

THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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UNITED STATES OF AMERICA, )  
COMMONWEALTH OF PENNSYLVANIA, )  
DEPARTMENT OF ENVIRONMENTAL )  
PROTECTION, and )  
ALLEGHENY COUNTY HEALTH )  
DEPARTMENT )  
Plaintiffs, )  
)  
)  
)  
)  
vs. )  
) Civil Action No.  
ALLEGHENY COUNTY SANITARY )  
AUTHORITY, )  
Defendant. )  

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**CONSENT DECREE**

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WHEREAS, the Allegheny County Sanitary Authority (“ALCOSAN”), a municipal authority organized under the Municipal Authorities Act, as amended, 53 Pa. C.S.A. §§ 5601-5623, operates the Conveyance and Treatment System, including the Sewage Treatment Plant, that serves the citizens of the City of Pittsburgh and many surrounding municipalities, all of which are located within the jurisdiction of the U.S. District Court for the Western District of Pennsylvania;

WHEREAS, the Sewage Treatment Plant is a large publicly-owned treatment work with flows equal to at least 1,000,000 gallons per day (“MGD”) and a service population equivalent exceeding 10,000 persons;

WHEREAS, the geographic area served by ALCOSAN includes a unique sewer system where approximately 83 municipalities own their own Collection Systems and convey Sewage to the Conveyance and Treatment System, including the Sewage Treatment Plant, and most of those 83 municipalities have entered or agreed to enter into administrative orders and agreements with the Commonwealth of Pennsylvania Department of Environmental Protection (“Commonwealth” or “PADEP”) and/or the Allegheny County Health Department (“ACHD”) to assess, repair, and improve their municipal systems;

WHEREAS, Plaintiff, the United States of America ("United States"), 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"), the Commonwealth, and ACHD (hereinafter the United States, the Commonwealth and ACHD will sometimes be collectively referred to as the “Plaintiffs”) have filed a Complaint against ALCOSAN seeking injunctive relief and civil penalties pursuant to:

a. the Clean Water Act, 33 U.S.C. § 1251 *et seq.* (“The Clean Water Act”), specifically Section 309 of the Clean Water Act, 33 U.S.C. § 1319;

- b. the Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. §§ 691.1. - 691.1001 (“Clean Streams Law”), specifically Sections 601 and 605 of the Clean Streams Law, 35 P.S. §§ 691.601 and 695.605; and
- c. the Local Health Administration Law, Act 315 of August 24, 1951, P.L. 1304, as amended, 16 P.S. §12001, *et. seq.*, (“Local Health Administration Law”) and the rules and regulations of the ACHD promulgated thereunder (“ACHD’s Rules and Regulations”);

WHEREAS, the United States, the Commonwealth, and ACHD allege that ALCOSAN has violated and continues to violate Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1342, Sections 3, 202 and 401 of the Clean Streams Law, 35 P.S. §§ 691.3, 691.202 and 691.401, and ACHD's Rules and Regulations, Article XIV, Sewage Management, § 1404.1, as amended (“ACHD’s Article XIV”) by impermissibly discharging untreated Sewage from the Conveyance and Treatment System to the Allegheny, Ohio and Monongahela Rivers and several smaller water bodies;

WHEREAS, on March 3, 2007, the Commonwealth, as the permitting agency for the National Pollutant Discharge Elimination System (“NPDES”) permit program, noticed for public comment the draft of the NPDES Permit to be reissued to ALCOSAN;

WHEREAS, the Commonwealth has subsequently issued the final version of the reissued NPDES Permit to ALCOSAN, which is a Phase II NPDES permit as referenced in EPA’s Combined Sewer Overflow Policy;

WHEREAS, the NPDES Permit requires ALCOSAN to immediately implement a water-quality-based long-term control plan;

WHEREAS, the NPDES Permit also requires ALCOSAN, *inter alia*, to revise its Nine Minimum Control Plan, to modify its operation and maintenance procedures, to revise its industrial pretreatment program, to eliminate sanitary sewer overflows, to meet certain monitoring and reporting requirements, and to cooperate with Customer Municipalities to develop area-wide planning and combined sewer overflow control activities.

WHEREAS, Section V.C.2. of EPA's Combined Sewer Overflow Policy (59 Fed.Reg. at 18,696) specifies, among other things, that compliance schedules for permittees, such as ALCOSAN, under a Phase II NPDES permit be placed in a judicial order;

WHEREAS, since immediate implementation of the water-quality-based long-term control plan and the tasks associated therewith cannot occur, The Plaintiffs and ALCOSAN (collectively, the "Parties"), as required by EPA's Combined Sewer Overflow Policy, have entered into this Consent Decree to establish, through a judicial order, judicially-enforceable schedules and requirements for the development and implementation of a water-quality-based long-term control plan and associated tasks; and

WHEREAS, the Parties agree, and the Court finds, that settlement of the claims alleged in the Complaint without further litigation or trial of any issues, is fair, reasonable and in the public interest and that the entry of this Consent Decree is the most appropriate way of resolving the claims alleged in the Complaint.

NOW THEREFORE, without admission by ALCOSAN of any of the non-jurisdictional allegations in the Complaint, and without adjudication of any issue of fact or law, it is hereby ORDERED, ADJUDGED and DECREED as follows:

### **I. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action and over the Parties to this action pursuant to Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b).



2. The Complaint states claims against ALCOSAN under the Clean Water Act, the Clean Streams Law, Local Health Administration Law, and ACHD's Article XIV, for injunctive relief and civil penalties. By entering this Consent Decree, ALCOSAN does not admit any liability to the Plaintiffs arising out of the transactions or occurrences alleged in the Complaint and maintains that the provisions in this Consent Decree are for compromise and settlement purposes only.

3. ALCOSAN waives any and all objections it might have to the Court's jurisdiction to enter and enforce this Consent Decree.

4. The authority for the United States to bring this action is vested in the United States Department of Justice pursuant to Section 506 of the Clean Water Act, 33 U.S.C. § 1366, and 28 U.S.C. §§ 516 and 519. The authority for the Commonwealth to bring this action is pursuant to Section 309(e) of the Clean Water Act and Sections 601 and 605 of the Clean Streams Law, 35 P.S. § 691.601 and 691.605. The authority for ACHD to bring this action is pursuant to Section 12010 of the Local Health Administration Law, 16 P.S. § 12010, and ACHD's Article XIV.

## **II. VENUE**

5. Venue is proper in this Court pursuant to Section 309(b) of the Clean Water Act, 33 U.S.C. §1319(b) and 28 U.S.C. §§1391(b) and 1395(a).

## **III. PARTIES BOUND**

6. The United States is acting at the request and on behalf of the Administrator of EPA.

7. The Commonwealth of Pennsylvania is a state of the United States and, pursuant to Section 309(e) of the Clean Water Act, 33 U.S.C. § 1319(e), is required to be a party in this action. The Department of Environmental Protection is the agency within the Commonwealth of

Pennsylvania that administers and enforces the Clean Streams Law and is delegated by EPA to administer and enforce the federal NPDES permit program.

8. ACHD is a county department of health operating under the authority of Local Health Administrative Law, 16 P.S. §§ 12001 to 12028.

9. ALCOSAN is a "person" within the meaning of Section 502(5) of the Clean Water Act, 33 U.S.C. § 1362(5), and Section 1 of the Clean Streams Law, 35 P.S. § 691.1, and a "municipality" within the meaning of Section 502(4) of the Clean Water Act, 33 U.S.C. § 1362(4).

10. The provisions of this Consent Decree shall apply to and be binding on ALCOSAN, its directors, employees, agents, servants, successors and assigns, and upon the United States, the Commonwealth, and ACHD.

11. From the Date of Entry until its termination, ALCOSAN shall give written notice of this Consent Decree to each person or entity to whom ALCOSAN may transfer ownership or operation of the Conveyance and Treatment System or any portion thereof and shall provide a copy of this Consent Decree to each such person or entity. ALCOSAN shall notify EPA, the United States Department of Justice, PADEP, and ACHD, in writing, of each successor-in-interest at least 21 days prior to each such transfer.

12. ALCOSAN shall provide a copy of this Consent Decree to each engineering, consulting and contracting firm to be retained to perform the work or any portion thereof required by this Consent Decree, upon the execution of any contract relating to such work. ALCOSAN shall also provide a copy to each engineering, consulting and contracting firm already retained to perform such work no later than 30 days after the Date of Entry.

13. Any action taken to implement ALCOSAN's duties under this Consent Decree by a contractor or consultant retained by ALCOSAN shall be considered an action of ALCOSAN for

purposes of determining compliance with this Consent Decree. Except as permitted in Section XIII (Force Majeure), Paragraph 101 of Section VIII (Review and Approval of Submittals), and Paragraph 170 of Section XXI (General Provisions), ALCOSAN, in an action to enforce this Consent Decree, shall not assert as a defense against the United States, EPA, PADEP, or ACHD, any act or failure to act by any of its directors, employees, agents, servants, contractors, successors and assigns.

#### **IV. PURPOSE**

14. The purpose of the Parties entering into this Consent Decree is to ensure that ALCOSAN undertakes measures necessary to comply with the Clean Water Act, including, but not limited to, 33 U.S.C. § 1342(q) and the regulations promulgated thereunder, the Clean Streams Law and the regulations promulgated thereunder, the terms of the NPDES Permit, and the ACHD's Rules and Regulations.

#### **V. DEFINITIONS**

15. Unless otherwise defined herein, terms used in this Consent Decree shall have the meanings given to those terms in the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, and the regulations promulgated under that act or, if not defined in the Clean Water Act or its regulations, then as defined in the Clean Streams Law and the regulations promulgated thereunder. All other words shall be given their ordinary meaning. The following terms used in this Consent Decree apply to this Consent Decree only and shall be defined as set forth below:

“ACHD” shall mean the Allegheny County Health Department.

“ALCOSAN” shall mean the Allegheny County Sanitary Authority.

“ALCOSAN Sewer Pipe” shall mean all pipes and interceptors in the Conveyance and Treatment System, except those in the Sewage Treatment Plant and in ALCOSAN's deep tunnel system.

“Appendix” shall mean any appendix to this Consent Decree, and “Appendices” shall mean all such appendices.

“Collection System” shall mean a system of sewer pipes designed to collect Sewage, or designed to collect Stormwater and Sewage, and/or which conveys Sewage, Infiltration and/or Inflow from a sewerred area for Discharge, transport, or treatment. “Collection System” shall not include a system that is not connected to the Regional Collection System.

“Combined Sewer Outfall” shall mean an Outfall within the Conveyance and Treatment System identified in Appendix A, unless changed by written agreement of the Parties.

“Combined Sewer Overflow” shall mean a Discharge from a Combined Sewer Outfall.

