

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA )

Plaintiff, )

v. )

JERSEY CITY MUNICIPAL UTILITIES )  
AUTHORITY, and THE STATE OF )  
NEW JERSEY, )

Defendants. )  
\_\_\_\_\_ )

Civil Action No. \_\_\_\_\_

CONSENT DECREE

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WHEREAS, plaintiff United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), has filed a Complaint in this action concurrently with this Consent Decree alleging that Defendant Jersey City Municipal Utilities Authority (hereinafter "Defendant" or "JCMUA") violated Section 301(a) of the Clean Water Act ("CWA" or the "Act"), 33 U.S.C. Section 1311(a), and the New Jersey Pollutant Discharge Elimination System General Permit for Combined Sewer System ("CSS General Permit") that has been issued to it pursuant to Section 402 of the Act, 33 U.S.C. Section 1342, due to unauthorized, illegal and persistent discharges of pollutants from its Combined Sewer System. The State of New Jersey is a defendant in this action solely for the purposes of Section 309(e) of the Act, 33 U.S.C. § 1319(e).

WHEREAS, the Complaint against Defendant alleges that Defendant has violated the CWA and its CSS General Permit conditions and limitations in a number of ways, including but not limited to, causing dry weather overflows, failing to properly operate and maintain its combined sewer system, failing to prevent tidal intrusion into the collection system, and allowing the discharge of untreated sewage from the collection system onto public and private property located in Jersey City, where people have or could come into contact with the untreated sewage.

WHEREAS, Defendant does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

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

NOW, THEREFORE, with the consent of the Parties, IT IS HEREBY  
ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Sections 309(b) and (d) of the CWA, 33 U.S.C. § 1319(b) and (d), and over the Parties. Venue lies in this District pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), 28 U.S.C. §§ 1391(b) and (c), and 1395, because Defendant resides and is located in this judicial district. For purposes of this Decree, or any action to enforce this Decree, Defendant consents to the Court's jurisdiction over this Decree and any such action stemming from this Decree and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d).

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States, and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

4. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Decree are implemented. At least thirty (30) Days prior to such transfer, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together

with a copy of the proposed written agreement, to EPA Region 2, the United States Attorney for the District of New Jersey, and the United States Department of Justice, in accordance with Section XV of this Decree (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree.

5. Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

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

### III. OBJECTIVE

7. The express purpose of the Parties entering into this Consent Decree is for Defendant to fulfill the requirements of the Clean Water Act, the regulations promulgated thereunder, and its CSS General Permit by operating and maintaining its Facility to maximize flow of untreated sewage to the proper treatment facility, as well as, eliminate any dry weather overflows, or discharges of untreated sewage from its Facility onto public and private property.

### IV. DEFINITIONS

8. Terms used in this Consent decree that are defined in the CWA or in regulations promulgated pursuant to the CWA shall have the meanings assigned to them in the

CWA or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. "Building/Private Property Backup" shall mean a Sewer Overflow in the form of wastewater release or backup into a building or onto private property that is caused by blockages, flow conditions, or any malfunction in JCMUA's system. A wastewater backup or release, that is caused by blockages, flow conditions, or other malfunctions of a Private Lateral and/or Common Sewer is not a Building/Private Property Backup for purposes of this Decree.

b. "Common Sewer" shall mean a sanitary or combined sewer, which services two or more separately owned buildings and passes through or exists within two or more separately owned properties prior to connecting to the sewer in the public right of way.

c. "Complaint" shall mean the complaint filed by the United States in this action;

d. "Consent Decree" or "Decree" shall mean this Decree *and* all appendices attached hereto;

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

f. "Defendant" shall mean the Jersey City Municipal Utilities Authority ("JCMUA");

g. "Dry Weather Overflow" means a type of combined sewer overflow which is not the direct result of an increase in wastewater flows due to events of precipitation including floods, storm events, and prolonged snow melts;

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

i. "Effective Date" shall have the definition provided in Section XVI.

j. "Facility" shall mean Defendant's Combined Sewer Collection System, which includes: 232 miles of gravity sewers, 3,600 catch basins, 5,800 manholes, 20 combined sewer outfalls, 25 combined sewer regulators, 21 floatable control facilities, 20 netting facilities, 4 interceptor sewers, 11 remote pump stations, and 2 regional pump stations (east and west). Any changes to the Defendant's Combined Sewer Collection System after the Effective Date of this Decree shall also be included in the definition of Facility, and subject to the terms of this Decree.

k. "Paragraph" shall mean a portion of this Decree identified by an arabic numeral;

l. "Parties" to this Consent Decree shall mean the United States and Defendant;

m. "Private Lateral" shall mean that portion of the Wastewater Collection and Transmission System, not owned by the Defendant, used to convey wastewater from a building or buildings to that portion of the Wastewater Collection and Transmission System owned by Defendant;

n. "Section" shall mean a portion of this Decree identified by a roman numeral;

o. "Sewer Overflow" or "Overflow" shall mean an overflow, spill, diversion, or release of wastewater from the Defendant's sewer collection system. This term shall include: 1) discharges to surface; and 2) any release of wastewater from the sewer collection system to public or private property that does not reach waters of the United States or the State, including Building/Private Property Backups;

p. "State" shall mean the State of New Jersey; and

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

#### V. CIVIL PENALTY

9. Within thirty (30) Days after the Effective Date of this Consent Decree, Defendant shall pay the sum of \$375,000.00 as a civil penalty, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961, as of the date of lodging.

