity Analysis Plan to EPA for review within thirty (30) days of receipt of EPA's comments. The revised Capacity Analysis Plan will include EPA's comments and appropriate County responses. The revised Capacity Analysis Plan will be subject to EPA approval or disapproval within thirty (30) days of receipt. In the event the County's revised Capacity Analysis Plan is disapproved by EPA, the parties will proceed to dispute resolution pursuant to Section XIII of this Consent Decree. The final Capacity Analysis Plan, as approved by EPA or as determined through the dispute resolution process, as the case may be, shall be placed in the Public Document Repository.

J. Capacity Analysis Reports and Capacity Improvement Schedules:Phase II

1. Concurrent with scheduled Sewer System Evaluation surveys for each Collection System, as set forth in the Capacity Analysis Plan, the County shall carry out an analysis for each Collection System, including connected municipal systems. These analyses shall determine the capacity of each critical segment and of typical laterals (not including house service laterals) in each Collection System. Detailed analyses shall be required for critical segments and all sewer lines eighteen inches (18") in diameter or greater. These analyses will consider worst-case (high flow/high groundwater) conditions and will consider all expected upstream and downstream influences on each reach of sewer, The County shall provide information on how the various

Collection System components will be modeled and describe all simplifying assumptions to be used in the modeling effort. For purposes of this paragraph, the term "critical segment" means a sewer line having a diameter of less than 18 inches and for which modeling indicates a surcharge condition.

2. The County shall develop and maintain a collection and transmission system model or models to: a) assist in the development and implementation of operation and maintenance procedures to optimize transmission capacity within the County Collection System; and b) evaluate the impact of Collection System Infiltration/Inflow rehabilitation projects, and proposed Collection System modifications, upgrades, and expansions on the transmission capacity and performance of the Collection Systems.

3. The Capacity Analysis Report for each Collection System shall include documentation of each of the items in Subparagraphs 1–2 of this Paragraph. The Capacity Analysis Report for each Collection System shall be submitted to EPA within ninety (90) days of submittal of the respective draft SSES Report.

4. The results of the Capacity Analysis Reports shall be incorporated into the determination of remedial measures for each respective Collection system, as set forth in the SSES Reports, and for each wastewater treatment plant, as set forth in the Performance Improvement Plans.

5. Within one hundred and eighty (180) days after each

Capacity Analysis Report is submitted to EPA, the County shall submit to EPA a draft Capacity Improvement Schedule for the Collection System analyzed in such report. Each draft Capacity Improvement Schedule shall include a schedule for the beginning and ending of the engineering design for capacity improvement projects necessary to address the capacity limitations identified in the Capacity Analysis Report for the relevant Collection System and an intermediate date for submittal to EPA of a WTSCIP amendment that includes a schedule for construction of such projects.

6. EPA will evaluate and provide comments on each draft Capacity Improvement Schedule within forty-five (45) days of receipt. The County shall respond to and address EPA's comments and submit a copy of each revised Capacity Improvement Schedule to EPA for review within thirty (30) days of receipt of EPA's comments. Each revised Capacity Improvement Schedule will include EPA's comments and appropriate County responses. Each Capacity Improvement Schedule will be subject to EPA approval or disapproval within thirty (30) days of receipt. In the event such a revised Capacity Improvement Schedule is disapproved by EPA, the parties will proceed to dispute resolution pursuant to Section XIII of this Consent Decree. Each final Capacity Improvement Schedule, as approved by EPA or as determined through the dispute resolution process, as the case may be, shall be placed in the Public Document Repository.

K. Reporting of Un-permitted Discharge Events: Phase I

1. Within one-hundred and fifty (150) days of the Date of Execution hereof by the County, as set forth in Subparagraph A.5 of this Section, the County shall develop, and submit to EPA, a tracking and reporting program (for reports to EPA) regarding un-permitted discharges of wastewater, Sanitary Sewer Overflows (SSO's), and Bypasses. The tracking and reporting program shall provide that reports contain at least the following information: i) the cause of the discharge (known or suspected causes); ii) estimated volume (if determinable); iii) description of the source (e.g., manhole, pump station); iv) identification of the Collection System that overflowed (i.e., which County or Municipal system); v) location, by street address or any other appropriate method; vi) date of event; vii) ultimate destination of the flow (e.g., name of surface waterbody, land use location, name of surface waterbody via municipal separate storm sewer system (reference location by basin and street address and/or cross streets)); viii) corrective actions or plans to eliminate future discharges; ix) name and title of person reporting the discharge; x) weather conditions; and xi) a certification statement, similar to the statement in Discharge Monitoring Reports, concerning the accuracy of the information.

2. The County shall develop a form containing the elements described in Subparagraph 1 above, and that form shall be used by County personnel to log all un-permitted discharges reported to the County or observed by County personnel. The

County shall provide on-going training to its personnel concerning the completion of these forms and the importance of reporting any un-permitted discharge. The information collected from these forms shall be entered into a computerized database maintained by the County. This database shall be in a format compatible with dBase III for IBM PC Computers, or in a database agreed upon by the parties.

3. An example of the un-permitted discharge form shall be submitted to EPA, along with a statement certifying that the training of personnel has been conducted, within one-hundred and fifty (150) days of the Date of Execution by the County, as set forth in Subparagraph A.5 of this Section. The form shall contain all of the requirements set forth in Subparagraph K.I. of this Section.

4. No later than thirty (30) days following the end of the last full month that begins within one-hundred and eighty (180) days of the Date of Execution by the County, as set forth in Subparagraph A.5 of this Section, the County shall begin to provide EPA and Citizen Plaintiffs with monthly summaries of the information collected pursuant to Subparagraphs 1-3 of this Section. These reports shall also be placed in the Public Document Repository. Such reports will thereafter be due on a monthly basis, within thirty (30) days of the close of the month for which the report is submitted. Beginning within three-hundred and sixty-five (365) days of the Date of Execution by the County, as set forth in Subparagraph A.5 of this Section, the

County shall submit these reports in hard copy to the Public Document Repository and in hard copy and disk format to EPA. Data collected pursuant to this Paragraph prior to the development of an electronic database shall be entered into the database. These reports to EPA do not take the place of requirements for reporting to ADEM pursuant to the terms of the County's National pollutant Discharge Elimination System (NPDES) permits or any Administrative Order in effect.

L. Comprehensive performance Evaluation Plan: Phase I

1. within one-hundred and thirty-five (135) days of the Date of Execution by the County, as set forth in Subparagraph A.5 of this Section, the County shall develop and submit a draft plan, the Comprehensive Performance Evaluation Plan ("CPE Plan") to optimize wastewater treatment efficiency and effectiveness at all of the County's wastewater treatment plants, excluding Trussville Industrial Park. The CPE Plan shall be completed using procedures compatible with EPA's Composite Correction Program ("CCP"), as described in EPA's Improving POTW Performance Using the Composite Correction Approach, EPA CERL, October 1984, and EPA's Retrofitting POTWs, EPA CERL, July 1989.

2. The draft CPE Plan shall consist of: a narrative describing the results of preliminary surveys of the operations and performance of each of the County's wastewater treatment plants; recommendations as to the level of Comprehensive Performance Evaluation ("CPE") to be performed at each plant;

descriptions of the models or techniques of evaluation to be utilized; and a preliminary schedule for performing the evaluations.

3. The County shall analyze the results of such preliminary surveys and determine whether the type or level of preliminary CPE to be conducted at each wastewater treatment plant will be an overall performance analysis, including a hydraulic analysis, or a hydraulic analysis by itself. The hydraulic analysis shall determine each plant's ability to handle and treat wastewater under peak flow conditions. The County shall justify the proposed level of CPE to be performed for each plant.

4. The initial investigation results and all supporting documentation shall be submitted to EPA for review and approval.

5. EPA will evaluate and provide comments on the draft CPE Plan within forty-five (45) days of receipt. The County shall respond to and address EPA's comments and submit a copy of the revised CPE Plan to EPA for review within thirty (30) days of receipt of EPA's comments. The revised CPE Plan will include EPA comments and appropriate County responses. The revised CPE Plan will be subject to EPA approval or disapproval within thirty (30) days of receipt. In the event the County's revised CPE Plan is disapproved by EPA, the parties will proceed to dispute resolution pursuant to Section XIII of this Consent Decree. The final CPE Plan, as approved by EPA or as determined through the

dispute resolution process, as the case may be, shall be placed in the Public Document Repository.

M. Comprehensive Performance Evaluations and Performance Improvement Plans: Phase II

1. The County shall complete and submit all CPE's, as set forth in the CPE Plan, no later than two-hundred and seventy (270) days from the date on which the CPE Plan becomes final.

2. Each CPE shall include an evaluation of the following for each of the County's wastewater treatment plants:

- a) hydraulic or overall design capabilities and limitations as set forth in the final CPE Plan;
- b) administrative and managerial procedures;
- c) operational procedures; and
- d) maintenance practices.

The CPE shall be completed in accordance with procedures compatible with EPA's Improving POTW Performance Using the Composite Correction Approach, EPA CERL, October 1984, and EPA's Retrofitting POTWs, EPA CERL, July 1989. The County shall utilize appropriate modeling techniques (e.g., the POTW Expert model or existing engineering reports less than five years old) to analyze wastewater treatment processes for each of the County's wastewater treatment plants.

3. The County shall submit to EPA, according to the schedule approved in the final CPE Plan, draft CPE Reports which set forth the results of the CPE's. Supporting data shall be submitted with each draft CPE Report.

4. EPA will evaluate and provide comments on each draft CPE Report within thirty (30) days of receipt. The County shall respond to and address EPA's comments and submit a copy of

each revised CPE Report to EPA for review within thirty (30) days of receipt of EPA's comments. Each revised CPE Report will include EPA's comments and appropriate County responses. Each revised CPE Report will be subject to EPA approval or disapproval within thirty (30) days of receipt. In the event that such a revised CPE Report is disapproved by EPA, the parties will proceed to dispute resolution pursuant to Section XIII of this Consent Decree. Each final CPE Report, as approved by EPA or as determined through the dispute resolution process, as the case may be, shall be placed in the Public Document Repository.

5. Within one-hundred and eighty (180) days after submittal of each such draft CPE Report, the County shall submit to EPA, based on the findings of the respective CPE, a draft Performance Improvement ("PI") Plan for such CPE. Each draft PI Plan shall include anticipated future remedial measures for the respective County wastewater treatment plant. Such remedial measures shall include both capital improvements and operational changes necessary to achieve permit compliance and, consistent with the other provisions of this Consent Decree, eliminate Bypasses. Each draft PI Plan for the respective County wastewater treatment plant shall include a cost analysis of the remedial measures chosen and how those costs compare to the cost of alternative remedial measures, if any, not selected. In addition, each draft PI Plan shall set forth a schedule for the beginning and ending of the engineering design for the remedial measures necessary to achieve permit compliance and eliminate

Bypasses at the relevant wastewater treatment plant, and an intermediate date for submittal to EPA of a WTSCIP amendment that includes a schedule for the implementation and completion of each such remedial measure. In instances where remedial measures are planned because of hydraulic capacity limitations, such measures must be consistent with the results of the I/I analysis and SSES for the associated Collection System.