“Combined Sewer System” shall mean (i) the portion of the Regional Collection System within the Boroughs of: Aspinwall, Braddock, Crafton, East Pittsburgh, Etna, Homestead, McKees Rocks, North Braddock, Pitcairn, Rankin, Sharpsburg, Turtle Creek, and Wilmerding, the Township of Stowe and Munhall Borough; (ii) the portion of the Regional Collection System designed, constructed and operated to collect and convey Sewage and Storm Water and/or permitted to be used as a combined sewer system within the City of Pittsburgh, the Boroughs of : Carnegie, Ingram, Millvale, Swissvale, West Homestead and West View, the Township of Wilkins, and McDonald Borough; (iii) Outfall C-51, which is located in Scott Township, but not including the Collection System serving Scott Township; and (iv) the portion of the Regional Collection System, not already listed above in this definition, within a Customer Municipality and designed, constructed, and operated to collect and convey Sewage and Storm Water and permitted to be used as a combined sewer system.

“Commonwealth” shall mean the Commonwealth of Pennsylvania Department of Environmental Protection.

“Consent Decree” shall mean this Consent Decree and all Appendices hereto.

“Conveyance and Treatment System” shall mean the Collection System owned and/or operated by ALCOSAN, as well as the Sewage Treatment Plant and other treatment facilities owned and/or operated by ALCOSAN.

“Customer Municipality” shall mean a Municipality under contract with ALCOSAN that conveys Sewage directly or indirectly to the Conveyance and Treatment System.

"Date of Entry" shall mean the date this Consent Decree is approved, signed, and entered by the United States District Court Judge for the Western District of Pennsylvania.

"Date of Lodging" shall mean the date this Consent Decree is filed for lodging with the United States District Court for the Western District of Pennsylvania.

“Demonstration Approach” shall mean the demonstration approach to controlling and/or eliminating Discharges described in EPA’s Combined Sewer Overflow Policy.

“Discharge” shall mean a spill, release or diversion of Sewage.

“Dry Weather Discharge” shall mean, for purposes of this Consent Decree, a Discharge from the combined sewer portion of a Collection System, other than a Wet Weather Discharge, except those Discharges that are caused by a third-party not retained by ALCOSAN.

“Dry Weather Flow” shall mean flow within the Regional Collection System during periods when there is no direct or immediate precipitation, snow melt or flood condition influence upon the Regional Collection System.

“Enforceable Document” shall mean: (a) an approved Corrective Action Plan reviewed and approved by PADEP pursuant to 25 Pa. Code §§ 94.1 *et seq.*; (b) an Official Plan Revision reviewed and approved by PADEP pursuant to the Pennsylvania Sewage Facilities Act, Act of

January 24, 1966, P.L. 1535, *as amended*, 35 P.S. §§ 750.1-750.20a (“Sewage Facilities Act”), including an Official Plan Revision in which a Municipality adopts ALCOSAN’s Wet Weather Plan, as approved by EPA and PADEP; (c) a long term control plan of a Municipality approved by PADEP; (d) a judicial consent decree; and/or (e) an administrative order issued by EPA or PADEP.

“EPA” shall mean the United States Environmental Protection Agency.

“EPA’s Combined Sewer Overflow Policy” shall mean the policy issued by EPA regarding combined sewer overflows, entitled “Combined Sewer Overflow (CSO) Control Policy,” 59 Fed. Reg. 18,688 (April 19, 1994).

“Force Main” shall mean a pipe that receives Sewage from the discharge side of a pump and is intended to convey such Sewage under pressure.

“Gravity Sewer Lines” shall mean pipes that contain Sewage flowing as a result of the force of gravity.

“Hydrograph” shall mean a graphical representation of the temporal distribution of runoff volume as a result of a precipitation event.

“Industrial User” shall mean any source regulated under Section 307(b), (c), or (d) of the Clean Water Act that introduces Pollutants into the Regional Collection System.

“Infiltration” shall mean water, other than Sewage, that enters a sewer system through structural or mechanical defects in the system.

“Inflow” shall mean water, other than Sewage or Infiltration, that enters a sewer system from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, French drains, foundation drains, streams, springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, Storm Water, surface runoff, street wash waters or drainage.

“Interceptor” shall mean a sewer within the Conveyance and Treatment System that is designed to collect Sewage from a Sanitary Sewer System and/or a Combined Sewer System and convey it to the Sewage Treatment Plant.

“Municipal Collection System” shall mean a Collection System owned or operated by a Customer Municipality that conveys Sewage and/or Storm Water to the Conveyance and Treatment System or to points in the Regional Collection System, including permitted and unpermitted Outfalls. A Municipal Collection System shall not include Storm Water collection or Sewage systems that are not connected to the Conveyance and Treatment System.

“Municipality” shall mean a county, city, borough, town, township or school district, as well as an authority (other than ALCOSAN) created by one or more of these entities.

“Nine Minimum Control(s)” shall mean those controls and best management practices for Sewage conveyance and treatment systems described in EPA’s Combined Sewer Overflow Policy.

“NPDES Permit” shall mean National Pollutant Discharge Elimination System (“NPDES”) permit number PA0025984 issued by PADEP to ALCOSAN pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342 and Section 202 of the Clean Streams Law, 35 P.S. § 691.202, and the previous version of said NPDES permit issued to ALCOSAN on March 28, 1995, and amended on February 17, 1998, and all future extensions, modifications, amendments, renewals or reissuances of this permit. A copy of the NPDES permit for ALCOSAN is attached to this Consent Decree in Appendix D (NPDES Permit).

“Outfall” shall mean a structure designed, constructed, or operated to allow a discharge. For purposes of this Consent Decree, however, “Outfall” shall exclude Discharges from the Sewage Treatment Plant.

"Paragraph" shall mean a portion of this Consent Decree identified by Arabic numerals.

"Participating Municipality" shall mean every Customer Municipality except McCandless Township, Franklin Park Borough, Kilbuck Township, Ohio Township, and the portion of Ross Township that contributes sewage flows to the Lowries Run Interceptor.

"Parties" shall mean the United States, the Commonwealth, ACHD, and ALCOSAN. A "Party" shall mean any one of these entities.

"Peak Dry Weather Flow" shall mean the annual average of the highest flow value for each day of Dry Weather Flow, in MGD. Peak Dry Weather Flow shall be calculated by summing the highest flow values for each day of Dry Weather Flow within a calendar year for which such values can be observed or estimated, and then dividing that figure by the number of days of Dry Weather Flow within that calendar year in which such values are observed or estimated.

"Plaintiffs" shall mean the United States, the Commonwealth and ACHD.

"Plant Secondary Capacity" shall mean the maximum amount of flow that can be fully treated by both the Sewage Treatment Plant aeration basins and final clarifiers, or their equivalent.

"Point of Connection" shall mean any physical connection to the Conveyance and Treatment System that routes flow to that system from a Municipal Collection System.

"Pollutant" shall mean dredged spoil, solid waste, incinerator residue, filter backwash, garbage, Sewage, sewage sludge, munitions, chemical wastes, biological materials, radiological materials (except those regulated under the Atomic Energy Act of 1954, as amended), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and/or agricultural waste discharged into water.



“Post-Construction” shall mean the period of time following completion of construction of the remedial controls, and implementation of the remedial activities, required by the approved Wet Weather Plan.

“Presumption Approach” shall mean the presumption approach to controlling and/or eliminating Discharges described in EPA’s Combined Sewer Overflow Policy.

“Primary Treatment” shall mean the combination of treatment processes and technologies, such as screening, grit removal, and settling, that provides primary clarification or its equivalent, the removal of solids and floatables and, if necessary, disinfection and the removal of any harmful disinfection residuals, where necessary.

“Pump Station” shall mean a facility comprised of hydraulic pumps or other mechanical equipment designed and utilized to impart energy to the Sewage in the form of hydraulic pressure, velocity, or elevation.

“Regional Collection System” shall mean, collectively, the Conveyance and Treatment System and all the Municipal Collection Systems.

“Regulator” shall mean a device that is designed, constructed, and operated to control the volume of flow that is either (a) conveyed to one or more locations on the Conveyance and Treatment System and/or (b) discharged to receiving waters.

“Sanitary Sewer Outfall” shall mean an Outfall within the Conveyance and Treatment System identified in Appendix B, unless changed by written agreement of the Parties.

“Sanitary Sewer Overflow” shall mean a Discharge from a Sanitary Sewer Outfall or any other point (including but not limited to manholes and broken mains) within the Sanitary Sewer System at a location prior to a sewage treatment plant.

“Sanitary Sewer System” shall mean the portion of the Regional Collection System that is not part of the Combined Sewer System or the combined portion of the Conveyance and Treatment System.

“Secondary Treatment” shall mean “secondary treatment” as that term is defined in 40 C.F.R. § 133.

"Section" shall mean a portion of this Consent Decree identified by upper case Roman numerals.

"Sensitive Areas" shall mean, consistent with EPA's Combined Sewer Overflow Policy, areas as determined by the NPDES authority in coordination with state and federal agencies, as appropriate, which include designated Outstanding Natural Resource Waters, National Marine Sanctuaries, waters with threatened or endangered species and their habitat, waters with primary contact recreation, public drinking water intakes or their designated protection areas, and shellfish beds. The areas to be treated as Sensitive Areas for purposes of this Consent Decree only are those identified as such in Appendix C.

“Sewage” shall mean wastes, and wastewater, collected from residences, public buildings, industries, and commercial establishments and conveyed through the Regional Collection System.

“Sewage Parameters” shall mean the following parameters:

- i. biochemical oxygen demand;
- ii. fecal coliform;
- iii. total suspended solids;
- iv. E-coli;
- v. dissolved oxygen;
- vi. ammonia; and
- vii. nitrite plus nitrate.

“Sewage Treatment Plant” shall mean the devices, processes, and/or systems owned and operated by ALCOSAN at 3300 Preble Avenue, Pittsburgh, Pennsylvania, that are used to store, treat, recycle, and reclaim Sewage.

“Storm Water” shall mean runoff and/or drainage resulting from precipitation, including rainfall and snowmelt.

“Subparagraph” shall mean a portion of a Paragraph identified by lower case letters or lowercase Roman numerals.

“Subsection” shall mean a portion of a Section, identified by upper case letters.

“Treatment” shall mean (a) Secondary Treatment and (b) any additional treatment that may be necessary to meet Water Quality Standards, to protect designated uses, and to protect human health.

“Validate” or “Validation” shall mean, for purposes of the models required under this Consent Decree, the calibration and verification of such models in accordance with EPA guidance, established industry standards, and good engineering practices.

“Water Quality Standards” shall mean the standards promulgated pursuant to Sections 301(b)(1)(C) and 402(a) of the Clean Water Act, 33 U.S.C. §§ 1311(b)(1)(C) and 1342(a).

“Wet Weather Discharge” shall mean a Discharge when the flow in a Collection System exceeds the storage and conveyance capacity of that system and is directly caused or influenced by Inflow and/or Infiltration that is the direct or immediate result of precipitation, snow melt, or flood conditions.

“Wet Weather Flow” shall mean flow within the Regional Collection System consisting of Sewage, Inflow, and/or Infiltration during periods when there is a direct or immediate precipitation, snow melt or flood condition influence upon the Regional Collection System.