10. Defendant shall pay the civil penalty due by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with written instructions to be provided to Defendant, following entry of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney's Office for the District of New Jersey, Federal Building, Room 701, 970 Broad Street, Newark, NJ 07102-2506. At the time of payment, Defendant shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in

United States v. Jersey City Municipal Utilities Authority, and shall reference the civil action number and DOJ case number 90-5-1-1-09499, to the United States in accordance with Section XV of this Decree (Notices); by email to [acctsreceivable.CINWD@epa.gov](mailto:acctsreceivable.CINWD@epa.gov); and by mail to:

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, Ohio 45268

11. Defendant shall not deduct any penalties paid under this Decree pursuant to this Section or Section IX (Stipulated Penalties) in calculating its federal or State or local income tax.

#### VI. COMPLIANCE REQUIREMENTS

12. At all times, Defendant shall comply with Section 301(a) of the CWA, 33 U.S.C. § 1311 (a), as well as the CSS General Permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and any permit Defendant subsequently applies for and obtains, including but not limited to the New Jersey Pollutant Discharge Elimination System permit (“NJPDES permit”).

13. Defendant is undertaking a Combined Sewer System Capacity and Condition Assessment Study (“Capacity and Condition Assessment Study”) to better understand its entire system and to identify actions that need to be undertaken to address flooding and other problems on its system. The Capacity and Condition Assessment Study should enable Defendant to prioritize improvements needed and begin addressing those improvements in an orderly fashion as capital improvement funding becomes available. Defendant has embarked on a phased approach to this Capacity and Condition Assessment Study. Defendant shall complete all phases of the Capacity and Condition Assessment Study no later than April 15, 2015. The

remaining phases of the Capacity and Condition Assessment Study shall be completed according to the following schedule:

Phase of the Capacity Assessment Study	Date Study is to be completed	Date the Report of the Study and Recommendations are to be submitted to EPA
Phase IV (1094 manholes and associated pipes inspected)	No later than January 15, 2012	No later than April 15, 2012
Phase V (1138 manholes inspected and associated pipes inspected)	No later than January 15, 2013	No later than April 15, 2013
Phase VI (1082 manholes inspected and associated pipes inspected)	No later than January 15, 2014	No later than April 15, 2014
Phase VII (1,227 manholes inspected and associated pipes inspected)	No later than January 15, 2015	No later than April 15, 2015

The locations to be inspected in the remaining phases of the Capacity and Condition Assessment Study are set forth in spreadsheets attached to this Consent Decree as Appendix A. After completing each phase of the Capacity and Condition Assessment Study, Defendant shall prepare for EPA approval a report containing any recommended actions that are to be implemented by Defendant as a result of the Study by the dates indicated above. Defendant's report to EPA shall include recommended actions and the time frame for completing each action. The Parties agree that the extent of the repairs and actions necessarily resulting from each phase of the Capacity and Condition Assessment Study are presently unknown and cannot be estimated until after each phase of the Capacity and Condition Assessment Study is completed. The Parties agree to confer on an as needed basis to discuss the relative priority to be given to the actions resulting from the Capacity and Condition Assessment Study. Defendant shall complete all of

the recommended actions resulting from the Capacity and Condition Assessment Study as soon as practicable, but no later than December 31, 2021.

14. Defendant will install a residential complaint system which should enable Defendant to better understand and characterize any releases that occur into public and private areas from its Facility. Defendant will analyze the complaints received on the system for a period of one year, and provide to EPA for approval no later than September 30, 2011 a report analyzing all received complaints, determinations made regarding the cause of the complaint, remedial actions taken and proposed to eliminate any release(s) on the system that are attributable to Defendant. EPA will provide comments on the report to Defendant within sixty (60) days of receipt. A summary of the residential complaints received shall be discussed in the Quarterly Reports required under Section VIII (Reporting Requirements).

15. Any unpermitted Sewer Overflow including a Building/Private Property Backup constitutes a violation of this Consent Decree.

16. Defendant shall purchase two additional vacuum trucks no later than August 31, 2011. These two vacuum trucks shall be in service no later than January 31, 2012. At all times during pendency of this Consent Decree, Defendant shall at a minimum maintain in service three vacuum trucks to assist with the operation and maintenance of its Facility. Failure to maintain three vacuum trucks throughout the duration of this Consent Decree constitutes a violation of the Consent Decree, and shall be included in the Quarterly Reports as required under Section VIII (Reporting Requirements).

17. No later than sixty (60) days after the Effective Date, Defendant shall post, and continuously thereafter shall maintain, signs within 10 feet of each and every CSO point.