6. The County may propose and obtain approval from the proper permitting authority for the handling of peak flows at its wastewater treatment plants. Such peak flow processes shall comply with all applicable federal standards and any other restrictions, such as frequency of use, that are imposed by the permitting authority. If the County proposes, but fails to obtain approval from the permitting authority for a peak flow process or processes, the County may then seek additional time to complete the rehabilitation necessary to achieve the level of treatment required by the permitting authority. Such petition shall provide cost estimates for any necessary additional treatment and comparative rehabilitation cost estimates and schedules. Such petition must be submitted and may be approved as part of each PI Plan.

7. EPA will evaluate and provide comments on each draft PI Plan within forty-five (45) days of receipt. The County shall respond to and address EPA's comments and submit a copy of each revised WI Plan to EPA for review within thirty (30) days of receipt of EPA's comments. Each revised Pt Plan will include

EPA's comments and appropriate County responses. Each revised PI Plan will be subject to EPA approval or disapproval within thirty (30) days. In the event such a revised PI Plan is disapproved by EPA, the Parties will proceed to dispute resolution pursuant to Section XIII of this Consent Decree. Each final PI plan, as approved by EPA or as determined through the dispute resolution process, as the case may be, shall be placed in the Public Document Repository.

N. Water Quality Monitoring Plan: Phase I

1. Within one-hundred and eighty (180) days of the Date of Execution by the County, as set forth in Subparagraph A.5 of this Section, the County shall submit to EPA for approval a draft Water Quality Monitoring Plan which will describe a Water Quality Monitoring Program to assess stream quality within the County, as such stream quality may be influenced by discharges from the County's Complete Waste Treatment Systems, and to track improvements in stream quality.

2. The proposed Water Quality Monitoring Program shall consist of weekly sampling upstream and downstream from all County wastewater treatment plants, upstream and downstream from all automatic Overflow points (e.g., Barton Branch and Hurricane Branch) and other selected locations within the County.

Monitoring locations within the County shall be selected so as to provide adequate coverage of all major streams influenced by discharges from the County's Complete Waste Treatment Systems. The County may use existing monitoring stations if they conform

to the requirements of this Paragraph N. The County may use data collected from other sources (e.g., State or EPA monitoring stations), provided that these stations conform to this Paragraph N and the proposed source for the data is noted in the draft Water Quality Monitoring Plan. The County shall submit a map showing existing and proposed monitoring locations and a schedule for implementing the monitoring program.

3. Monitoring shall include sampling for fecal coliform, dissolved oxygen, conductivity, pH and turbidity. Rainfall data shall also be collected at representative locations within the County. Sampling and testing procedures shall conform to standard protocols, and include quality assurance and quality control procedures. Sampling and testing procedures and references shall be clearly documented in the draft Water Quality Monitoring Plan.

4. All data collected will be submitted by the County for use in the STORET database.

5. EPA will evaluate and provide comments on the draft Water Quality Monitoring Plan within thirty (30) days of receipt. The County shall respond to and address EPA's comments and submit a copy of the revised Water Quality Monitoring Plan to EPA for review within fifteen (15) days of the County's receipt of EPA's comments. The revised Water Quality Monitoring Plan will include EPA's comments and appropriate County responses. The revised Water Quality Monitoring Plan will be subject to approval by EPA within fifteen (15) days of receipt. In the event the County's

revised Water Quality Monitoring Plan is disapproved by EPA, the parties will proceed to dispute resolution pursuant to Section XIII of this Consent Decree. The final Water Quality Monitoring Plan, as approved by EPA or as determined through the dispute resolution process, as the case may be, shall be placed in a Public Document Repository.

O. Water Quality Monitoring Program: Phase III

1. Within ninety (90) days after the date on which the Water Quality Monitoring Plan becomes final, the County shall implement the Water Quality Monitoring Program.

2. For each Complete Waste Treatment System, the County shall continue the Water Quality Monitoring Program, as developed in accordance with Paragraph N, for a period of one year after the completion of the corresponding Phase III capital improvements and operational changes for such Complete Waste Treatment System as developed in accordance with Paragraph G, the Waste Treatment System Capital Improvement Plan.

3. EPA will use the data collected to evaluate the effectiveness of the County's efforts to eliminate, consistent with other provisions of this Consent Decree, Bypasses and overflows.

P. Plan for Collection system Operation and Maintenance: Phase III

1. Within thirty (30) days of the date on which the last SSES Report becomes final, the County shall submit to EPA, for approval, a draft Collection System Operation and Maintenance

("O & M") Plan for the operation and maintenance of the County Collection System.

2. The O & M Plan shall describe the implementation of a maintenance program for the County Collection System and shall include schedules for routine inspections, corrective maintenance response and reporting procedures, staffing and resource commitments, and a system that tracks actual tasks performed.

3. The O & M Plan shall include a map showing all permanent flow monitoring locations. It shall also include provisions describing the circumstances under which the County would use temporary flow monitoring.

4. The O & M Plan shall include proposed sewer repair and rehabilitation measures and the conditions under which they will be used. These measures are long-term maintenance practices beyond those required by each SSES.

5. The O & M Plan shall include operation and maintenance procedures for all of the County's pump stations.

6. EPA will evaluate and provide comments on the draft O & M Plan within forty-five (45) days of receipt. The County shall respond to and address EPA's comments and submit a copy of the revised O & M Plan to EPA for review within thirty (30) days of receipt of EPA's comments. The revised O & M Plan will include EPA's comments and appropriate County responses. The revised O & M Plan will be subject to approval or disapproval by EPA within thirty (30) days of receipt. In the event the County's revised O & M Plan is disapproved by EPA, the parties

will proceed to dispute resolution pursuant to Section XIII of this Consent Decree. The final O & M Plan, as approved by EPA or as determined through the dispute resolution process, as the case may be, shall be placed in the Public Document Repository.

Q. Reporting Requirements

1. Beginning within the thirty (30) days of the close of the first full Calendar Quarter following the Date of Lodging of this Consent Decree, and each subsequent Calendar Quarter, the County shall submit to EPA and simultaneously place in the Public Document Repository, a report containing the following information pertaining to the Calendar Quarter just concluded: the current status of the remedial actions specified in Paragraphs A through P of Section VII of this Consent Decree, % progress made with respect to such remedial actions since the last report, the number of Sewer Impact Connection Permits issued and fixtures permitted in each Collection System, and a description of compliance or non-compliance with the requirements of this Consent Decree and, if applicable, include reasons for non-compliance. This report shall also include a summary of the work projected to be performed pursuant to this Consent Decree during the then-current Calendar Quarter. Notification to EPA pursuant to this Paragraph of any anticipated delay, shall not, by itself, excuse the delay.

2. Additional reporting requirements are contained in Subparagraphs K.4 and N.4 of this Section.

R. Municipalities

1. Pursuant to the Clean Water Act, the County has assumed responsibility as a National Pollutant Discharge Elimination System permit holder and as the designated Section 201, 33 U.S.C. § 1281, planning agency. As such, the County is responsible for the operation and maintenance of several Complete Waste Treatment Systems. To insure proper operation and maintenance of the Collection Systems associated with these Complete Waste Treatment Systems, the County must control Infiltration and Inflow through a program of sewer system rehabilitations, sewer replacements, and other actions as set forth in this Consent Decree. The parties recognize that sewage collection and treatment activity in Jefferson County has heretofore been divided between the County and the Municipalities, with the Municipalities generally owning the Collection Systems that serve residences and businesses within the Municipalities' boundaries, and the County owning the major collection lines (trunk lines) and wastewater treatment plants.

2. Subject to Subparagraphs 4 and 5 of this Paragraph R, the County proposes the establishment of a unified system which will include all Collection Systems served by any of the County's wastewater treatment plants, regardless of whether such Collection Systems are situated in Municipalities that are within or outside of Jefferson County.

3. In recognition of these matters, and to achieve the objectives of this Consent Decree, including the timely

implementation of the proposed unified system, the County shall within sixty (60) days of the Date of Lodging of this Consent Decree initiate all steps necessary to implement such a unified system for the purpose of eliminating or otherwise controlling, in conformity with the other provisions of this Consent Decree, overflows and the unauthorized discharge of wastewater from the Collection Systems of each of the Municipalities served by the County. The objectives referred to herein shall be achieved through the direction, control, rules and regulations of the County, and pursuant to such ordinances, resolutions, regulations and/or contracts as the County deems necessary and appropriate, including the County's authority to suspend and/or terminate connections to the County Collection System. This Consent Decree may be an exhibit to any contract between the County and a Municipality and/or can be specifically referenced in any ordinance, resolution, rule or regulation pertaining to Section VII of this Consent Decree, with particular reference to Paragraphs H and K.

4. For purposes of this Section VII, the term "Non-participating Municipality" shall refer to any Municipality which has not been joined into the proposed unified system described in Subparagraph 2 above.

5. the parties further recognize that for one or more Municipalities implementation of the proposed unified system may not be completed within the time frame necessary for meeting various requirements of this Consent Decree or that the unified

system is unachievable for such Non-participating Municipality or Municipalities. When the County determines that either circumstance is present, it will proceed as follows if the Non-participating Municipality (or Municipalities) owns a Collection System, or a Subsystem that is a component of such a Collection System, for which the corresponding SSES Report indicates that rehabilitation is necessary:

a. Within one hundred-eighty (180) days of approval of the subject SSES Report, the County shall use its best efforts to obtain such Non-participating Municipality's duly authorized commitment in writing to perform the design and construction necessary to reduce Infiltration and Inflow in the Non-participating Municipality's Collection System or Subsystem, and to the extent recommended by the applicable SSES Report(s) and Capacity Analysis Report(s). The commitment shall include completion dates for such design and construction that will allow for the County to meet the corresponding time requirements set out in this Consent Decree.

b. In the event that the County fails to obtain a Non-participating Municipality's commitment, as described in the previous Subparagraph, the County will suspend issuance of sewer connection permits within such Non-participating Municipality. Such suspension by the County will continue and if from time to time relaxed it may thereafter be reinstated until such time as the commitment referred to in the previous Subparagraph is obtained and performance hereunder proceeds under conditions and

on a schedule acceptable to the County. The suspension shall not be an exclusive remedy and shall not constitute any waiver of any other remedy available to the County to require such Non-participating Municipality's commitment and performance hereunder.

S. Contingent Authority

1. Failure by the County due to an inexcusable delay to meet an applicable critical Path End Date shall result, subject to the provisions of this paragraph, in the suspension of new sewer connections in the County, provided that such suspension shall be limited to the individual Collection System or Subsystem affected.