“Wet Weather Plan” shall mean the long term wet weather control plan submitted by ALCOSAN pursuant to this Consent Decree.

## **VI. CLEAN WATER ACT REMEDIAL CONTROLS AND REMEDIAL ACTIVITIES**

### **A. Compliance Requirements:**

16. Within the time frames established as part of the Wet Weather Plan process described in this Consent Decree, ALCOSAN shall:

- a. eliminate all Sanitary Sewer Overflows from the Conveyance and Treatment System;
- b. eliminate Dry Weather Discharges from the Conveyance and Treatment System;
- c. discharge from the Conveyance and Treatment System only to the extent that such Discharges, as demonstrated by Post-Construction compliance monitoring, will meet the requirements of the Clean Water Act, consistent with EPA's Combined Sewer Overflow Policy; and
- d. construct and operate conveyance, storage, and treatment facilities for flows from the Regional Collection System in accordance with Section VI, Subsections B (Planning, Design, and Construction Requirements) and C (Operational Requirements).

### **B. Planning, Design, and Construction Requirements**

17. Sanitary Sewer System Flow Within the time frames established as part of the Wet Weather Plan process described below, but in no event later than September 30, 2026, ALCOSAN shall design and construct facilities for the Conveyance and Treatment System sufficient to:

- a. eliminate all Sanitary Sewer Overflows from the Conveyance and Treatment System; and
- b. capture and provide Treatment, for at least twenty years after completion of construction of the remedial controls, and implementation of the remedial activities, required

under the Wet Weather Plan approved by the Plaintiffs, for a flow volume equivalent to all of the Sanitary Sewer System flow that is generated in the Regional Collection System.

Notwithstanding the foregoing, ALCOSAN need not design and construct facilities to capture and provide Treatment for a given amount of Sanitary Sewer System flow from a Customer Municipality within the Regional Collection System if:

i. the Customer Municipality has constructed or is legally committed under an Enforceable Document to construct facilities to capture and provide Treatment for that amount of Sanitary Sewer System flow; or

ii. insufficient capacity exists to convey a given amount of flow from the Customer Municipality to the Conveyance and Treatment System, the Customer Municipality certifies that it does not intend to create and/or cannot create capacity sufficient to convey that given amount of flow to the Conveyance and Treatment System, and PADEP and EPA have determined that the Customer Municipality can comply with the Clean Water Act through means other than conveying this amount of flow to the Conveyance and Treatment System; and

iii. ALCOSAN submits a proposal to the Plaintiffs to exclude such municipal flow on the grounds set forth above in Subparagraphs 17(b)(i) or 17(b)(ii), with sufficient detail for review and approval by EPA and PADEP, and for review and comment by ACHD, in accordance with Section VIII (Review and Approval of Submittals); and

iv. EPA and PADEP approve of ALCOSAN's proposal to exclude the municipal flow from its planning, design, and construction of such facilities.

18. Combined Sewer System Flow Within the time frames established as part of the Wet Weather Plan process described below, but in no event later than September 30, 2026,

ALCOSAN shall design and construct facilities for the Conveyance and Treatment System sufficient to capture and treat flows from the Combined Sewer System for at least twenty years after completion of construction of the remedial controls, and implementation of the remedial activities, required under the Wet Weather Plan approved by the Plaintiffs, as follows:

a. Demonstration Approach – If ALCOSAN submits the Wet Weather Plan utilizing the Demonstration Approach pursuant to Section VI, Subsections H (Wet Weather Plan – General Requirements) and J (Wet Weather Plan – Demonstration Approach), and EPA’s Combined Sewer Overflow Policy, then: ALCOSAN shall design and construct facilities for the Conveyance and Treatment System sufficient to capture and provide Treatment to the volumetric equivalent of all Peak Dry Weather Flow generated in the Regional Collection System; and, for the volumetric equivalent of all Wet Weather Flow generated in the Combined Sewer System portion of the Regional Collection System, ALCOSAN shall design and construct facilities that will meet the requirements of the Clean Water Act, consistent with EPA’s Combined Sewer Overflow Policy. Notwithstanding the foregoing, ALCOSAN need not design and construct facilities to capture and provide such treatment to a given amount of Combined Sewer System flow from a Customer Municipality within the Regional Collection System if:

i. the Customer Municipality has constructed or is legally committed under an Enforceable Document to construct facilities to achieve such capture and treatment; or

ii. insufficient capacity exists to convey a given amount of flow from the Customer Municipality to the Conveyance and Treatment System, the Customer Municipality certifies that it does not intend to create and/or cannot create capacity sufficient to convey that given amount of flow to the Conveyance and Treatment System, and PADEP and EPA have determined that the Customer

Municipality can comply with the Clean Water Act through means other than conveying this amount of flow to the Conveyance and Treatment System; and

iii. ALCOSAN submits a proposal to the Plaintiffs to exclude such municipal flow on the grounds set forth above in Subparagraphs 18(a)(i) or 18(a)(ii), with sufficient detail for review and approval by EPA and PADEP, and for review and comment by ACHD, in accordance with Section VIII (Review and Approval of Submittals); and

iv. EPA and PADEP approve of ALCOSAN's proposal to exclude the municipal flow from its planning, design, and construction of such facilities.

b. 85% Presumption Approach – If, in accordance with Paragraphs 45-47, EPA and PADEP make a Preliminary Determination that ALCOSAN may utilize a Presumption Approach, and ALCOSAN elects to submit the Wet Weather Plan utilizing the Presumption Approach based on 85% capture of the volumetric equivalent of all Combined Sewer System flow pursuant to Section VI, Subsection I (Wet Weather Plan – Presumption Approach) and EPA's Combined Sewer Overflow Policy, then ALCOSAN shall design and construct facilities for the Conveyance and Treatment System sufficient to meet the requirements of the Clean Water Act, consistent with EPA's Combined Sewer Overflow Policy, and sufficient to:

- i. provide Treatment to the volumetric equivalent of all Peak Dry Weather Flow generated in the Regional Collection System;
- ii. capture at least 85% of the volumetric equivalent of all Combined Sewer System flow that is generated in the Regional Collection System; and
- iii. for the volumetric equivalent of all Wet Weather Flow within the above-referenced captured flow, provide the best practicable technology (“BPT”), including, at a minimum, primary clarification or the equivalent of primary

clarification, solids and floatables disposal, and disinfection of effluent, if necessary, to meet all applicable Water Quality Standards, protect designated uses and protect human health, including, where necessary, removal of harmful disinfection chemical residuals.

Notwithstanding the foregoing, ALCOSAN need not design and construct facilities to capture and provide such treatment for a given amount of Combined Sewer System flow from a Customer Municipality within the Regional Collection System if ALCOSAN demonstrates compliance with the requirements set forth in Subparagraphs 18(a)(i) through (iv), above.

c. Mass Pollutant Removal Presumption Approach – If, in accordance with Paragraphs 45-47, EPA and PADEP make a Preliminary Determination that ALCOSAN may utilize a Presumption Approach, and ALCOSAN elects the mass-pollutant-removal Presumption Approach pursuant to EPA’s Combined Sewer Overflow Policy, then ALCOSAN shall design and construct facilities for the Conveyance and Treatment System sufficient to capture and provide treatment to remove the mass of those Pollutants in the flow volumes that would be eliminated or captured for treatment in accordance with the 85% Presumption Approach discussed above in Subparagraph 18(b). Notwithstanding the foregoing, ALCOSAN need not design and construct facilities to capture and provide such treatment to remove this given mass of Pollutants from the Combined Sewer System flow from a Customer Municipality within the Regional Collection System if ALCOSAN demonstrates compliance with the requirements set forth in Subparagraphs 18(a)(i) through (iv), above.



### **C. Operational Requirements**

19. Sanitary Sewer System Flow Within the time frames established as part of the Wet Weather Plan process described below, but in no event later than September 30, 2026, ALCOSAN shall operate the Conveyance and Treatment System such that it:

- a. eliminates all Sanitary Sewer Overflows from the Conveyance and Treatment System; and
- b. captures and provides Treatment, for at least twenty years after completion of construction of the remedial controls, and implementation of the remedial activities, required under the Wet Weather Plan approved by the Plaintiffs, for a flow volume equivalent to all of the Sanitary Sewer System flow that is routed to the Conveyance and Treatment System from the Municipal Collection Systems within the Regional Collection System.

20. Combined Sewer System Flow Within the time frames established as part of the Wet Weather Plan process described below, but in no event later than September 30, 2026, ALCOSAN shall operate the Conveyance and Treatment System such that it captures and treats flows from the Combined Sewer System for at least twenty years after completion of construction of the remedial controls, and implementation of the remedial activities, required under the Wet Weather Plan approved by the Plaintiffs, as follows:

- a. Demonstration Approach – If ALCOSAN elects the Demonstration Approach pursuant to Paragraph 48 and EPA’s Combined Sewer Overflow Policy, then ALCOSAN shall operate the Conveyance and Treatment System such that:
  - i. it captures and provides Treatment to the volumetric equivalent of all Peak Dry Weather Flow routed to the Conveyance and Treatment System from the Regional Collection System;
  - ii. it provides, for the volumetric equivalent of all Wet Weather Flow routed from the Combined Sewer System portion of the Regional Collection System to the Conveyance and Treatment System, the maximum pollution

reduction benefits reasonably attainable to protect designated uses and human health; and

iii. Discharges from the combined sewer system portion of the Conveyance and Treatment System meet the requirements of the Clean Water Act, consistent with EPA's Combined Sewer Overflow Policy.

b. 85% Presumption Approach – If, in accordance with Paragraphs 45-47, EPA and PADEP make a Preliminary Determination that ALCOSAN may utilize a Presumption Approach, and ALCOSAN elects to submit the Wet Weather Plan utilizing the Presumption Approach based on 85% capture of the volumetric equivalent of all Combined Sewer System flow (“85% Captured Flow”) pursuant to Section VI, Subsection I (Wet Weather Plan – Presumption Approach) and EPA's Combined Sewer Overflow Policy, then ALCOSAN shall operate the Conveyance and Treatment System such that it meets the requirements of the Clean Water Act, consistent with EPA's Combined Sewer Overflow Policy, and such that:

i. it captures the 85% Captured Flow that is routed to the Conveyance and Treatment System from the Regional Collection System;

ii. it provides Treatment to the volumetric equivalent of all Peak Dry Weather Flow routed to the Conveyance and Treatment System from the Regional Collection Systems; and

iii. for the volumetric equivalent of all Wet Weather Flow within this 85% Captured Flow, it provides BPT, including, at a minimum, primary clarification or the equivalent of primary clarification, solids and floatables disposal, and disinfection of effluent, if necessary, to meet all applicable Water Quality Standards, protect designated uses and protect human health, including, where necessary, removal of harmful disinfection chemical residuals.

c. Mass Pollutant Removal Presumption Approach – If, in accordance with Paragraphs 45-47, EPA and PADEP make a Preliminary Determination that ALCOSAN may utilize a Presumption Approach, and ALCOSAN elects the mass-pollutant-removal Presumption

Approach pursuant to EPA's Combined Sewer Overflow Policy, then ALCOSAN shall operate the Conveyance and Treatment System such that it captures and provides treatment to remove the mass of those Pollutants in the flow volumes that would be eliminated or captured for treatment in accordance with the 85% Presumption Approach discussed above in Subparagraph 20(b).