2. For purposes of this Paragraph 5, an "inexcusable delay" shall mean any delay which the County could have avoided through the exercise of due diligence and which is not the result of a force majeure event. Such suspension shall take place if due to inexcusable delay: (1) the County fails to complete Phase III rehabilitation and correction tasks in accordance with the applicable schedule, and Overflows or unauthorized Bypasses occur within a Collection System affected by such failure; or (2) the County fails to complete Phase III wastewater treatment plant construction in accordance with the applicable schedule, and unauthorized bypassing of untreated or partially treated wastewater occurs at the affected wastewater treatment plant.

3. Failure by the County to complete construction of facilities designed to eliminate the Automatic Bypasses at

Hurricane Branch, Old Rocky Ridge Road (Horse Farm), Barton Branch, Tarrant Springs Branch, Watkins Branch and any other Automatic Bypasses, as identified through Phase II SSES work and thereafter set forth in the Phase III construction schedule, shall result in suspending new connections to the individual Collection System or Subsystems affected.

4. In the event the conditions identified above in Subparagraphs 1-3 exist, EPA shall invoke the suspension of new sewer connections as set forth above. Such suspension shall not take effect for ten (10) days from the date EPA notifies the County of EPA's decision to invoke suspension. Such suspension shall remain in effect until the construction is completed and, if applicable, Bypasses have been eliminated, unless EPA determines that the suspension can be lifted prior to the completion of construction.

5. If the County disputes EPA's determination to invoke such suspension, it may invoke dispute resolution pursuant to Section XIII. The County will bear the burden of proving that the delay at issue was not inexcusable.

VIII.

SUPPLEMENTAL ENVIRONMENTAL PROJECT

A. Preface

In consideration of the settlement of the enforcement action under the Clean Water Act resolved by this Consent Decree, the County shall complete the Supplemental Environmental Project ("SEP") as described below. The County will fully and faithfully

perform all obligations and observe or fulfill all conditions with respect to the SEP as set forth in this Consent Decree. All provisions of the Master Plan (See Paragraph F of this Section VIII) are hereby incorporated by reference and made a part of this Consent Decree as if they were fully set out herein, and any failure of the County to perform any obligation, or to observe or fulfill any condition, with respect to the SEP that is contained in the Master Plan shall be deemed a failure to comply with the requirements of this Consent Decree.

B. Description of Project

1. The County agrees to acquire and maintain protected areas or Greenways along selected portions of the Designated Rivers. These properties or Greenways will be held in perpetuity to restore, protect and enhance the water quality of, and to reduce and/or prevent erosion and non-point source pollution loads from entering the Designated Rivers, such that the Designated Rivers may be maintained in, or be restored to, their natural condition.

2. It being acknowledged that the County discharges effluent from its Complete Waste Treatment System into the Designated Rivers, the primary environmental purpose of the SEP will be to restore, protect and enhance the water quality of, and to reduce and/or prevent erosion and non-point source pollution loads from entering the Designated Rivers, by setting aside land in perpetuity for the protection of the Designated Rivers. The parties hereto recognize that the SEP, taken together with the

sewage treatment remedies mandated by this Consent Decree, will improve the water quality of the Designated Rivers and reduce the overall potential adverse environmental impact. A secondary benefit shall be to protect, restore, and enhance aquatic and stream corridor habitats of the Designated Rivers.

C. General Obligations

1. The County hereby agrees to spend \$30 million (together with such interest as shall be earned thereon) in accordance with the funding and expenditure provisions of this Section VIII to implement a SEP to reduce or prevent pollution, primarily non-point source, to the Designated Rivers.

2. To accomplish this project, the County shall, in accordance with the final Master Plan:

- a. acquire interests in selected portions of land within the corridors of the Designated Rivers;
- b. protect and restore those lands and adjacent Designated Rivers; and
- c. retain ownership interests in the acquired lands or enter into an agreement with a suitable corporate or governmental entity that will ensure that the acquired property is perpetually maintained as a protected area through conservation easements, deed restrictions and covenants.

3. The County hereby certifies that, as of the Date of Entry of this Consent Decree, it is not required to perform or

develop the SEP by any federal, state or local law or regulation; nor is the County required. To perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or in compliance with state or local requirements. The County further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

4. Any failure by the County to perform in a timely manner any obligations of the SEP, as set forth herein, or any obligation subsequently established in the final Master Plan, shall constitute a violation of this Consent Decree and shall be subject to stipulated penalties as provided in Section XI herein. Whether the County has complied with the terms of the SEP as required herein and pursuant to the Master Plan shall be a determination within the sole discretion of EPA.

5. The parties to this Consent Decree understand (i) that the Water Works and Sewer Board of the City of Birmingham (the "Birmingham Water Board") is a public corporation the governing body of which is appointed by the Council of the City of Birmingham ("Birmingham") and (ii) that the Birmingham Water Board owns substantial stretches of land adjacent to the Cahaba River and its tributaries which either constitute watershed properties or properties held for other corporate purposes. As a part of the County's obligations in connection with the SEP, the County hereby undertakes to use its best efforts to influence Birmingham and the Birmingham Water Board to include its land

adjacent to the Cahaba River and its tributaries in the system of Greenways to be developed pursuant to this Section VIII. The County shall be obligated to attempt to obtain the agreement and cooperation of Birmingham with respect to the common objective of influencing the Birmingham Water Board to establish Greenways along the Cahaba River and its tributaries using the land now owned by the Birmingham Water Board. The inclusion of land owned by the Birmingham Water Board in a comprehensive Greenway system shall be accomplished by conveying either fee interests or permanent conservation easements in trust to a trustee selected or established by Birmingham and the Birmingham Water Board. The Greenways created from lands owned by the Birmingham Water Board shall comply with the standards and conditions of this Section VIII and the Master Plan and shall, to the extent possible, constitute a functional part of the Greenway system to be created pursuant to the SEP, but such Greenways need not be under common legal ownership with the Greenways created pursuant to the SEP unless that is the desire of Birmingham and the Birmingham Water Board. The trustee of land or easements dedicated to the Greenway system by the Birmingham Water Board need not be the County or the Land Trust created pursuant to Paragraph I of this Section viii, and it may be any private not-for-profit corporation, public corporation or corporate trustee acceptable to Birmingham and the Birmingham Water Board. The value of any land or conservation easements committed for Greenways by the Birmingham Water Board shall not be credited against the County's

obligation to fund the SEP as provided in this Section VIII. The County acknowledges that it expects to assume the ownership and rehabilitation of Birmingham's sewer system in implementing this Consent Decree and is expected to use its best efforts to obtain in consideration for such undertaking by the County, the cooperation of Birmingham in influencing the Birmingham Water Board to include its land along the Cahaba River and its tributaries in a comprehensive Greenway system.

D. Funding and Expenditures

1. By resolution dated August 29, 1995, the County adopted a unified investment policy for all County funds (the "Investment Policy"). Pursuant to the Investment Policy, the County entered into an agreement with a custodian/trustee for the County's funds (the "Trust Agreement"). The County also entered into an agreement with an investment advisor (the "Investment Advisor Agreement") to act as the investment manager for the County's funds (the "Investment Account"). The Investment Policy, Trust Agreement and Investment Advisor Agreement are reproduced in the Appendix to this Consent Decree. In order to fund the SEP, the County shall establish one or more separate sub-accounts within the Investment Account, pursuant to the terms of the Trust Agreement (the "SEP sub-account"). The SEP sub-account funds shall be invested in the manner and only in the manner set forth in the Investment Policy. Investment in financial obligations of the County are to be excluded from the SEP sub-account. Unexpended balances of the SEP sub-account

shall be kept continuously invested, and the interest income shall be added to the corpus of the SEP sub-account for implementation of the SEP and for those purposes set forth in Subparagraph D.7 of this Section VIII; provided that normal and customary fees not to exceed one-half (1/2) of one (1) percent per annum of the average daily balance of the SEP sub-account, as calculated pursuant to the Investment Advisor Agreement, may be paid from such earned interest to the trustee and the investment as advisor. The County shall submit a draft of the documents establishing the SEP sub-account to EPA for review and approval within thirty (30) days of the Date of Entry. EPA shall conduct its review of such documents and provide its comments to the County within sixty (60) days of the Date of Entry. The County shall incorporate EPA's comments into the final SEP sub-account documents and shall establish such sub-account within thirty (30) days following receipt of EPA's comments. Since the County relies upon the Trust Agreement and the Investment Advisor Agreement for the investment of funds of the County other than those committed to the SE?, nothing contained in this Consent Decree shall be construed to prevent the County from changing the terms and conditions of the Trust Agreement or the Investment Advisor Agreement, or to substitute different parties thereunder to serve as custodial trustee or investment advisor, or to change the Investment Policy, or to comply with state law that may require modifications to such agreements or the procedures followed by the County with respect to the investment of its

funds; provided, however, that no change shall be made in the investment and management of funds held in the SEP sub-account as herein established and approved by EPA without the further approval of EPA or the order of this Court. All of the County's obligations under the SEP remain binding and enforceable irrespective of the County's Investment Policy, Trust Agreement and/or Investment Advisor Agreement.

2. Within six (6) years of the Date of Entry, the County shall deposit \$30 million in cash for implementation of the SEP in the SEP sub-account as follows:

a. at least \$3 million will be deposited in the SEP sub-account upon establishment thereof, with the balance to be deposited in accordance with such schedule as the County deems appropriate; provided that aggregate annual amounts of not less than \$5 million shall be deposited by the anniversary of the Date of Entry for each of the six years during which the trust is to be fully funded (the County may include the \$3 million initial deposit to the SEP sub-account for purposes of satisfying the \$5 million minimum deposit requirement for the first year of this six-year period); provided further that the County may accelerate the deposit of any required installment in the SEP sub-account, or increase the amount thereof, in which case the County shall

receive credit against a future installment or installments of the County's choosing to the extent of such acceleration or increase; and

b. interest or other income from the investment of unexpended balances held in the SEP sub-account shall not be credited against the \$30 million commitment of the County.

3. The County or its authorized agent may withdraw money from the SEP sub-account to implement the SEP only for the following purposes, all of which are further subject to EPA approval:

- a. preparing, managing, and implementing the Master Plan;
- b. acquiring property and conservation easements;
- c. restoring any aquatic habitat or acquired property to suitable condition to meet the SEP's purposes;
- d. the acquisition of up to 300 acres of forested land that is located in the watershed of the Cahaba River adjacent to Ruffner Mountain Park, such land to be maintained in its natural state as part of Ruffner Mountain Park pursuant to agreement between the County and the City of Birmingham;

- e. the development of a conservation and land use plan for property surrounding Bayview Lake on Village Creek, which plan shall constitute part of the Master Plan and shall be coordinated with efforts of the State of Alabama and other public and private entities to establish one or more forested parks or nature preserves adjacent to Bayview Lake; provided that no monies from the SEP sub-account may be used for the construction of improvements such as roads for automobile traffic, buildings, or recreational facilities such as beaches, swimming pools, playing fields, viewing stands, picnic shelters or similar improvements; and
- f. payment of the cost of other implementation activities, except to the extent that such activities are performed by the County's regular personnel, equipment or facilities.

4. The County shall, within one (1) month of the Date of Entry, develop and submit a budget for:

- a. the preparation of the Master Plan, including the amounts to be allocated to the employment of consultants and the use of special services that will not be provided by the County; and

b. the employment of personnel and the purchase of services and equipment that will not be provided through the regular personnel and facilities of the County.

5. None of the principal of the \$30 million corpus that the County deposits in the SEP sub-account nor any interest earned thereon, except as set forth in Subparagraph D.7 below, may be used for operation and maintenance of Greenway properties, those costs being borne by the County.

6. Expenditures from the SEP sub-account shall be limited to no more than 10% of the total \$30 million corpus for costs associated with the purposes described in any of Subparagraphs a, d and e of Subparagraph D.3 above.

7. At the end of the ten (10) year implementation period, and after the County has satisfactorily completed all of its obligations under this Consent Decree, any remaining interest accrued in the SEP sub-account shall be used by the County to operate and maintain the acquired Greenway property and for operating expenses of the Black Warrior-Cahaba Land Trust. Such funds may also be used to acquire additional Greenway property or to reimburse the County for access areas previously acquired by the County (i.e., hiking and bicycle trails, picnic areas, canoe launch facilities and similar facilities).

E. Greenway Land Acquisition. Restoration and Restrictions

1. To be considered effective for non-point source pollution prevention or reduction, all property and easements

acquired under the final Master Plan must be contiguous with the Designated Rivers, with the exception of that acreage acquired pursuant to Subparagraph D.2.d of this Section VIII. These properties and easements shall generally extend laterally 150 feet from the top of the bank of the Designated Rivers, unless there are other standards identified in the Master Plan that require more or less distance from the river or tributary bank.

2. All property and easements acquired shall, after necessary restoration of the land, serve one or more of the following functions:

- a. prevention or reduction of point or non-point source pollution into one of the Designated Rivers;
- b. protection or improvement of the water quality in the Designated Rivers; and
- c. the protection of ecologically significant or environmentally sensitive areas and habitats surrounding the Designated Rivers.

3. The County shall not use SEP funds or the interest thereon, except as otherwise provided for in D.7 above, to acquire land to be developed for public access such as bike trails, hiking paths, picnic areas, canoe launch facilities and similar facilities. Except to the extent otherwise provided in the final Master Plan and with the approval of EPA, no more than 10% of the land area acquired may be developed for public access or use. Such public access or use must not cause or add to non-

point source pollution and must be compatible with the SEP's purposes. If such access or use causes or adds to non-point source pollution, or is otherwise incompatible with the objectives of the SEP, it shall be modified to satisfy the SEP objectives or such access or use shall be terminated.

4. Bicycle and hiking trails, canoe launch ramps and picnic facilities or other public access facilities shall be designed and constructed with non-point source pollution prevention as a primary consideration. Location and construction of such facilities shall be subject to EPA approval.

5. Any infrastructure for human activity within the Greenway lands shall be designed and constructed with prevention of non-point source pollution as the primary consideration.

6. If an easement is acquired as a Greenway property it should be perpetual or for the longest term possible.

7. Consistent with the other provisions of this Section VIII, once SEP property is acquired in accordance with the final Master Plan, such property may not be alienated or converted to other use by the County, regardless of state or local laws which might otherwise permit such alienation or conversion, provided that the foregoing does not preclude giving effect to the provisions of § 18-1A-72 (b), Code of Alabama (1975), in accordance with the terms thereof as in effect on the Date of Entry hereof. This will assure perpetual realization of the purposes for which the property was acquired as part of the SEP and will include such safeguards as the continued limitation

of public access in accordance with the final Master Plan and the prohibition of new or additional uses that increase pollution or interfere with the preservation of the property. In the event such new or additional access or uses increase pollution or interfere with the preservation of the property, such access or uses shall be modified or terminated as necessary to eliminate such increase in pollution or interference with preservation.

8. In the recorded documents by which the property is acquired pursuant to the SEP, either by easement or in fee, the document shall restrict such property's use by perpetual covenants running with the land so that it may not be, used for future purposes inconsistent with the SEP's purposes. As the County in its discretion determines appropriate, the Black Warrior-Cahaba Land Trust may hold and manage property and/or conservation easements acquired by the County as part of the SEP.

9. The County, for itself and its successors in interest, acknowledges and agrees that the perpetual dedication of all SEP property in accordance with the SEP's purposes as set forth in this Consent Decree and the final Master, Plan shall be a permanent and continuing obligation of the County.

10. The County covenants that it will not take any action pursuant to state or local law, or omit to take any action pursuant to state or local law, if such action or omission would result in, facilitate or in any way contribute to, any alienation of the SEP property or change its use in a manner that is

inconsistent with the SEP's purposes as set forth in this Consent Decree and the final Master Plan.

11. The County's covenants referred to in Subparagraphs 7-10 above shall survive the termination of this Consent Decree. The foregoing covenants in Subparagraphs 7-10 above and the preceding sentence shall continue in perpetuity, shall survive the termination of this Consent Decree and shall be enforceable by any agency of the United States, and/or any of the Citizen Plaintiffs in this case.

F. Master Plan

1. Prior to the expenditure of any part of the County's \$30 million commitment for the acquisition of any interests in property to be protected under the SEP, the County shall prepare and EPA shall review and comment on a Master Plan for SEP implementation.

2. Within two (2) months of the Date of Entry, the County shall enter into a contract with one or more professional consultants with expertise in the planning, acquisition and management of natural resource-based Greenway systems to perform the following functions, among others:

- a. develop an inventory report, draft and final assessment report, and draft and final Master Plan in accordance with the provisions and requirements contained in this Decree;
- b. manage the implementation of and reevaluate the Master Plan, as necessary, during

- implementation;
- c. prepare semi-annual and special reports to be submitted to EPA and the Citizen Plaintiffs concerning the progress in implementation of the SEP; and
 - d. allow and coordinate the full participation of a Citizens' Advisory Committee and the public in the development of the Master Plan. The purpose of the Citizens' Advisory Committee is to provide input and make recommendations to the County in the preparation of all aspects of the Master Plan and the priorities for implementation, including property and easement acquisitions a The Citizens' Advisory Committee shall be comprised of a wide diversity and balance of interests potentially affected by the Greenway plan. Each Citizen Plaintiff shall select one member for the Citizens' Advisory committee.

3. The County shall prepare an inventory report, using existing sources of information, that includes, among others, the following information and procedures:

- a. a description, including maps, of the Designated Rivers, including classification, water quality, wetlands, floodplains, wastewater discharge points (NPDES permit holders), any adjacent CERCLA sites, and other relevant environmental information;
- b. maps of the County showing existing land use and projected development areas, topography, soils, vegetation, including endangered, threatened or sensitive species, and areas with inadequate vegetation buffer at the streambank;
- c. known wildlife species and habitat, including endangered, threatened or sensitive species, and quality of aquatic habitat;
- d. identification of the stream corridors that will be evaluated as potential Greenway properties;
- e. relevant criteria for evaluating and prioritizing properties as candidates for protection pursuant to the SEP by acquisition or by conservation easement, such as:
 - 1) potential for preventing or reducing non-point source pollution,
 - 2) the protection or improvement of water quality in the Designated Rivers,

- 3) potential connection with other Greenway areas,
- 4) desirable natural state,
- 5) need for restoration,
- 6) value as wildlife habitat,
- 7) potential for aquatic and wildlife habitat protection or restoration,
- 8) the protection of ecologically significant or environmentally sensitive areas (e.g., wetlands and areas inhabited by endangered or threatened species of plants or animals),
- 9) the preservation of existing natural beauty,
- 10) near term likelihood for alternative development,
- 11) compatibility for possible use as a Greenway with utilization of surrounding areas,
- 12) environmental education potential,
- 13) the cost and probable efficacy of restoring environmental integrity that had been impaired by prior degradation within the river corridor,

- 14) the relative acquisition costs of various categories and parcels of targeted property,
- 15) the suitability and availability of conservation easements for targeted property; and
- f. the types of information to be collected to evaluate potentially available property based on the criteria in Subparagraph F.2.e above.

4. The County shall collect information on potentially available properties in the targeted stream corridors and prepare draft and final assessment report that includes, among others, the following information and procedures:

- a. the goals and objectives of the Master Plan;
- b. an inventory and evaluation of qualifying and potentially available properties, based on the criteria of Subparagraph F.3.e above, including their size, location, length along the watercourse, lateral distance from stream bank necessary to utilize the property for a designated SEP purpose (e.g., restoration), ownership, and availability; and
- c. the identification of Greenway areas to be targeted for acquisition or for protection through conservation easements, the preparation of detailed maps showing the

location of such areas, and the breakdown of parcels or tracts ranked by priority for acquisition, or for protection through conservation easements, in accordance with relevant criteria; at least two alternative Greenway system configurations shall be prepared and compared and a preferred alternative shall be identified. The alternatives shall include different levels of emphasis on conservation easements compared to purchase of land in fee.

5. The County shall prepare a draft and final Master Plan that includes, in addition to the items listed in Subparagraphs F.4.a, b and c, the following information and procedures:

- a. maps, by drainage basin, of the proposed Greenway system;
- b. description of the types and locations of public improvement projects (e.g., hiking trails, bicycle trails, canoe launches) including design/construction standards to minimize environmental impact;
- c. identification and description of the sites targeted for restoration work, type of work required, and design and construction standards to accomplish the SEP's purposes;

- d. land management guidelines to ensure that the properties are maintained in accordance with the SEP's purposes;
- e. identification of criteria that will be used to measure the environmental and public health benefits resulting from implementation of the SEP (with a quantification of pollution reduction and other benefits, if feasible);
- f. implementation methods concerning easement and in-fee acquisition, and a draft conservation easement that may be used as a model;
- g. a proposed budget and implementation plan for the acquisition and restoration of the properties or easements and construction of public improvements. The proposed budget shall identify the dollar amounts to be allocated to the following:
 - 1) the acquisition of SEP property in fee;
 - 2) the acquisition of conservation easements as SEP property;
 - 3) the restoration of SEP property;
 - 4) hiking and bicycle trails, picnic areas, canoe launch facilities and similar facilities; and

5) any other costs necessary or desirable for the implementation of the SEP. The proposed implementation plan shall include a milestone schedule for timely acquisition in fee or through conservation easements of targeted Greenway properties.