#### **D. Permitting Requirements**

##### 21. NPDES Permit.

a. The NPDES Permit, which is attached to this Consent Decree in Appendix D (NPDES Permit), applies to all of the Combined Sewer Outfalls listed in Appendix A (Combined Sewer Outfalls) and the Outfalls at the Sewage Treatment Plant. Any violation of the NPDES Permit, in and of itself, shall not be deemed a violation of this Consent Decree.

b. The NPDES Permit addresses, *inter alia*, the implementation of a water quality based Long-Term Control Plan ("LTCP") and certain associated combined sewer overflow control requirements. Such associated requirements include, but are not limited to, review and potential revisions to ALCOSAN's operation and maintenance procedures, review and potential revisions to ALCOSAN's implementation of a Nine Minimum Control plan, review and potential revisions to ALCOSAN's industrial pretreatment program, the elimination of Sanitary Sewer Overflows from the Conveyance and Treatment System, obligations for monitoring and reporting and cooperation with Customer Municipalities to implement area wide planning and combined sewer overflow control activities, protection of sensitive areas, public participation in developing the wet weather LTCP, maximization of flow to the Sewage Treatment Plant for treatment, evaluation and selection of control alternatives, evaluation and selection of a presumptive or demonstrative approach, development of an operational plan, implementation schedule and financing plan for selected control options, post-construction

compliance monitoring, and characterization, monitoring and modeling of the combined sewer systems (collectively, the “Associated LTCP Implementation Requirements”).

c. This Consent Decree is intended to address the Associated LTCP Implementation Requirements, and to the extent the NPDES Permit and this Consent Decree provide different schedules for the implementation of the LTCP and/or different schedules for the performance of Associated LTCP Implementation Requirements, the schedule set forth in the Consent Decree shall govern enforcement proceedings as long as the Consent Decree is in effect. Also, to the extent the NPDES Permit and this Consent Decree establish different requirements for monitoring and/or reporting of the implementation of the long-term control plan, and/or for monitoring and/or reporting of the performance of Associated LTCP Implementation Requirements, the monitoring and reporting requirements set forth in the Consent Decree shall govern enforcement proceedings as long as the Consent Decree is in effect.

22. Waiver of Appeal of NPDES Permit. On the basis of the requirements of this Consent Decree, including those provisions relating to the Associated LTCP Implementation Requirements, ALCOSAN agrees to the terms of the NPDES Permit attached hereto in Appendix D (NPDES Permit), and therefore waives its right to appeal the issuance of the NPDES Permit in the form attached in Appendix D.

#### **E. Sewage Treatment Plant Operation**

23. Operation of Plant Influent Pumps. Beginning 180 days after the Date of Entry, ALCOSAN shall operate the Sewage Treatment Plant influent pumps to increase pumping rates, up to the maximum available treatment capacity of the Sewage Treatment Plant, in response to increases in wet-well elevation.

24. Sewage Treatment Plant Operating Plan. Within 180 days after the Date of Entry, ALCOSAN shall submit a “Sewage Treatment Plant Operating Plan” to be used before, during,

and after Wet Weather Flow events. The Sewage Treatment Plant Operating Plan shall include the following components:

- a. specific actions that ALCOSAN proposes to conduct before an anticipated Wet Weather Flow event and the purpose of each action;
- b. specific actions that ALCOSAN proposes to conduct during a Wet Weather Flow event and the purpose of each action;
- c. specific actions that ALCOSAN proposes to conduct after a Wet Weather Flow event and the purpose of each action;
- d. a description of how the proposed actions will vary with different Wet Weather Flow events;
- e. identification of operational and maintenance problems that have or are likely to impair ALCOSAN's ability to treat Wet Weather Flows and comply with its NPDES Permit; and
- f. a description of preventative operational and maintenance measures to be implemented to seek to prevent such problems in the future.

25. Review, approval, and implementation of the Sewage Treatment Plant Operating Plan shall be in accordance with Section VIII (Review and Approval of Submittals).

26. Whenever any material and substantial alteration or addition is made to the Sewage Treatment Plant and/or its operation during Wet Weather Flow events, ALCOSAN shall submit to the Plaintiffs for comment and approval, in accordance with Section VIII (Review and Approval of Submittals), an update of the Sewage Treatment Plant Operating Plan.

**F. Operation and Maintenance of Conveyance and Treatment System**

27. Operation and Maintenance Program. ALCOSAN shall implement an operation and maintenance program for the Conveyance and Treatment System in accordance with

Appendix I (Operation and Maintenance of the Conveyance and Treatment System).

ALCOSAN may, at any time, propose to the Plaintiffs modifications to the requirements for the O&M Plan as defined in Paragraph 7 of Appendix I. If the Plaintiffs agree in writing to such modifications, then ALCOSAN shall submit to the Plaintiffs proposed revisions to its O&M Plan. Upon approval by the Plaintiffs in accordance with Section VIII (Review and Approval of Submittals), the revised O&M Plan shall be enforceable under this Consent Decree without a modification to this Consent Decree under Section XIX (Modification).

28. Compliance with Nine Minimum Controls. In addition to the measures required of ALCOSAN pursuant to this Subsection, ALCOSAN shall undertake the measures identified in Section VI, Subsection Q (Compliance with Nine Minimum Controls).

29. Regulators. ALCOSAN shall, in accordance with Appendix E (Regulator Capacity Evaluation and Modification), evaluate the capacity of, and modify as necessary, the Regulators within the Conveyance and Treatment System.

30. Industrial Users. ALCOSAN shall, in accordance with Appendix F (Reduction of Water Quality Impacts from Industrial Users), implement measures to reduce water quality impacts on receiving waters from Industrial Users through Combined Sewer Overflows and Sanitary Sewer Overflows from the Conveyance and Treatment System.

31. Control of Solids and Floatables. ALCOSAN shall, in accordance with Appendix G (Control of Solid and Floatable Materials), implement a solids and floatables control program for the Conveyance and Treatment System.

32. Dry Weather Discharges. ALCOSAN shall, in accordance with Appendix H (Elimination of Dry Weather Discharges), implement a program to eliminate Dry Weather Discharges from the Conveyance and Treatment System. By no later than six years from the Date of Entry, ALCOSAN shall eliminate all Dry Weather Discharges from the Conveyance and Treatment System.

33. Sewer Pipe Repair. ALCOSAN shall assess, repair, and maintain the ALCOSAN Sewer Pipes in accordance with the provisions of Appendix I (Operation and Maintenance of the Conveyance and Treatment System).

34. System Inventory and Maps. ALCOSAN, as required by Appendix I (Operation and Maintenance of the Conveyance and Treatment System), shall develop an inventory of the Conveyance and Treatment System and a map of the Conveyance and Treatment System and the Regional Collection System.

**G. Monitoring and Modeling**

35. Overflow Monitoring. In accordance with Appendix L (Combined Sewer Overflow and Sanitary Sewer Overflow Monitoring), ALCOSAN shall evaluate each Discharge from the Conveyance and Treatment System.

36. Flow Monitoring. In accordance with Appendix M (Flow Monitoring) and this Consent Decree, ALCOSAN shall conduct flow monitoring of the Regional Collection System, including measurement of flows routed to the Conveyance and Treatment System from the Municipal Collection Systems.

a. For the ALCOSAN Point of Connection Meters (as that term is defined in Appendix M (Flow Monitoring)), ALCOSAN shall measure the flows at locations that are as close in proximity as possible to each Point of Connection, unless it is not feasible to monitor flow in proximity to a particular Point of Connection. Where it is not feasible to conduct such flow monitoring, or to obtain actual flow monitoring data, ALCOSAN shall utilize other established methodologies to characterize the flow rates for each Point of Connection.

b. For the flow routed to the Conveyance and Treatment System from the Municipal Collection Systems, in lieu of conducting flow monitoring at some of the Points of Connection to the Conveyance and Treatment System, ALCOSAN may submit to Plaintiffs, as part of its flow monitoring plan prepared and submitted pursuant to Section VIII (Review and Approval of Submittals) and Appendix M (Flow Monitoring), a proposal to utilize existing flow monitoring data gathered from past flow monitoring efforts by or on behalf of ALCOSAN.

ALCOSAN may for the Point of Connection Meters or for any flow monitoring it conducted in the Regional Collection System, make such a proposal if such past flow monitoring was conducted (i) at locations as close in proximity as possible to each Point of Connection, if the location to be monitored is a Point of Connection Meter, (ii) after January 1, 1997, and (iii) in accordance with the protocols proposed by ALCOSAN and approved by the Plaintiffs pursuant to Appendix M (Flow Monitoring). In its proposal, ALCOSAN shall include a summary and assessment of the data that it proposes to utilize, and an explanation of whether and how the past flow monitoring data meet the requirements of this subparagraph. ALCOSAN shall not receive credit for flow monitoring efforts for Synoptic ALCOSAN Point of Connection Meters. For purposes of this Consent Decree, "Synoptic ALCOSAN Point of Connection Meter" shall mean an ALCOSAN Point of Connection Flow Meter where three or more other flow meters are tributary to the location of that flow meter.

c. In accordance with Appendix M (Flow Monitoring), ALCOSAN shall perform flow monitoring and collect, and compile flow monitoring data for each Participating Municipality. If a Participating Municipality fails to cooperate with ALCOSAN or fails to grant ALCOSAN access to conduct flow monitoring within its municipal borders on or before October 1, 2007, ALCOSAN shall immediately notify the Plaintiffs. ALCOSAN will not be required to conduct flow monitoring of the Regional Collection System in those Participating Municipalities that refuse to grant reasonable access to ALCOSAN or refuse to provide information or authorizations necessary to conduct the flow monitoring on or before December 15, 2007. For purposes of this subparagraph, ALCOSAN cannot claim that it was denied necessary information, necessary authorization, or reasonable access if it seeks reimbursement of flow monitoring costs directly from the Participating Municipality.



37. Rainfall Monitoring. In accordance with Appendix N (Rainfall Monitoring), ALCOSAN shall implement a rainfall monitoring program within the geographical area comprising the Regional Collection System.

38. Model Validation. ALCOSAN shall ensure that it has obtained sufficient flow monitoring data and rainfall data to correlate Wet Weather Flow rates with rainfall measurements and to Validate and re-Validate the Hydrologic and Hydraulic Model, as hereinafter defined, developed by ALCOSAN, before and after its implementation of the Wet Weather Plan, in accordance with this Consent Decree. In performing such Validation of the Hydrologic and Hydraulic Model, ALCOSAN shall perform sensitivity analyses using actual flow and rainfall monitoring data from temporary and long term monitoring points, to the extent such data are available and reliable. ALCOSAN shall also provide to the Plaintiffs a summary of the Validation of the model evidencing the use of such actual system monitoring data. ALCOSAN shall provide this information within 60 days of each such Validation and re-Validation, and shall include with such submittals a written certification of the model Validation and/or re-Validation by a professional with experience in model Validation.

39. Hydrologic and Hydraulic Model. In accordance with Appendix P (Hydrologic and Hydraulic Model), ALCOSAN shall submit to EPA and PADEP for review and approval, and to ACHD for review and comment, a plan (“Hydrologic and Hydraulic Model Plan”) for the development of a computerized hydrologic and hydraulic model (“Hydrologic and Hydraulic Model”) of the Conveyance and Treatment System and “Critical Portions”, as defined in Appendix P (Hydrologic and Hydraulic Model), of the Municipal Collection Systems. ALCOSAN shall include in its Hydrologic and Hydraulic Model Plan a schedule that provides for complete implementation of the Hydrologic and Hydraulic Model before submission of its Wet Weather Plan. Following review and approval of the Hydrologic and Hydraulic Model Plan

in accordance with Section VIII (Review and Approval of Submittals), ALCOSAN shall proceed with the development and implementation of the Hydrologic and Hydraulic Model in accordance with the schedule and requirements set forth in the approved plan.

40. Outfall Pollutant Monitoring. In accordance with Appendix O (Combined Sewer Overflow Pollutant Monitoring), ALCOSAN shall evaluate the Pollutant concentrations in Discharges from the Combined Sewer Outfalls.

41. Receiving Water Quality Monitoring. ALCOSAN shall assess and monitor the water quality of receiving waters in accordance with Paragraphs 1 through 11 of Appendix Q (Receiving Water Quality Monitoring) for the purpose of determining whether and to what extent these waters are in attainment with all applicable Water Quality Standards (a) prior to the submission of the Wet Weather Plan, (b) during the implementation of the Wet Weather Plan, and (c) during the Post-Construction monitoring period. In accordance with those Paragraphs, and within one year after the Date of Entry, ALCOSAN shall submit to the Plaintiffs, pursuant to Section VIII (Review and Approval of Submittals), a Receiving Water Quality Monitoring Plan, as hereinafter defined in Paragraph 1 of Appendix Q (Receiving Water Quality Monitoring). Upon approval by the Plaintiffs, ALCOSAN shall implement the Receiving Water Quality Monitoring Plan in accordance with the schedule and requirements therein. As set forth in Paragraph 9 of Appendix Q (Receiving Water Quality Monitoring), ALCOSAN shall also submit to the Plaintiffs, in accordance with Section VIII (Review and Approval of Submittals), any proposed revisions to its Receiving Water Quality Monitoring Plan.

42. Receiving Water Quality Monitoring to Develop and Validate Receiving Water Quality Model.

a. Validation of Receiving Water Quality Model Required as Part of Wet Weather Plan Utilizing the Demonstration Approach - In preparation for the development of a

Receiving Water Quality Model, as hereinafter defined, which is a prerequisite to ALCOSAN's submission of a Wet Weather Plan that follows the Demonstration Approach, ALCOSAN shall monitor the quality of receiving waters, in accordance with Paragraphs 12 through 15 of Appendix Q (Receiving Water Quality Monitoring), for the purpose of the development and Validation of the Receiving Water Quality Model. In accordance with those provisions and on or before the date that ALCOSAN submits its Receiving Water Quality Model Plan, as hereinafter defined, ALCOSAN shall submit to the Plaintiffs, for review and approval pursuant to Section VIII (Review and Approval of Submittals), a plan for the development and Validation of the Receiving Water Quality Model (the "Receiving Water Quality Model Validation Monitoring Plan"). Upon approval by the Plaintiffs, ALCOSAN shall implement the Receiving Water Quality Model Validation Monitoring Plan in accordance with the schedule and requirements set forth therein.

b. Validation of Receiving Water Quality Model Required as Part of Post-Construction Receiving Water Quality Monitoring – If as set forth in Paragraph 43.b., EPA and PADEP, in consultation with ACHD, determine, based upon the performance of any Post-Construction receiving water quality monitoring, that one or more receiving water bodies are not in attainment with all applicable Water Quality Standards then, unless ALCOSAN demonstrates to the Plaintiffs that such nonattainment is not attributable to the Conveyance and Treatment System, ALCOSAN shall conduct further monitoring of the quality of receiving waters, in accordance with Paragraph 43.b. and Paragraphs 5 through 11 of Appendix Q (Receiving Water Quality Monitoring), for the purpose of the development and Validation of the Receiving Water Quality Model required pursuant to Appendix R (Receiving Water Quality Model) for Post-Construction.

43. Receiving Water Quality Model

a. Submission of a Receiving Water Quality Model. No later than one year prior to the date of its submission of a Wet Weather Plan based on the Demonstration Approach, ALCOSAN shall submit to the Plaintiffs for review and approval, pursuant to Section VIII (Review and Approval of Submittals), a plan for the development of one or more receiving water quality models (the “Receiving Water Quality Model Plan”) that meets the requirements of Appendix R (Receiving Water Quality Model). In its Receiving Water Quality Model Plan, ALCOSAN shall propose a schedule for the submission of a receiving water quality model (“Receiving Water Quality Model”) that meets the requirements of Appendix R. Upon approval by the Plaintiffs, ALCOSAN shall implement the approved Receiving Water Quality Model Plan in accordance with the schedule and terms set forth therein.

b. Submission of a Post-Construction Receiving Water Quality Model and Revised Wet Weather Plan Following Determination of Nonattainment Based on Post-Construction Receiving Water Quality Monitoring. If, based upon the performance of any Post-Construction receiving water quality monitoring, EPA and PADEP, in consultation with ACHD, determine that the receiving waters are not in attainment with all applicable Water Quality Standards, consistent with EPA’s Combined Sewer Overflow Policy, after completion of construction of the remedial controls and implementation of the remedial activities required under the approved Wet Weather Plan, then EPA or PADEP shall provide written notice of such determination to ALCOSAN:

i. After receipt of such written notice, ALCOSAN shall have 180 days either to demonstrate to the Plaintiffs that such determination of nonattainment is not attributable to the Conveyance and Treatment System; or, if the Plaintiffs do not approve of ALCOSAN’s demonstration or if ALCOSAN opts not to submit such a demonstration,

then within that same time period ALCOSAN shall characterize impacts on receiving waters as defined in Appendix R (Receiving Water Quality Model), from Combined Sewer Overflows by submitting to the Plaintiffs a Post-Construction model (“Post-Construction Receiving Water Quality Model”), developed in accordance with Appendix R (Receiving Water Quality Model), to characterize the water quality in such receiving waters. In developing its Post-Construction Receiving Water Quality Model, ALCOSAN shall update the information applicable to such model that it has obtained pursuant to the following appendices: Appendix L (Combined Sewer Overflow and Sanitary Sewer Overflow Monitoring); Appendix M (Flow Monitoring); Appendix N (Rainfall Monitoring); Appendix O (Combined Sewer Overflow Pollutant Monitoring); and Appendix P (Hydrologic and Hydraulic Model); and

ii. If ALCOSAN submits a Post-Construction Receiving Water Quality Model pursuant to the preceding Subparagraph, then within 360 days after submitting the Post-Construction Receiving Water-Quality Model to the Plaintiffs, ALCOSAN shall submit a revised Wet Weather Plan to the Plaintiffs unless ALCOSAN has demonstrated to the Plaintiffs, through the Post-Construction Receiving Water Quality Model that such nonattainment is not attributable to the Conveyance and Treatment System.

#### **H. Wet Weather Plan - General Requirements**

44. By the dates specified below, ALCOSAN shall submit to EPA and PADEP for review and approval, and to ACHD for review and comment, a Wet Weather Plan in accordance with the terms of this Consent Decree. Upon approval by EPA and PADEP, in accordance with Section VIII (Review and Approval of Submittals), ALCOSAN shall implement the approved Wet Weather Plan in accordance with the schedule and provisions set forth therein. ALCOSAN

shall complete construction of all remedial controls, and shall be implementing all remedial activities, required by the approved Wet Weather Plan by no later than September 30, 2026.

45. Preliminary Determination. EPA's Combined Sewer Overflow Policy provides that regional sewer authorities such as ALCOSAN may use either a "Demonstration Approach" or a "Presumption Approach" when identifying control measures required to bring combined sewer overflows into compliance with the Clean Water Act. Consistent with that Policy, ALCOSAN may use the Presumption Approach only if EPA and PADEP determine that, based upon (a) the characterization, monitoring, and modeling of the Conveyance and Treatment System and the characterization of the receiving waters, (b) consideration of Sensitive Areas, and (c) available information pertaining to the Municipal Collection Systems, it is reasonable to presume that such an approach will bring ALCOSAN into compliance with the requirements of the Clean Water Act, consistent with EPA's Combined Sewer Overflow Policy. This determination shall be termed the "Preliminary Determination." In making this Preliminary Determination, EPA and PADEP shall not disapprove the use of the Presumption Approach based solely on whether information exists to provide a clear indication of the type and level of combined sewer overflow controls necessary to protect all applicable Water Quality Standards, unless EPA and PADEP determine, based on such information, that it is not reasonable to presume that this approach will bring ALCOSAN into compliance with the requirements of the Clean Water Act, consistent with EPA's Combined Sewer Overflow Policy.

46. If ALCOSAN wishes to use a Presumption Approach, then within two years of the Date of Entry, it shall request that EPA and PADEP make a Preliminary Determination and shall, by that date, submit to EPA, PADEP and ACHD a document explaining why it believes implementation of a Presumption Approach is appropriate and consistent with the Clean Water Act including EPA's Combined Sewer Overflow Policy. ALCOSAN's submission shall include

all information ALCOSAN wishes EPA and PADEP to consider in making the Preliminary Determination and shall, at a minimum, include the following estimates and the extent to which such estimates support a Presumption Approach:

a. the estimated annual volume of flow of Sewage (in gallons per year) that is generated in the Regional Collection System in a typical year, and the estimated percentage of this annual volume of flow that is captured for treatment in a typical year, as of the Date of Entry;

b. the estimated annual volume of flow of Sewage (in gallons per year) that will be generated in the Regional Collection System in a typical year, and the estimated percentage of this annual volume of flow that will be captured for treatment in a typical year, after implementation of the Wet Weather Plan and after the elimination of Sanitary Sewer Overflows from the Conveyance and Treatment System;

c. the estimated loadings (in lbs/day) of Sewage Parameters that will be discharged during a range of storm events from each Combined Sewer Outfall after implementation of the Wet Weather Plan; and

d. other available information (such as volume measurements and sampling results from Combined Sewer Overflows) that supports the information required under Subparagraphs (a), (b), and (c) of this Paragraph.