6. Prior to the initiation of work, the County may identify and request modifications to the Master Plan process that is different from that described in Subparagraphs F.2 through F.5 above, subject to review and approval by EPA.

C. Implementation Phase

The County shall commence the implementation of the final Master Plan within twenty-four (24) months of the Date of Entry of this Decree. Implementation includes the timely acquisition and restoration of the identified properties pursuant to the milestone schedule set forth in the final Master Plan.

H. Operation and Maintenance

None of the County's \$30 million commitment to the SEP or interest earned thereon will be used for operation and maintenance of the Greenway property acquired, except as otherwise provided herein. The County shall maintain the Greenway property in a manner that preserves environmental value and furthers the SEP's purposes.

I. Establishment of Land Trust

1. The County and the Citizen Plaintiffs desire the

establishment of a land trust to assist the County in the implementation of the SEP. Therefore, within six (6) months of the Date of Entry, the County shall establish and incorporate pursuant to the Alabama Nonprofit Corporation Act, § 10-3A-1, Code of Alabama 1975, as amended a Black Warrior-Cahaba Rivers Land Trust ("Land Trust") which shall be qualified as a tax-exempt organization under § 501(c)(3) of the United States Internal Revenue Code. The primary purpose of the Land Trust shall be to assist the County in implementing the SEP and accomplishing the SEP's purposes for long-term land stewardship. The activities for which the Land Trust shall be responsible include the following:

- a. advise the County on long term management of the acquired properties and conservation easements;
- b. advise and assist the County in implementing an education/outreach strategy including preparation and delivery of education to affected landowners and their professional advisors concerning land use and disposition;
- c. advise affected landowners of the tax benefits of donations of property and conservation easements; and
- d. assist the County in managing those conservation easements where the Land Trust is a co-holder of the easement.

The documents that establish the Land Trust shall include the authorities and responsibilities for the County and the Land Trust and the relationship between these two entities with respect to SEP implementation and long-term management of the SEP properties and conservation easements.

2. The County shall establish a Board of Directors for the Land Trust consisting of twelve (12) members, each of whom must be a resident and qualified voter of Jefferson County, whose terms, except for the initial terms, shall be for three (3) years, or until their successors are appointed. The initial terms shall be for the periods set forth in subparagraph I.3 below, and shall begin upon appointment. The terms following the initial term shall begin on October 1; provided, however, that no person shall serve more than two consecutive terms, including the initial term, that no person who acted as an attorney of record for any of the parties to this Consent Decree or who participated in the negotiations shall be eligible to serve on said Board; and, provided further, that the Angwins shall nominate persons other than themselves to serve on said Board and if Kipp is nominated and selected to serve on the Board he shall be limited to one three (3) year term. If, as a result of death, resignation or any other inability to serve, a vacancy occurs in any position on the Board before the end of the term of that position, a successor shall be appointed for the unexpired term in the same manner as the preceding incumbent. Each person nominated by a nominating entity to serve on the Board shall be

of good character and reputation in the County, shall have an educational, business, professional or other background or experience that will enable such person, if appointed to the Board, to participate responsibly in its activities, and shall have a demonstrated interest in environmental matters.

3. within six (6) months of the Date of Entry and thereafter on August 1, prior to the expiration of the term of a member, the County shall request the nominating entity for each Board position to nominate at least two (2) but not more than four (4) persons to fill that position. If, within thirty (30) days of being requested to make nominations for any position on the Board, the appropriate nominating entity for that position fails to designate the minimum required number of qualified nominees, the County shall have the right to appoint the member of the Board for that position. The County shall select one person from those nominated to fill the vacant position. If the County fails to make such selection within thirty (30) days, the nominating entity shall make the selection. Irreconcilable differences between the County and the Citizen Plaintiffs concerning the nomination and appointment of members of the Board of Directors of the Land Trust, as well as other disputes concerning powers, responsibilities and actions of the Land Trust, shall be subject to the dispute resolution provisions of Section XIII of this Consent Decree. The County and Citizen Plaintiffs agree to the following twelve (12) nominating

entities, which shall have the authority to nominate members to the Board of the Land Trust as follows:

<u>Position</u>	<u>Nominating Entity</u>	<u>Initial Term</u>
Position 1	- County Commission	3 years
Position 2	- Kipp	3 years
Position 3	- Cahaba River Society	3 years
Position 4	- Rails, Open spaces, Trails Association ("R.O.S.T.A.")	1 year
Position 5	- City of Birmingham	1 year
Position 6	- A nominating assembly consisting of the mayors of all municipalities in the County having a population greater than 10,000	1 year
Position 7	- The Nature Conservancy	2 years
Position 8	- Environmental Committee of the Birmingham Area Chamber of Commerce	1 year
Position 9	- Greater Birmingham Association of Home Builders	1 year
Position 10	- County Commission	2 years
Position 11	- Angwins	2 years
Position 12	- Cahaba River Society	2 years

The provisions herein contained for the governance of the Land Trust shall remain in effect for the first ten years of the existence of the Land Trust. Thereafter, the Board of Directors of the Land Trust shall have the right to alter the organic documents of the Land Trust so as to change the composition and appointment of the governing body of the Land Trust, with the

approval of the County; provided, that no change may be made in the purposes, functions or responsibilities of the Land Trust that is inconsistent with the provisions of this Consent Decree and the perpetual objectives of the SEP and is in accordance with the Master Plan. At the end of the (10) year implementation period, and after the County has satisfactorily completed all of its obligations hereunder, the Board of Directors of the Land Trust may in its discretion elect to change the name of the Land Trust.

J. Documentation and Progress Report Requirements

1. The County shall maintain legible copies of all documentation relating to the development and implementation of the SEP.

2. The County shall provide EPA and the Citizen Plaintiffs with a semi-annual progress report detailing all activities taken to implement the SEP. such reports shall include, but not be limited to:

- a. a description of properties or conservation easements acquired during the period covered by the report;
- b. a description of problems or potential problems encountered and the actions taken to rectify them, such as changes in key personnel;
- c. restoration projects commenced and/or continued;

- d. an accounting of all expenditures, including~ but not limited to, itemized costs, documented by copies of purchase orders and receipts or cancelled checks; and
- e. certification from the County that all activities that have been undertaken during the period covered by the report are in accordance with the final Master Plan.

3. within ten (10) years from the Date of Entry, the County shall submit a final SEP completion report to EPA and the Citizen Plaintiffs. This final completion report shall include:

- a. a detailed description of the SEP as implemented, including a description of all Greenway property acquired, maps of such property and applicable deed restrictions or covenants;
- b. a description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of pollution reduction and other benefits, if feasible); and
- c. certification from the County that the SEP has been fully implemented pursuant to the provisions of this Consent Decree.

4. The County shall provide copies of all documentation relating to the development and implementation of

the SEP to EPA within fourteen (14) days of request for such documentation. Plaintiffs will not make repeated requests for documents that have previously been provided to them pursuant to other provisions of this Consent Decree.

5. With respect to all financial information, including deposits and/or expenditures, included in semi-annual and the final reports submitted to EPA and/or the Citizen Plaintiff s, the County shall provide the following certification, signed by an officer or an authorized representative:

I certify, under penalty of law, that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

6. A public statement, oral or written, in print, film, or other media, made by the County within the ten (10) year implementation period of the SEP which publicizes the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action brought by the U.S. Environmental Protection Agency against Jefferson County for violations of the Clean Water Act." The County's obligations under this Subparagraph shall terminate at the end of the ten (10) year implementation period.

K. Schedule

The County shall submit the following documents to EPA and the Citizen Plaintiffs for review and comment and complete the following activities according to the following schedule:

<u>Activity</u>	<u>Date</u>
submit SEP sub-account documents	Within thirty (30) days of Date of Entry
Establish SEP sub-account	Within thirty (30) days of receipt of EPA's comments on SEP sub-account documents
Deposit at least \$3 million in SEP sub-account	Upon establishment of SEP sub-account
Submit budget for preparation of Master Plan and purchase of services and equipment	Within 1 month of Date of Entry
Hire Consultant	Within 2 months of Date of Entry
Inventory Report	Within 5 months of Date of Entry
Establish Black Warrior - Cahaba Land Trust	Within 6 months of Date of Entry
Request nominating entities for Land Trust Board of Directors to nominate person	Within 6 months of Date of Entry and thereafter on August 1st prior to expiration of term of a member
Draft Assessment Report	Within 11 months of Date of Entry
Final Assessment Report (incorporating changes based on EPA comments)	Within 14 months of Date of Entry
Draft Master Plan	Within 17 months of Date of Entry
Final Master Plan (incorporating changes based on EPA comments)	Within 20 months of Date of Entry
Commence implementation of Master Plan	Within 24 months of Date of Entry

Deposit \$30 million in cash into SEP sub-account	Within 6 years of Date of Entry
Final SEP completion Report	within 10 years of Date of Entry
Submit Progress Reports (described in J.2 above)	Beginning at the end of the first full six month period following Date of Entry, and semi-annually thereafter

L. EPA Review of County Document Submittal

1. Except as otherwise specified in this Section VIII, .within forty-five (45) days following receipt of any report, draft plan, final plan, or other document from the County required by this Section VIII, EPA shall do one of the following:

- a. accept the document;
- b. notify the County, in writing, of any deficiencies or problems with the document and any changes that should be made in the document or underlying activity; or
- c. request an additional thirty (30) days to complete review of the document. The Citizen Plaintiffs may provide EPA with comments. If EPA does not provide the County with any written response to a document submitted by

the County within forty-five (45) days of receipt, the document shall be considered accepted.

2. In the event EPA notifies the County pursuant to Subparagraph L.1.b of this Section VIII, the County shall have thirty (30) days from receipt of such notice to address the deficiency or problem identified therein and resubmit the document to EPA. Within thirty (30) days of such resubmittal, EPA shall either accept the document, notify the County of additional deficiencies or problems in the document, or request additional time to review the document, as set forth above in Subparagraph L.1. of this Section VIII, or EPA shall reject the document as not satisfying the underlying requirements of this Section VIII and impose stipulated penalties in accordance with Subparagraph A.1 of Section XI hereof. Such stipulated penalties shall continue to accrue until such time as the County has provided a further revised submittal that meets the requirements of this Section.

M. Stipulated Penalties

In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by the County to EPA in accordance with Section XI of this Consent Decree.

IX.

EFFLUENT LIMITATIONS

Nothing in this Consent Decree shall relieve the County of its obligation to comply at all times with all effluent limitations in its NPDES Permits, including any modifications, extensions or re-issuances. The Administrative Orders issued by the State, including those that have interim limits, do not supplant effluent limitations contained in the NPDES permits.

X.

CIVIL PENALTY

A. Thirty (30) days after the Date of Entry of this Consent Decree by the Court, the County shall pay a civil penalty to the United States in the total amount of \$750,000 for violations as alleged by the United States and Citizen Plaintiffs in the complaints filed in this matter through the Date of Lodging.