47. If ALCOSAN requests a Preliminary Determination in accordance with Paragraphs 45-46, EPA and PADEP provide a Preliminary Determination that the use of the Presumption Approach is appropriate based on the factors set forth in Paragraph 45, and ALCOSAN elects to pursue the Presumption Approach following such Preliminary Determination, then by September 30, 2012, ALCOSAN shall submit a Wet Weather Plan based upon such approach, in accordance with Section VI, Subsection I (Wet Weather Plan - Presumption Approach).

48. If EPA and PADEP do not provide ALCOSAN with a Preliminary Determination to submit a Wet Weather Plan based on the Presumption Approach in accordance with this Subsection, or if ALCOSAN elects to pursue a Demonstration Approach notwithstanding its receipt of a Preliminary Determination to utilize the Presumption Approach, then by September 30, 2012, ALCOSAN shall, submit a Wet Weather Plan based upon the Demonstration Approach, in accordance with Section VI, Subsection J (Wet Weather Plan - Demonstration Approach).

### **I. Wet Weather Plan - Presumption Approach**

49. If ALCOSAN submits the Wet Weather Plan utilizing the Presumption Approach in accordance with Section VI (Clean Water Act Remedial Controls and Remedial Activities), Subsection H (General Requirements), then ALCOSAN shall submit such plan in accordance with the requirements for the Presumption Approach set forth in EPA's Combined Sewer Overflow Policy, Section VI (except for Subsection J (Wet Weather Plan - Demonstration Approach)), and Appendix S (Wet Weather Plan Requirements for Presumption Approach).

50. In developing the Wet Weather Plan based on the Presumption Approach, ALCOSAN shall utilize the relevant information obtained by ALCOSAN from Customer Municipalities pursuant to Section VI, Subsection N (Coordination with Customer Municipalities), and the information developed by ALCOSAN pursuant to (a) the system inventory and system inspection requirements of Appendix I (Operation and Maintenance of the Conveyance and Treatment System), (b) Appendix L (Combined Sewer Overflow and Sanitary Sewer Overflow Monitoring), (c) Appendix M (Flow Monitoring), (d) Appendix N (Rainfall Monitoring), (e) Appendix O (Combined Sewer Overflow Pollutant Monitoring), (f) Appendix P (Hydrologic and Hydraulic Model), and (g) Appendix Q (Receiving Water Quality Monitoring).



51. ALCOSAN shall include in the Wet Weather Plan based on the Presumption Approach:

a. the information required under Paragraphs 45-46 (Preliminary Determination) and all additional updated information obtained by ALCOSAN in the interim period between the Preliminary Determination regarding ALCOSAN's proposed use of the Presumption Approach and its submission of the Wet Weather Plan;

b. water quality sampling results, diurnal flow patterns, hydrographs, estimated flow volumes (including flow volume information received from Customer Municipalities), estimated concentration and/or mass of Sewage Parameters, and any other data that ALCOSAN has used to identify the range of remedial controls and remedial activities that will meet the compliance requirements in Section VI, Subsection A (Compliance Requirements);

c. an analysis of alternative remedial controls and alternative remedial activities conducted in accordance with Appendix S (Wet Weather Plan Requirements for Presumption Approach), including an evaluation of such controls and activities to quantify their effectiveness in achieving the requirements identified in Section VI, Subsection A (Compliance Requirements), and the rationale for the proposed controls to be constructed and activities to be implemented to achieve such compliance requirements;

d. if ALCOSAN proposes to operate the Sewage Treatment Plant such that all flows are not routed through all or any portion of the primary or secondary treatment processes, a bypass demonstration in accordance with Appendix T (Bypass Demonstration);

e. design criteria and quantifiable performance criteria for the proposed remedial controls and remedial activities;

f. a cost analysis for controlling Combined Sewer Overflows in accordance with Appendix U (Cost Analysis for Combined Sewer Overflow Remedial Controls and Remedial Activities);

g. an implementation plan and a schedule, including interim milestones, for the proposed remedial controls and for the proposed remedial activities to ensure that the program of construction (including facilities improvements and expansions) and implementation described in the Wet Weather Plan are completed at the earliest date practicable, but in any event by no later than September 30, 2026;

h. a proposal for addressing the Sensitive Areas listed in Appendix C (Sensitive Areas), as well as any other sensitive areas identified by ALCOSAN in the Wet Weather Plan, in a manner that is consistent with EPA's Combined Sewer Overflow Policy;

i. a Post-Construction compliance monitoring plan, to be initiated pursuant to the approved schedule set forth therein after completion of construction of the remedial controls and implementation of the remedial activities required under the approved Wet Weather Plan to determine:

i. whether the proposed remedial controls, as built, and remedial activities, as implemented, meet the design and performance criteria set forth in the Wet Weather Plan;

ii. whether the remedial controls and remedial activities are sufficient to ensure compliance with ALCOSAN's then-current NPDES permit; and

iii. whether any Combined Sewer Overflows remaining after implementation of the Wet Weather Plan will preclude compliance with the requirements of the Clean Water Act, consistent with EPA's Combined Sewer Overflow Policy.

ALCOSAN's Post-Construction compliance monitoring shall include additional receiving water quality monitoring, in accordance with Paragraphs 1 through 10 of Appendix Q (Receiving Water Quality Monitoring), to determine the effect of Discharges from the Conveyance and Treatment System upon receiving waters after the completion of construction of the remedial controls and implementation of the remedial activities required under the approved Wet Weather Plan. As set forth in Paragraph 10 of Appendix Q (Receiving Water Quality Monitoring), ALCOSAN shall submit a revised Post-Construction receiving water quality monitoring plan two years prior to the estimated completion of construction of remedial controls and implementation of remedial activities required under the approved Wet Weather Plan.

52. If, based upon the performance of any Post-Construction receiving water quality monitoring, EPA and PADEP, in consultation with ACHD, determine that the receiving waters are not in attainment with all applicable Water Quality Standards, consistent with EPA's Combined Overflow Policy, after completion of construction of the remedial controls and implementation of remedial activities required under the approved Wet Weather Plan, then EPA or PADEP shall provide written notice of such determination to ALCOSAN:

a. After receipt of such written notice, ALCOSAN shall have 180 days either to demonstrate to the Plaintiffs that such determination of nonattainment is not attributable to the Conveyance and Treatment System; or, if the Plaintiffs do not approve of ALCOSAN's demonstration or if ALCOSAN opts not to submit such a demonstration, then within that same time period ALCOSAN shall characterize impacts on receiving waters as defined in Appendix R (Receiving Water Quality Model), from Combined Sewer Overflows by submitting to the Plaintiffs a Post-Construction Receiving Water Quality Model to characterize the water quality in such receiving waters. In developing its Post-Construction Receiving Water Quality Model, ALCOSAN shall update the information applicable to such model that it has obtained pursuant to

the following appendices: Appendix L (Combined Sewer Overflow and Sanitary Sewer Overflow Monitoring); Appendix M (Flow Monitoring); Appendix N (Rainfall Monitoring); Appendix O (Combined Sewer Overflow Pollutant Monitoring); and Appendix P (Hydrologic and Hydraulic Model); and

b. If ALCOSAN submits a Post-Construction Receiving Water Quality Model pursuant to the preceding Subparagraph, then within 360 days after submitting the Post-Construction Receiving Water Quality Model to the Plaintiffs, ALCOSAN shall submit a revised Wet Weather Plan to the Plaintiffs unless ALCOSAN has demonstrated to the Plaintiffs, through the Post-Construction Receiving Water Quality Model, that such nonattainment is not attributable to the Conveyance and Treatment System.

#### **J. Wet Weather Plan - Demonstration Approach**

53. If ALCOSAN elects to utilize the Demonstration Approach, or if EPA and PADEP determine that ALCOSAN may not utilize the Presumption Approach pursuant to Paragraph 48, above, then ALCOSAN shall submit to EPA and PADEP for review and approval, and to ACHD for review and comment, a Wet Weather Plan in accordance with the requirements for the Demonstration Approach as set forth in EPA's Combined Sewer Overflow Policy, Section VI (Clean Water Act Remedial Controls and Remedial Activities) (except for Subsection I (Wet Weather Plan - Presumption Approach)), and Appendix V (Wet Weather Plan for Demonstration Approach).

a. No later than one year prior to the date of its submission of a Wet Weather Plan based on the Demonstration Approach, ALCOSAN shall submit to the Plaintiffs for review and approval, pursuant to Section VIII (Review and Approval of Submittals), a Receiving Water Quality Model Plan that meets the requirements of Appendix R (Receiving Water Quality

Model). In its Receiving Water Quality Model Plan, ALCOSAN shall propose a schedule for the submission of a Receiving Water Quality Model that meets the requirements of Appendix R.

b. As set forth in Paragraph 42(a), on or before the date that ALCOSAN submits a Receiving Water Quality Model Plan, ALCOSAN shall also submit to the Plaintiffs for review and approval, pursuant to Section VIII (Review and Approval of Submittals), the Receiving Water Quality Model Validation Monitoring Plan.

54. In developing the Wet Weather Plan based on the Demonstration Approach, as well as the models required for the Wet Weather Plan under this Consent Decree, ALCOSAN shall utilize the information obtained by ALCOSAN from Customer Municipalities pursuant to Section VI, Subsection N (Coordination with Customer Municipalities), and the information developed by ALCOSAN pursuant to Appendices I (Operation and Maintenance of the Conveyance and Treatment System), L (Combined Sewer Overflow and Sanitary Sewer Overflow Monitoring), M (Flow Monitoring), N (Rainfall Monitoring), O (Combined Sewer Overflow Pollutant Monitoring), P (Hydrologic and Hydraulic Model), Q (Receiving Water Quality Monitoring), and R (Receiving Water Quality Model).

55. The Wet Weather Plan based on the Demonstration Approach shall include:

a. water quality sampling and modeling results, diurnal flow patterns, hydrographs, estimated flow volumes (including flow volume information received from Customer Municipalities), the estimated concentration and/or mass of Sewage Parameters, and any other data that ALCOSAN has used to identify the range of remedial controls and remedial activities that will meet the compliance requirements in Section VI, Subsection A (Compliance Requirements);

b. an analysis of alternative remedial controls and alternative remedial activities conducted in accordance with Appendix V (Wet Weather Plan Requirements for

Demonstration Approach), including an evaluation of such controls and activities to quantify their effectiveness in achieving the requirements identified in Section VI, Subsection A (Compliance Requirements), and the rationale for the proposed controls to be constructed and activities to be implemented to achieve such compliance requirements;

c. if ALCOSAN proposes to operate the Sewage Treatment Plant such that all flows are not routed through all treatment units, a bypass demonstration in accordance with Appendix T (Bypass Demonstration);

d. design criteria and quantifiable performance criteria for the proposed remedial controls and remedial activities;

e. a cost analysis for controlling Combined Sewer Overflows in accordance with Appendix U (Cost Analysis for Combined Sewer Overflow Remedial Controls and Remedial Activities);

f. an implementation plan and a schedule, including interim milestones, for the proposed remedial controls, and for the proposed remedial activities, to ensure that the program of construction (including facilities improvements and expansions) and implementation described in the Wet Weather Plan are completed at the earliest date practicable, but in any event by no later than September 30, 2026;

g. a proposal for addressing the Sensitive Areas listed in Appendix C, as well as any other sensitive areas identified by ALCOSAN in its Wet Weather Plan, in a manner consistent with EPA's Combined Sewer Overflow Policy;

h. a Post-Construction compliance monitoring plan, to be initiated pursuant to the approved schedule set forth therein and after completion of construction of the remedial controls and implementation of the remedial activities required under the approved Wet Weather Plan, to determine:

- i. whether the proposed remedial controls, as built, and remedial activities, as implemented, meet the design and performance criteria set forth in the Wet Weather Plan;
- ii. whether the remedial controls and remedial activities are sufficient to ensure compliance with ALCOSAN's then-current NPDES permit; and
- iii. whether any Combined Sewer Overflows remaining after implementation of the Wet Weather Plan will preclude compliance with the requirements of the Clean Water Act, consistent with EPA's Combined Sewer Overflow Policy.