B. In the event that the civil penalty specified in Paragraph A of this Section is not paid when due, the County shall pay interest at the rate provided in 28 U.S.C. § 1961(a), that is, a rate equal to the coupon issue yield equivalent (as determined by the Secretary of Treasury) of the average accepted auction price for the last auction of 52-week U.S. Treasury bills settled prior to the date this Consent Decree is entered from the original due date to the date of payment. Interest shall be computed daily and compounded annually.

c. The County shall make the payment specified in Paragraph A of this Section by tendering a certified check or cashier's

check payable to the "Treasurer, United States of America" to the office of the United States Attorney for the Northern District of Alabama, Southern Division, 1800 5th Ave. North, Birmingham, Alabama 35203. Simultaneously, the County shall send copies of the registered or certified check and the transmittal letter to the Chief, Environmental Enforcement Section, United States Department of Justice, Post Office Box 7611, Ben Franklin Station, Washington, D.C. 20044, and to the Director, Water Management Division, the United States Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365.

XI.

STIPULATED PENALTIES

A. Applicability and Penalty Amounts

1. The County shall pay to the United States, upon written demand, stipulated civil penalties for each day it fails to meet any of the milestone dates set forth in Subparagraphs 2-6 of this Paragraph A. The stipulated civil penalties for failure to meet such milestone dates shall be as follows:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
1st to 30th day	\$ 1,000
31st to 60th day	\$ 5,000
After 60 days	\$ 8,000

After ninety (90) days EPA reserves the right to take whatever additional enforcement actions it deems necessary to bring the County into compliance with the approved schedule.

2. The Phase I milestones subject to such stipulated penalties are both the draft plan submittal dates as stipulated in this Consent Decree and the period allowed for the County to respond to EPA comments with respect thereto. The plans covered under this Subparagraph are as follows: the Preliminary Sewer System Analysis (§ B of Section VII), the Infiltration/Inflow Plan (Phase I) (§ C of Section VII), the Sewer System Evaluation Survey Plan (§ E of Section VII), the initial Waste Treatment System Capital Improvement Plan (§ G of Section VII), the Capacity Analysis Plan (§ I of Section VII), Reporting of Unpermitted Discharge Events (Phase I) (§ K of Section VII), the Comprehensive Performance Evaluation Plan (Phase I) § L of Section VII), and the Water Quality Monitoring Plan (§ N of Section VII).

3. The Phase II milestones subject to such stipulated penalties are both the draft report submittal dates as set forth in this Consent Decree or approved by EPA in a Phase I plan, and the period allowed for the County to respond to EPA comments with respect thereto. The reports covered under this Subparagraph are: each Infiltration/Inflow Report (§ D of Section VII), each Sewer System Evaluation Survey (§ F of Section VII), and each Capacity Analysis Report (§ J of Section VII), each associated Capacity Improvement Schedule (§ J of Section VII), each Comprehensive Performance Evaluation Report (§ M of Section VII) and each Performance Improvement Plan (§ M of Section VII).

4. The Phase III milestones subject to such

stipulated penalties are the Critical Path End Dates for each Collection System facility and wastewater treatment plant identified in Subparagraph H.3 of Section VII. Phase III milestones subject to such stipulated penalties are also the scheduled completion dates set forth in Subparagraph H.3 of Section VII for the elimination of the Barton Branch and Tarrant Springs Branch diversion structures. Other Phase III milestones subject to such stipulated penalties are the submittal date for the draft Plan for Collection System Operation and Maintenance (¶ P of Section VII), and the period allowed for the County to respond to EPA comments with respect thereto.

5. The quarterly reports (¶ Q of Section VII) are also subject to such stipulated penalties.

6. Failure to meet the following milestones connected with the Supplemental Environmental Project (Section VIII hereof) will also subject the County to stipulated penalties (all time intervals are from Date of Entry:

- a. Inventory Report
 - 1) Submit Report to EPA for comment 5 months
- b. Assessment Report
 - 1) Submit Draft Report to EPA for comment 11 months
 - 2) Submit Final Report to EPA for approval 14 months
- c. Master Plan
 - 1) Submit Draft Plan to EPA for comment 17 months

- 2) Submit Final Plan to EPA for approval 20 months
- d. SEP sub-account:
 - 1) Initial \$3 million 90 days
 - 2) Total deposit of \$5 million 1 year
 - 3) Total deposit of \$10 million 2 years
 - 4) Total deposit of \$15 million 3 years
 - 5) Total deposit of \$20 million 4 years
 - 6) Total deposit of \$25 million 5 years
 - 7) Total deposit of \$30 million 6 years
- e. Implement EPA-Approved Master Plan:
 - 1) Expend at least \$10 million 4 years
 - 2) Expend at least \$20 million 7 years
 - 3) Expend at least \$30 million 10 years

(The deposit and expenditure amounts stated above in Subparagraphs d. and e. are cumulative of all such deposits or expenditures as of the applicable milestone date.)

- f. Submit Bi-Annual Status Reports
 - 1) Submit initial report 6 months
 - 2) submit subsequent reports every 6 months
- g. Submit SEP Completion Report 10 years

However, in no event shall the County pay more than \$7 million in stipulated penalties pursuant to Subparagraph 6. (a-g) of this Section.

In addition to the stipulated penalties referenced in this Section, the parties expressly agree that it is their intent that any and all properties acquired with respect to the supplemental Environmental Project are to be held, dedicated and maintained in perpetuity as environmental Greenways. Notwithstanding any state or local laws, ordinances or regulations, the alienation of any of the properties obtained with respect to the SEP, except in the manner authorized by Section VIII E.7, shall be prohibited and any attempt to alienate such property shall be deemed contemptuous of this Court.

7.a. The County shall pay a stipulated penalty of \$1,000 per day for each Overflow, as defined in Section VI, Subparagraph B.24, which occur~ in any Collection System owned and/or operated by the County where such Overflow occurs after the later of (1) the date scheduled for completion of the last rehabilitation or replacement project for the relevant Collection System in accordance with Subparagraph H.3 of Section VII of this Consent Decree, plus six months, or (2) any schedule completion date extensions or revisions that may hereafter be authorized pursuant to other provisions of this Consent Decree.

b. EPA will not demand payment for stipulated penalties under Subparagraph 7.a above until after the evaluation period set forth in Subparagraph H.5 of Section VII of this Consent Decree.

c. Prior to such date, the County shall pay a stipulated penalty of \$1,000 per day for each Overflow which

occurs in any collection System owned and/or operated by the County or the affected portion thereof, unless the County demonstrates, with flow monitoring records or other engineering data, that weather conditions caused the affected collection System, or affected portion thereof, to exceed the corresponding peak hydraulic flow capacity.

8.a. The County shall pay a stipulated penalty of \$1,000 per day for each Bypass at a treatment plant that is not excused pursuant to the County's NPDES permits and that occurs after the later of (1) the last scheduled construction completion date for that treatment plant in accordance with Subparagraph H.3 of Section VII of this Consent Decree, plus six months, or (2) any schedule completion date extensions or revisions that may hereafter be authorized pursuant to other provisions of this Consent Decree.

b. EPA will not demand payment for stipulated penalties under Subparagraph 8.a above until after the evaluation period set forth in Subparagraph 11.5 of Section VII of this Consent Decree.

c. Prior to such date, the County shall pay a stipulated penalty of \$1,000 per day for each Bypass at a treatment plant unless such Bypass is excused pursuant to the County's NPDES permits or occurs as a result of weather conditions which have caused the plant to exceed its peak hydraulic flow capacity as listed in Subparagraph A.9.c of this Section.

9. The County shall pay a stipulated penalty of \$500 per day per violation for each effluent discharge which violates the limits contained in the County's NPDES permits, and that occurs after the later of (1) the last scheduled construction completion date for the relevant treatment plant, in accordance with subparagraph 11.3 of Section VII of this Consent Decree, plus six months, or (2) any schedule completion date extensions or revisions that may hereafter be authorized pursuant to other provisions of this Consent Decree. EPA will not demand payment for stipulated penalties, under this Subparagraph, until after the evaluation period set forth in Subparagraph H.5 of Section VII of this Consent Decree.

a. The County shall pay a stipulated penalty of \$2,000 per violation of the following effluent discharge limitations, at permitted outfalls for which the applicable NPDES permits impose effluent limitations that are equal to or more stringent than those set forth below, and which will apply where weather conditions cause the subject wastewater treatment plant's weekly average flow to exceed the maximum design flow capacity as listed below in Subparagraph C.

Parameter	Discharge Limitation	
	weekly average	
	<u>mg/l</u>	<u>lb/d</u>
FLOW	report	
CBOD5	40.0	report

BOD5	45.0	report
TSS	45.0	report
NH3-N	8.0	report
TKN	15.0	report
TRC--End Contact Chambers	0.1 (minimum)	
TRC--Gross Effluent	0.5 (maximum)	

In addition,

pH	6.0 to 9.0 standard units
DO	5.0 mg/l minimum for F & W (Fish & Wildlife) streams
DO	3.0 mg/l minimum for A & I (Agricultural & Industrial) streams

Sampling will be by daily composite samples for the duration of the event, with the exception of dissolved oxygen (DO) and pH which will be by daily grab sample. Otherwise, all sampling will be done in accordance with the NPDES permit requirements for each facility. Parameters not covered by a particular permit will not apply to that facility.

b. (i) In the case of the weekly and monthly average effluent limitations of the County's NPDES permits for individual County wastewater treatment plants, effluent monitoring results for any day or days during which the maximum design flow capacity, listed in Subparagraph c, for an individual plant is exceeded shall be excluded, for the purposes of determining stipulated penalties, in the calculation of average

effluent discharge parameter levels for the corresponding week or month.

(ii) Weekly average effluent limitations of the County's NPDES permits shall be subject to a maximum stipulated penalty of \$2,000 per violation per facility and monthly average effluent limitations of the County's NPDES permits shall be subject to a maximum stipulated penalty of \$5,000 per violation per facility.

(iii) No stipulated penalties will be assessed for violations of mass loadings (lbs/day), percent removal of BOD₅, percent removal of total suspended solids (TSS) or toxicity.

c. The peak hydraulic flow capacities are:

Cahaba River WWTP	16.0	MGD
Valley Creek WWTP	130.0	MGD
Village Creek WWTP	60.0	MGD
Five Mile Creek WWTP	40.0	MGD
Turkey Creek WWTP	5.5	MGD
Trussville WWTP	2.7	MGD
Leeds WWTP	7.5	MGD
Prudes Creek WWTP	1.0	MGD
Warrior WWTP	0.175	MGD
Trussville Ind. Park WWTP	0.15	MGD

The maximum design flow capacities are:

Cahaba River WWTP	12.0	MGD
Valley Creek WWTP	65.0	MGD

Village Creek WWTP	60.0	MGD
Five Mile Creek WWTP	20.0	MGD
Turkey Creek WWTP	4.0	MGD
Trussville WWTP	1.2	MGD
Leeds WWTP	5.0	MGD
Prudes Creek WWTP	0.6	MGD
Warrior WWTP	0.1	MGD
Trussville Ind. Park WWTP	.08	MGD

In any instance where Subparagraph 9.a applies and the peak hydraulic flow capacity or maximum design flow capacity of any facility has been increased, then such increased capacity shall be used in lieu of the corresponding capacity set forth above.

10. In support of this Section, the County shall submit to EPA copies of each Discharge Monitoring Report (DMR) at the same time that such reports are submitted to the permitting authority. Any DMR reporting a permit violation shall be accompanied by the associated Monthly Operating Report (MOR). If the County seeks relief from stipulated penalties under the provisions of Subparagraphs A.7, A.8, or A.9 of this Section, the County shall also submit flow monitoring records, records showing the duration of related weather conditions, engineering data, MOR's or other information necessary to support the County's position. The County shall submit all necessary documentation to support calculations under Subparagraph A.9.b.i of this Section.

B. Stipulated civil penalties shall automatically begin to accrue on the first day the County fails to either meet any of

the schedules of performance required by this Consent Decree or satisfy any other obligation or requirement of this Consent Decree. The stipulated penalties will accrue from the dates identified in this Consent Decree regardless of whether the Consent Decree has yet to be entered by the Court. 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 the County's failure to comply with requirements of this Consent Decree, and all applicable Federal, state or local laws, regulations, NPDES permit(s) and all other applicable permits. EPA shall use its best efforts to notify the County of EPA's belief that the County has failed to meet any of the schedules of performance required by this Consent Decree or satisfy any other obligation or requirement of this Consent Decree.

C. Subject to Paragraphs D and E of this Section, stipulated civil penalties shall be paid within thirty (30) days of the date of EPA's written 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. Stipulated civil penalties shall be paid by submitting a cashier's or certified check payable to the "Treasurer, the United States of America", and tendered to the United States Attorney for the Northern District of Alabama, 1800 5th Avenue North, Birmingham, Alabama 35203. Copies of the registered or certified check and the transmittal letter shall be sent

simultaneously to the Chief, Environmental Enforcement Section, United States Department of Justice, Post Office Box 7611, Ben Franklin Station, Washington, D.C. 20044 and to the Chief, Water Programs Enforcement Branch, Water Management Division, United States Environmental Protection Agency, Region IV, Atlanta Federal Center, 100 Alabama Street, S.W., Atlanta, Georgia 30303-3104

D. In the event that a stipulated civil penalty is not paid when due, the stipulated civil penalty shall, upon written demand of the United States, 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).

E. Upon receipt of EPA's written demand for payment of a stipulated penalty, the County may dispute such demand for payment pursuant to the dispute resolution provisions of Section XIII hereof. During the dispute resolution period, stipulated penalties shall accrue with interest but need not be paid. If the Court becomes involved in the resolution of such a dispute, the period of dispute shall end upon the rendering of a decision by the Court regardless of whether any party appeals such decision. In the event of an appeal, the stipulated penalty amount in dispute shall be placed in an escrow account until a final decision no longer subject to judicial review has been rendered.

XII.

FORCE MAJEURE

A. "Force Majeure" for the purposes of this Consent Decree is defined as an event arising from causes beyond the control of the County or of any entity employed by the County, including its consultants and contractors, which delays or prevents the performance of any obligation under this Consent Decree.

B. 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, the County shall so notify EPA and the Citizen Plaintiffs, in writing, within fifteen (15) days after the County learns, or in the exercise of reasonable diligence under the circumstances should have learned, of the delay or anticipated delay. The notice shall describe in detail the basis for the County'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 EPA shall constitute a waiver of any claim of Force Majeure as to the event in question.

C. If EPA 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 XIII shall apply, and the County 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.

D. 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. The County shall make an individual showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought. The County may petition for the extension of more than one compliance date in a single request.

XIII.

RETENTION OF JURISDICTION/DISPUTE RESOLUTION

A. This Court shall retain jurisdiction of this matter for the purposes of implementing and enforcing the terms and conditions of this Consent Decree and for the purpose of adjudicating all disputes among the parties that may arise under the provisions of this Consent Decree, to the extent that this Consent Decree provides for resolution of disputes by the Court.

B. Any dispute that arises with respect to the meaning, application, implementation, interpretation, amendment or modification of this Consent Decree, or with respect to the County's compliance herewith or any delay hereunder, the

resolution of which is not expressly provided for in this Consent Decree, shall in the first instance be the subject of informal negotiations. If any party believes it has a dispute with any other party, it shall notify all the other parties in writing, setting forth the matter(s) in dispute and the parties will proceed initially to resolve the matter in dispute by informal means. For purposes of this Paragraph only, the County shall address such notification to the United States at: U.S. Environmental Protection Agency, Region IV, Office of Regional Counsel, Attention: Regional Counsel, Environmental Protection Agency, Atlanta Federal Center, 100 Alabama Street, S.W., Atlanta, Georgia 30303-3104, and Chief, Environmental Enforcement Section, Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Washington, D.C. 20044-7611, Referencing United States v. Jefferson County, Alabama (90-5-1-1-4195). If the dispute concerns remedial actions addressed under Section VII of this Consent Decree, the parties shall if, necessary, physically meet in either EPA's offices in Atlanta or the County's offices in Birmingham in order to attempt to resolve the dispute. The parties shall meet in Birmingham if observation of the County's Collection System or treatment plants would be helpful to understanding and/or resolving the dispute.

If a dispute (whether involving remedial actions under Section VII or not) cannot be resolved by the parties within thirty (30) days from receipt of written notice of the dispute,

then the County shall comply with the position of the United States and the Citizen Plaintiffs, assuming the United States and Citizen Plaintiffs are in agreement, unless the County files a petition with the Court for resolution of the dispute within forty-five (45) days of receipt of such notice of dispute, which petition shall set forth the nature of the dispute with a proposal for its resolution. In the event the Citizen Plaintiffs and United States are not in agreement, the County shall comply with the position of the United States (except when the County has filed a petition in accordance with the proceeding sentence), and the dispute resolution procedures set forth above may be invoked to resolve the dispute between the Citizen Plaintiffs and United States. Within thirty (30) days of the receipt of a petition filed with the Court pursuant to this Paragraph, any opposing party may file a response, which may include an alternate proposal for resolution of the dispute. In any dispute for the resolution of which the procedure under this Section XIII shall be invoked, the County shall have the burden of proving that its position complies with the terms, conditions, and requirements of this Consent Decree.

C. Submission of any matter to the Court for resolution shall not extend any of the deadlines set forth in this Consent Decree, unless the parties agree to such extension in writing or the Court allows the extension upon motion.

XIV.

RIGHT OF ENTRY

A. Without limiting the authority otherwise available to it, the United States and its authorized representatives and contractors shall have authority at all times, upon the presentation of credentials, to enter the premises of the County to:

1. Monitor the program of activities required by this Consent Decree;

2. Verify any data or information submitted to the United States;

3. Obtain samples from the municipal treatment and Collection System;

4. Inspect and evaluate any portions of the County Collection System; and

5. Inspect and review any records required to be kept under the terms and conditions of this Consent Decree or any NPDES Permit and the Clean Water Act. This provision of this Consent Decree is in addition to, and in no way limits or otherwise affects, the United States' or the State's statutory authorities to conduct inspections, to require monitoring and to obtain information from the County as authorized by law.

6. The United States agrees to provide the County an opportunity to obtain split samples of wastewater samples taken by the United States from the County Collection System. The United States further agrees to provide the County with the

quality assured/quality controlled laboratory analytical results of samples obtained from the County Collection System, and any non-privileged (including non-attorney work product) reports prepared concerning such results. The United States will use best efforts to coordinate field inspections of the County Collection System with the County by notifying the County, if practicable, of such inspections prior to arrival at the field inspection location.

B. Attorneys for the Citizen Plaintiffs shall also have authority to inspect and review the records specified in this Section.

XV.

NOT A PERMIT/COMPLIANCE WITH OTHER STATUTES/REGULATIONS

A. This Consent Decree is not and shall not be construed as a permit, nor a modification of any existing permit, issued pursuant to Section 402 of the Clean water Act, 33 U.S.C. § 1342, nor shall it in any way relieve the County of its obligations to obtain permits for its wastewater treatment 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 applicable federal and State laws and regulations.

B. Nothing herein shall be construed as relieving the County of the duty to comply with the Clean Water Act, the regulations promulgated thereunder, and all applicable permits

issued thereunder, or as relieving the County of its duty to comply with State law and the regulations promulgated thereunder.

XVI.

FAILURE OF COMPLIANCE

The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that the County'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 Defendants' NPDES permits. Notwithstanding EPA's review or approval by the United States of any plans, reports, policies or procedures formulated pursuant to this Consent Decree, the County shall remain solely responsible for any non-compliance with the terms of this Consent Decree, all applicable permits, and the Clean Water Act and regulations promulgated thereunder.

XVII.

NON-WAIVER PROVISIONS

A. The Consent Decree in no way affects or relieves the County of any responsibility to comply with any federal, state, or local law or regulation.

B. Nothing contained in this Consent Decree shall be construed to prevent or limit the United States' or the State's rights to obtain penalties or further or additional injunctive relief under the Clean Water Act or other federal statutes or regulations, including, but not limited to, criminal punishment under Section 309(c) of the Act, 33 U.S.C. § 1319(c), or state

laws and regulations respectively except as expressly specified herein.

C. The parties agree that the County 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, except as set forth herein.

D. This Consent Decree does not limit or affect the rights of the County or the State or the United States and Citizen Plaintiffs as against any third parties which are not parties to this Consent Decree. The parties recognize that this Consent Decree resolves only matters between the United States, Citizen Plaintiffs and the County and that its execution does not preclude the County from asserting any legal or factual position in any action brought against the County by any person or entity not a party to this Consent Decree.

E. The parties reserve any and all legal and equitable remedies available to enforce the provisions of this Consent Decree.

F. This Consent Decree shall not limit any authority of EPA under any applicable statute, including the authority to seek information from the County or to seek access to the property of the County 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 the County, in response to

conditions that may present an imminent and substantial endangerment to the environment or to the public health or welfare.

G. Application for construction grants, State Revolving Loan Funds, or any other grants or loans, or delays caused by inadequate facility planning or plans and specifications, on the part of the County shall not be cause for extension of any required compliance date in this Consent Decree.

H. Obligations of the County 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 and payment of such stipulated penalties may be demanded by the United States as provided in this Consent Decree.