ALCOSAN's Post-Construction compliance monitoring shall include additional receiving water quality monitoring, in accordance with Paragraphs 1 through 10 of Appendix Q (Receiving Water Quality Monitoring), to determine the effect of Discharges from the Conveyance and Treatment System upon receiving waters after completion of construction of the remedial controls and implementation of the remedial activities required under the approved Wet Weather Plan.

56. If, based upon the performance of any Post-Construction receiving water quality monitoring, EPA and PADEP, in consultation with ACHD, determine that the receiving waters are not in attainment with all applicable Water Quality Standards, consistent with EPA's Combined Sewer Overflow Policy, after completion of construction of the remedial controls and implementation of remedial activities required under the approved Wet Weather Plan, then EPA or PADEP shall provide written notice of such determination to ALCOSAN:

- a. After receipt of such written notice, ALCOSAN shall have 180 days either to demonstrate to the Plaintiffs that such nonattainment is not attributable to the Conveyance and Treatment System; or, if the Plaintiffs do not approve of ALCOSAN's demonstration or if

ALCOSAN opts not to submit such a demonstration, then within that same time period, ALCOSAN shall characterize impacts on receiving waters, as defined in Appendix R (Receiving Water Quality Model), from Combined Sewer Overflows by submitting to the Plaintiffs a Post-Construction Receiving Water Quality Model to characterize the water quality in such receiving waters. In developing its Post-Construction Receiving Water Quality Model, ALCOSAN shall update the information applicable to such model that it has obtained pursuant to the following appendices: Appendix L (Combined Sewer Overflow and Sanitary Sewer Overflow Monitoring); Appendix M (Flow Monitoring); Appendix N (Rainfall Monitoring); Appendix O (Combined Sewer Overflow Pollutant Monitoring); and Appendix P (Hydrologic and Hydraulic Model); and

b. If ALCOSAN submits a Post-Construction Receiving Water Quality Model pursuant to the preceding Subparagraph, then within 360 days after submitting the Post-Construction Receiving Water Quality Model to the Plaintiffs, ALCOSAN shall submit a revised Wet Weather Plan to the Plaintiffs unless ALCOSAN has demonstrated to the Plaintiffs, through the Post-Construction Receiving Water Quality Model that such nonattainment is not attributable to the Conveyance and Treatment System.

#### **K. Interim Routing and Treatment**

57. In accordance with the schedule and terms set forth below, ALCOSAN may propose a program to provide treatment of additional Wet Weather Flow at the Sewage Treatment Plant prior to the period of construction of remedial controls under the approved Wet Weather Plan. ALCOSAN may propose to treat such additional Wet Weather Flow by maximizing the use of available facilities, particularly excess capacity in Primary Treatment units at the Sewage Treatment Plant, and by proposing to route certain amounts of Wet Weather Flow around certain treatment processes at the Sewage Treatment Plant.



58. If ALCOSAN wishes to propose such treatment, ALCOSAN shall submit to EPA and PADEP for review and approval, and to ACHD for review and comment, pursuant to Section VIII (Review and Approval of Submittals), a plan for routing and treating Sewage at the Sewage Treatment Plant prior to the period of construction of the remedial controls under the approved Wet Weather Plan. This plan shall be referred to as ALCOSAN's "Interim Routing Plan." In the Interim Routing Plan, ALCOSAN shall specifically discuss how treatment of Wet Weather Flow will occur at the Sewage Treatment Plant to produce the highest effluent water quality without destabilizing treatment during Wet Weather Flow and during transitions between Wet Weather Flow and Dry Weather Flow. ALCOSAN shall also include in its Interim Routing Plan:

- a. criteria (such as elevation of the wet well or other relevant parameters) that will be used to trigger changes in routing through the Sewage Treatment Plant as influent levels increase and decrease as a result of Wet Weather Flow, and the justification for each criterion;
- b. the pattern(s) of flow through the Sewage Treatment Plant and the treatment processes and units to be used for each waste stream;
- c. the volume of flow expected to be treated by each treatment process and unit within the Sewage Treatment Plant;
- d. the level of Pollutant removal expected for each treatment process and unit;
- e. the anticipated impact of the proposed Wet Weather Flow pattern(s) upon each treatment process and unit; and

f. the results of any pilot or other studies conducted by or on behalf of ALCOSAN pertaining to the proposed routing and Wet Weather Flow pattern(s) at the Sewage Treatment Plant.

59. If the Plaintiffs approve ALCOSAN's Interim Routing Plan and ALCOSAN elects to proceed with interim routing, then within 24 months of such approval, ALCOSAN shall submit to the Plaintiffs for review and comment, the specific parameters of the Interim Routing Plan in an "Interim Routing Design Plan." The Interim Routing Design Plan shall include a detailed description of the components that ALCOSAN proposes to construct and operate to implement the approved Interim Routing Plan. The Interim Routing Design Plan shall include:

- a. Preliminary design of the process and components to be utilized, including:
  - i. the rated capacity for each of the process units;
  - ii. the estimated volumetric use of each of the process units during Dry Weather Flow;
  - iii. the estimated volumetric use of each of the process units during wet weather events;
  - iv. the estimated percent reduction in biological oxygen demand and total suspended solids for each of the process units utilized; and
  - v. the factors that may compromise the estimated percent reduction in biological oxygen demand and total suspended solids, and a description of the measures taken to reduce the effect of such factors;
- b. a schedule for final design and construction of, or modification of, each of the required components, including a description of startup procedures and estimated date of startup; and

c. the proposed operation of the Sewage Treatment Plant upon implementation of the Interim Routing Plan.

60. ALCOSAN shall implement the interim routing in accordance with the approved Interim Routing Design Plan and schedule approved by EPA and PADEP, unless ALCOSAN elects not to proceed with such routing. Within 60 days of completion of construction of the remedial controls and implementation of the remedial activities required by the approved Interim Routing Plan, ALCOSAN shall incorporate the Interim Routing Plan into the Sewage Treatment Plant Operating Plan submitted to the Plaintiffs pursuant to Paragraphs 24 through 26. ALCOSAN shall terminate use of any such Interim Routing Plan upon completion of construction of the remedial controls, and implementation of the remedial activities, required under the approved Wet Weather Plan, unless the Interim Routing Plan and/or related facilities are a part of the approved Wet Weather Plan and ALCOSAN has satisfied the requirements for a Bypass Demonstration in accordance with Appendix T (Bypass Demonstration).

61. During the first year after ALCOSAN begins routing under an approved Interim Routing Plan, and during each instance in which ALCOSAN routes flow through the Sewage Treatment Plant in a manner that is different from ALCOSAN's routing for Dry Weather Flow, ALCOSAN shall monitor and record:

- a. the duration and date of each alternative routing event;
- b. the percentage of flow that passed through the primary clarifiers during that event;
- c. the percentage of flow that passed through aeration and the secondary clarifiers during the event;
- d. what actions were taken during the alternative routing event to produce the highest effluent water quality without destabilizing treatment; and

e. the estimated percent reduction in biological oxygen demand and total suspended solids for each of the process units utilized.

ALCOSAN shall report this information to the Plaintiffs in its progress reports submitted in accordance with Section VII (Reporting and Recordkeeping).

**L. Wet Weather Routing Plan**

62. As part of any Wet Weather Plan submitted in accordance with this Consent Decree that includes routing around any treatment process unit at the Sewage Treatment Plant, and as part of any Bypass Demonstration undertaken by ALCOSAN in accordance with Appendix T (Bypass Demonstration), ALCOSAN shall include a “Wet Weather Routing Plan.” In the Wet Weather Routing Plan, ALCOSAN shall propose procedures for operating the Conveyance and Treatment System to maximize Wet Weather Flow to the Sewage Treatment Plant without significantly affecting effluent quality and without destabilizing Treatment, and shall include the following:

a. the specific actions that ALCOSAN proposes to take before, during, and after Wet Weather Flow, and the purpose of each such action;

b. a description of how the proposed actions vary with different Wet Weather Flow;

c. the estimated percent reduction in biological oxygen demand and total suspended solids (*i.e.*, the average reduction in these parameters over all times in which routing will occur during Wet Weather Flow within a 12 month period) that ALCOSAN shall achieve upon implementation of its proposed Wet Weather Routing Plan;

d. a date by which ALCOSAN shall propose final percent reductions in biological oxygen demand and total suspended solids for its approved Wet Weather Routing

Plan, which percent reductions, upon approval by the Plaintiffs, shall be enforceable under this Consent Decree;

e. a description of the components of the Conveyance Treatment System, including any portions of the Conveyance and Treatment System, that are to be used to store or treat Wet Weather Flow during such wet weather routing; and

f. a description of operational and maintenance measures to be implemented at the Sewage Treatment Plant processes and units.

Upon EPA's and PADEP's approval of the Wet Weather Plan, ALCOSAN shall implement the Wet Weather Routing Plan in accordance with the schedule and provisions set forth therein.

63. ALCOSAN shall conduct an annual review of its Wet Weather Routing Plan and may submit to the Plaintiffs for review and approval, in accordance with Section VIII (Review and Approval of Submittals), any proposed revisions to its approved plan.

64. In the event that ALCOSAN begins a bypass of Primary Treatment or Secondary Treatment in accordance with the approved Wet Weather Routing Plan, ALCOSAN shall record and provide to the Plaintiffs in the progress reports submitted under Section VII (Reporting and Recordkeeping) the following information:

a. the starting time and ending time and date of the bypass;

b. the percentage of flow that received Primary Treatment;

c. the percentage of flow that received Secondary Treatment; and

d. what actions were taken during the bypass to optimize treatment of the Sewage.

65. ALCOSAN shall separately submit a written report to the Plaintiffs of any routing or process unit bypasses that are not consistent with the approved Wet Weather Routing Plan or the approved Wet Weather Plan with the monthly Discharge Monitoring Report ("DMR") for the

period in which such event occurred. ALCOSAN shall include in such report a description of the cause of such deviation, the impact of such deviation on the Conveyance and Treatment System and receiving waters, and the steps to be taken by ALCOSAN to prevent such deviations in the future.