I. 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.

J. The United States and State of Alabama reserve the right to elect to file a civil or criminal action for statutory penalties or injunctive relief against the County for any violations of the Clean Water Act by the County discovered after the Date of Lodging of this Consent Decree.

K. This Consent Decree was negotiated, mutually drafted, and executed by the parties in good faith to avoid further litigation and is a settlement of claims which were vigorously contested, denied and disputed. Neither the execution of this Consent Decree nor any action taken hereunder is an admission of any fact, liability or wrongdoing of any kind regarding any of the matters addressed in the Consent Decree. Accordingly, with the exception of this proceeding, this Consent Decree shall not be admissible in any judicial or administrative proceeding for use against any party over the objection of that party.

XVIII.

COSTS OF SUIT

The United States, the County, and the State shall bear their own costs and attorney's fees with respect to matters related to this Consent Decree. Within sixty (60) days from the Date of Entry, the County shall pay the reasonable costs and reasonable attorneys' fees of the Citizen Plaintiffs as follows:

Citizen Plaintiffs and the County agree to attempt to resolve the Citizen Plaintiffs' claims for attorneys' fees and expenses by a settlement to be submitted and approved by the Court. If an agreement cannot be reached, Citizen Plaintiffs and the County agree that the issue of attorneys' fees and expenses shall be submitted to the Court for resolution.

Should the County subsequently be determined by the Court to have violated the terms and conditions of this Consent Decree, then the County shall be liable to the United States and

Citizen Plaintiffs for any reasonable costs and reasonable attorneys' fees incurred by the United States and Citizen Plaintiffs in such actions against the County for non-compliance with this Consent Decree.

XIX.

CERTIFICATION OF SUBMISSIONS

A. The County shall maintain copies of any underlying research and data in its possession, custody or control for any and all documents, reports, or permits submitted to EPA pursuant to this Consent Decree for a period of five (5) years, except that the County shall not be required to maintain copies of drafts of documents, reports or permits; the County shall require any independent contractor implementing this Consent Decree to also retain such materials for a period of five (5) years. The County shall submit such supporting documents to EPA upon request. In all notices, documents or reports submitted to the United States pursuant to this Consent Decree, the County shall, by a senior management official of the County, 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 assure 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 such information, 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 for knowing violations.

B. EPA agrees to use its best efforts to expeditiously review and comment on all documents, plans and other deliverables that the County is required to submit to EPA pursuant to the terms and conditions of this Consent Decree. The State of Alabama agrees to use its best efforts to coordinate with the County to expedite evaluation of permit applications submitted by the County consistent with Chapters 22 and 22A, Code of Alabama (1975).

XX.

FORM OF NOTICE

Unless otherwise specified, or as may changed from time to time, 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:

Chief, Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
Post Office Box 7611, Ben Franklin Station
Washington, D.C. 20044
Reference DOJ Case No. 90-5-1-1-4195

United States Attorney
Northern District of Alabama
1800 5th Avenue North
Birmingham, Alabama 35203

As to EPA:

Chief
Water Programs Enforcement Branch
Water Management Division
U.S. Environmental Protection Agency,

Region IV
Atlanta Federal Center
100 Alabama Street S.W.
Atlanta, Georgia 30303-3104
ATTN: Alabama Management Unit

As to Citizen Plaintiffs:

Byron Bart Slawson, Esq.
The 1776 Building
1776 Independence Court
Suite 303
Birmingham, AL 35216

Robert G. Tate, Esq.
Burr & Forman
3100 SouthTrust Tower
420 20th Street North
Birmingham, AL 35203

As to Jefferson County:

Edwin A. Strickland
Charles S. Wagner
JEFFERSON COUNTY ATTORNEY'S OFFICE
716 North 21st Street
Birmingham, Alabama 35203

As to State of Alabama:

R. Craig Kneisel
Office of the Attorney General
Alabama State House
11 S. Union Street
Montgomery, Alabama 36130

Olivia Jenkins
General Counsel
Alabama Department of Environmental Management
1751 Cong. Wm. Dickinson Drive
Montgomery, Alabama 36130

Notifications to or communications with EPA, the United States Attorney or the Department of Justice ("DOJ") shall be deemed submitted on the date they are postmarked and sent by certified mail, return receipt requested. Notifications to or

communications with the County shall be deemed received ten (10) days after the date they are postmarked.

XX

MODIFICATION

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. This Consent Decree may not be amended or modified except by written order of this Court. Any modification of this Consent Decree by the parties shall be in writing and approved by the Court before it will be deemed effective. However, minor changes which do not significantly alter the remedial action to be conducted by the County may be made by the parties, provided such changes are agreed upon in writing.

XXII.

PUBLIC COMMENT

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 of any comments.

XXIII.

CONTINUING JURISDICTION OF THE COURT

The Court shall retain jurisdiction to enforce the terms and conditions and achieve the objectives of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction, modification, implementation or execution of this Consent Decree.

XXV.

TERMINATION

A. Upon motion filed with the Court by the United States or the County, this Consent Decree shall terminate with respect to an individual Complete Waste Treatment System after each of the following conditions has been satisfied:

1. With respect to such Complete Waste Treatment System the County has achieved and maintained compliance with all applicable provisions of Section VII hereof, except as provided in Subparagraphs a. and b. of this Subparagraph, for twelve (12) consecutive months, provided that during that 12-month period the County can establish that precipitation has been average or greater. In the absence of evidence of average or greater than average precipitation during a 12-month period, the County shall be permitted to demonstrate compliance at such Complete Waste Treatment System during a 24-month period.

- a. With respect to compliance with NPDES permit effluent limits, the County has achieved and maintained substantial compliance for twelve (12) consecutive months.
 - b. With respect to compliance with the objective of elimination of sewer system Overflows, the County has achieved and maintained substantial compliance for twelve (12) consecutive months.
2. The County has paid all penalties and monetary obligations due hereunder, with the exception of monetary obligations regarding the SEP referred to in Section VIII of this Consent Decree and which remain executory at the time of such motion, and no penalties or other monetary obligations due hereunder are outstanding or owed to the United States;
3. The County has certified compliance pursuant to Subparagraphs 1 and 2 above to the Court and all parties; and
4. The United States, within forty-five (45) days of receiving such certification from the County, has not contested, in writing, that such compliance has been achieved. If the United States disputes the County's full compliance, this Consent Decree

shall remain in effect pending resolution of the dispute by the parties or the Court pursuant to Section XIII.

As used in this Section, the term "Complete Waste Treatment System" means the following wastewater treatment plants and associated facilities which transport wastewater to such treatment plants under normal conditions of operation: Cahaba River, Leeds, Trussville (including Trussville Industrial Park), Village Creek, Valley Creek, Five Mile Creek, Turkey Creek, Prudes and Warrior River.

B. If the Citizen Plaintiffs dispute that the County has achieved such full compliance, this Consent Decree shall remain in effect with respect to the subject Complete Waste Treatment System pending resolution of the dispute by the Court.

C. The County may otherwise petition the United States for termination of the obligations of any paragraph of this Consent Decree, provided that the County has satisfied each and every term and condition of that paragraph, and certified to the United States that it has satisfied each and every term and condition of that paragraph.

D. The provisions contained in Section VIII (Supplemental Environmental Project) shall survive the foregoing termination provisions and remain enforceable in perpetuity.

XXV.

SIGNATORIES

The Assistant Attorney General on behalf of the United States and the signatories for the Citizen Plaintiffs, the County, and the State of Alabama certify that they are fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such parties to this document.

Dated and entered this _____ day of _____ 1996.

United States District Judge

WE HEREBY CONSENT to the entry of this Consent Decree in the United States, (Citizen Plaintiffs) v. Jefferson County, Alabama, et al., Case No. CV-93-G-2492-S subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR PLAINTIFF THE UNITED STATES OF AMERICA

DATE: _____

LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources
Division
United States Department of Justice

DATE: _____

WILLIAM A. WEINISCHKE
Senior Attorney
LORI JONAS
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
United States Department of Justice
Post Office Box 7611
Washington, D.C. 20044
(202) 514-4592
(202) 514-4080

United States Attorney
Northern District of Alabama

DATE: _____

HERBERT J. LEWIS
Assistant United States Attorney
200 Federal Building
1800 Fifth Avenue North
Birmingham, AL 35203
(205) 731-1790

DATE: _____

STEVEN A. HERMAN
Assistant Administrator for Enforcement
United States Environmental
Protection Agency
Washington, D.C. 20460

OF COUNSEL:

GWENDOLEN FITZ-HENLEY
Assistant Regional Counsel
United States Environmental
Protection Agency - Region IV
Atlanta Federal Center
100 Alabama Street S.W.
Atlanta, Georgia 30303-3104

Office of Enforcement
United States Environmental
Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

WE HEREBY CONSENT to the entry of this Consent Decree in United States, (Citizen Plaintiffs v. Jefferson County, Alabama, et al., Case No. CV-93-G-2492-S subject to the notice and comment requirements of 28 C.F.R. § 50.7.

FOR DEFENDANTS JEFFERSON COUNTY, ALABAMA AND THE JEFFERSON COUNTY COMMISSION

DATE: _____
Mary M. Buckelew
President, Jefferson County Commission

DATE: _____
EDWIN A. STRICKLAND
County Attorney

DATE: _____
Charles S. WAGNER
Assist County Attorney

WE, as statutory defendant, pursuant to 33 U.S.C. § 1319(e), and solely in that capacity and no other purpose, HEREBY CONSENT to the entry of this Consent Decree in United States, (Citizen Plaintiffs) v. Jefferson County, Alabama, et al., Case No. CV-93-G-2492-S subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR DEFENDANT, STATE OF ALABAMA

Attorney General
State of Alabama
Alabama State House
Montgomery, Alabama

DATE: _____

Assistant Attorney General
Alabama State House
11 S. Union Street
Montgomery, Alabama 36130

WE HEREBY CONSENT to the entry of this Consent Decree in United States, (Citizen Plaintiffs v. Jefferson County, Alabama, et al., Case No. CV 93-G-2492-S subject to the notice and comment requirements of 28 C.F.R. § 50.7.

FOR CITIZEN PLAINTIFFS R. ALLEN KIPP, JR., EDWARD E. ANGWIN;
BETSY B. ANGWIN

DATE: _____

Byron Bart Slawson, Esq.
1776 Independence Court
Suite 303
Birmingham, AL 35216

WE HEREBY CONSENT to the entry of this Consent Decree in United States, (Citizen Plaintiffs) v. Jefferson County, Alabama, et al., Case No. CV-93-G-2492-S subject to the notice and comment requirements of 28 C.F.R. § 50.7.

FOR CITIZEN PLAINTIFF CAMABA RIVER SOCIETY

DATE: _____

Robert G. Tate, Esq.
Burr & Forman
3300 SouthTrust Tower
420 20th Street
Birmingham, AL 35203