**M. Implementation of Wet Weather Plan**

66. Upon approval by EPA and PADEP, in accordance with Section VIII (Review and Approval of Submittals), ALCOSAN shall implement the approved Wet Weather Plan in accordance with the schedule set forth in the approved Wet Weather Plan. ALCOSAN shall complete construction of all remedial controls and shall be implementing all remedial activities required by the approved Wet Weather Plan by no later than September 30, 2026.

67. ALCOSAN shall submit a revision to the Wet Weather Plan in any of the following circumstances:

a. Following EPA's and PADEP's approval of the Wet Weather Plan, EPA or PADEP determine, based on information and/or analyses not available at the time of their Wet Weather Plan approval, that it is necessary for ALCOSAN to modify the Wet Weather Plan to achieve and maintain the compliance requirements set forth in Section VI, Subsection A (Compliance Requirements);

b. Following EPA's and PADEP's approval of the Wet Weather Plan, EPA or PADEP determine, due to changes in the applicable Water Quality Standards or assignment of wasteload allocations developed as part of total maximum daily loads ("TMDLs") for certain Pollutants, that it is necessary for ALCOSAN to modify the Wet Weather Plan to achieve and maintain the compliance requirements set forth in Section VI, Subsection A (Compliance Requirements);

c. Following ALCOSAN's implementation of the previously approved Wet Weather Plan, and based on any Post-Construction receiving water quality monitoring conducted after such implementation, EPA or PADEP determine, pursuant to Paragraphs 52 or 56 of this Consent Decree, that the receiving waters are not in attainment with all applicable Water Quality Standards, consistent with EPA's Combined Sewer Overflow Policy; provided, however, that ALCOSAN shall not have to submit a revised Wet Weather Plan following this determination if ALCOSAN demonstrates to the Plaintiffs that such nonattainment is not attributable to the Conveyance and Treatment System pursuant to the procedures set forth in Paragraphs 52 or 56; and/or

d. ALCOSAN proposes modifications to its approved Wet Weather Plan and such modifications are approved by the Plaintiffs.

68. If EPA and/or PADEP make a determination that ALCOSAN must submit a revised or modified Wet Weather Plan in accordance with the preceding Paragraph, EPA and PADEP shall provide such determination to ALCOSAN in writing. In this written determination, EPA and PADEP shall state the bases for their determination at that time, although EPA and PADEP may provide additional bases upon which the determination was made if ALCOSAN contests the determination through the dispute resolution provisions of this Consent Decree. If ALCOSAN does not dispute EPA's and PADEP's determination in accordance with the procedures set forth in Section XIV (Dispute Resolution), then, except as set forth in Paragraphs 52 or 56, ALCOSAN shall submit to the Plaintiffs a revised Wet Weather Plan within 365 days after such determination, unless the Parties agree to a shorter period of time taking into account the nature and extent of the required modifications to the Wet Weather Plan. ALCOSAN shall submit its revised Wet Weather Plan to the Plaintiffs in accordance with Section VIII (Review and Approval of Submittals). In its Wet Weather Plan revisions, ALCOSAN may propose Combined

Sewer Overflow capture and treatment approaches that are recognized either under EPA's Combined Sewer Overflow Policy or under any subsequent EPA amendments to this Policy. Upon approval by EPA and PADEP, ALCOSAN shall implement the requirements in the revised Wet Weather Plan in accordance with the schedule and other provisions set forth therein.

**N. Coordination With Customer Municipalities**

69. Process for Seeking Information from Customer Municipalities. In developing the Wet Weather Plan and in carrying out the other requirements of this Consent Decree, ALCOSAN shall seek to obtain from the Customer Municipalities, as more specifically set forth below, the information described in Paragraph 70, regarding the Municipal Collection Systems.

a. ALCOSAN shall first request that the Customer Municipality provide the information within 60 days of its initial request.

b. If the Customer Municipality fails to provide some or all of the information requested within this 60 day-period, then ALCOSAN shall: (i) within 15 days of such failure, notify the Plaintiffs, and (ii) for the information described in Subparagraphs 70(a) through (d), within 60 days of such failure, request that the Customer Municipality provide access to ALCOSAN so that ALCOSAN may itself, if feasible, obtain the requested information pursuant to the requirements of Subparagraph 69(c). If the Customer Municipality also fails or refuses to provide ALCOSAN with full access to gather all the requested information, then, within 15 days of such additional failure, ALCOSAN shall so notify the Plaintiffs, which may request or order the Customer Municipality to provide the information to ALCOSAN.

c. If the Customer Municipality provides access, and agrees to reimburse ALCOSAN at customary rates and charges that ALCOSAN may seek (except for the flow monitoring identified in Paragraph 36 which flow monitoring ALCOSAN agrees to perform if a Participating Municipality provides cooperation and reasonable access to ALCOSAN), then



ALCOSAN shall promptly obtain the requested information and notify the Plaintiffs that it has obtained such access. If the Customer Municipality refuses to reimburse ALCOSAN for its customary rates and charges, then within 15 days of such refusal ALCOSAN shall notify the Plaintiffs, which may request or order the Customer Municipality to provide the information to ALCOSAN.

d. When a Customer Municipality provides the requested information to ALCOSAN and where such information is relevant to the requirements of this Consent Decree, ALCOSAN shall assess the reliability of the information and, where it is found to be sufficiently reliable using established engineering practices, ALCOSAN shall utilize that information as needed.

e. If (i) ALCOSAN ultimately has less than the full information it requested pursuant to Subparagraphs 69(a), and 45 days have elapsed since ALCOSAN notified the Plaintiffs pursuant to Subparagraph 69(b) or 69(c), whichever is the last notice provided, and the Customer Municipality has not provided the requested information in response to a request by one or more of the Plaintiffs, or if (ii) ALCOSAN establishes to the Plaintiffs that the information provided by a Customer Municipality is not sufficiently reliable using established engineering practices, then ALCOSAN shall make reasonable assumptions (with supporting documentation), where such information is needed, in order to complete the relevant Consent Decree requirements.

70. Information ALCOSAN is to Seek from Customer Municipalities. ALCOSAN shall request from each of the Customer Municipalities, and consider in developing its Wet Weather Plan if relevant to such plan, the following information:

a. By August 31, 2007, or 60 days after the Date of Entry, whichever is later, the most recent maps of the Regional Collection System (or portions thereof) developed by or for the Customer Municipality;

b. By August 31, 2007, or 60 days after the Date of Entry, whichever is later, all physical surveys of the Regional Collection System trunk sewer lines that provide the final conveyance from the Customer Municipality to the Conveyance and Treatment System, all physical surveys of the Regional Collection System Regulators located along a trunk sewer line closest to the Conveyance and Treatment System, and the results of television inspections of these portions of the Regional Collection System developed by or for the Customer Municipality;

c. By February 1, 2010, all flow monitoring data not collected by ALCOSAN pursuant to Paragraph 36 and Appendix M, including any available data on flows for each connection to the Customer Municipality, that may assist ALCOSAN in characterizing, for ALCOSAN's Hydrologic and Hydraulic Model, flow volumes generated by the Customer Municipality and flow volumes routed to the Conveyance and Treatment System;

d. By August 1, 2010, all hydraulic capacity evaluations and system hydraulic characterizations of the Regional Collection System (or portions thereof) developed by or for the Customer Municipality;

e. By August 31, 2009, all Sanitary Sewer Overflow response plans developed by or for the Customer Municipality that apply to the Sanitary Sewer Outfalls listed in Appendix B;

f. By August 1, 2010, all LTCPs developed by or for a Customer Municipality; and

g. Within 60 days after the Date of Entry, all draft and final plans and plan amendments regarding the Nine Minimum Control measures for combined sewer overflow control measures (“Municipal Nine Minimum Control Plans”), and documentation summarizing each Customer Municipality’s implementation of the Nine Minimum Controls measures (“Municipal Nine Minimum Control Plan Documentation”), developed by or for the Customer Municipality.

71. Information ALCOSAN is to Provide to Customer Municipalities. ALCOSAN shall make available to the Customer Municipalities through secure access to its web site all flow monitoring plans developed by or for ALCOSAN and submitted to the Plaintiffs for approval pursuant to this Consent Decree within 15 days of the date of submission. ALCOSAN shall also make the following information available to the Customer Municipalities through secure access to its web site within 60 days of the date that it is finalized or received and verified by ALCOSAN:

a. all Combined Sewer Overflow and Sanitary Sewer Overflow monitoring data that has been screened by ALCOSAN using the quality control and quality assurance procedures approved by the Plaintiffs pursuant to Appendix M (Flow Monitoring);

b. a schematic map or GIS map showing the locations of all known Outfalls and Interceptors in the Conveyance and Treatment System and “Critical Portions of the Municipal Collection System,” as defined in Appendix P, (Hydrologic and Hydraulic Model),  
Paragraph 2;

c. summaries of the Hydrologic and Hydraulic Model results used to characterize the Regional Collection System;

d. all Overflow Response Plans developed by or for ALCOSAN pursuant to this Consent Decree;

e. ALCOSAN's approved Revised Nine Minimum Control Plan, any amendments thereto, and a copy of the annual evaluation prepared by ALCOSAN pursuant to Paragraph 93 regarding the efficacy of measures implemented pursuant to its the Revised Nine Minimum Control Plan; and

f. the periodic progress reports submitted to the Plaintiffs pursuant to Section VII (Reporting and Recordkeeping).

72. Providing Comments on Customer Municipality Nine Minimum Control Plans. By six months of the Date of Entry or six months of receipt of a draft Municipal Nine Minimum Control Plan and Nine Minimum Control Plan Documentation from a Customer Municipality, whichever is later, ALCOSAN shall provide comments to that Customer Municipality and the Plaintiffs regarding each Customer Municipality's proposed nine minimum controls.

73. ALCOSAN's Annual Report on Customer Municipality Data and Coordination. By July 30<sup>th</sup> of each year following one year from the Date of Entry until completion of construction of the remedial controls, and implementation of the remedial activities required under the approved Wet Weather Plan, ALCOSAN shall also report annually to EPA, PADEP, and ACHD regarding ALCOSAN's perspective on:

- a. the availability and utility of data received by January 31<sup>st</sup> from each Customer Municipality for the preceding year;
- b. the conformance of such data with any agency-approved flow monitoring plan, including data quality assurance and controls;
- c. the utility of such data to ALCOSAN in developing and implementing a Wet Weather Plan in coordination with the Customer Municipalities; and
- d. issues, impediments, and opportunities concerning coordination between the Customer Municipalities and ALCOSAN.

74. Soliciting Comment on ALCOSAN's Wet Weather Plan. In developing the Wet Weather Plan, no later than six months before the date that such plan is due to the Plaintiffs under this Consent Decree, ALCOSAN shall solicit comment on its draft Wet Weather Plan and shall coordinate with the Customer Municipalities by providing public participation opportunities on the proposed Wet Weather Plan in accordance with Section VI, Subsection O (Public Participation). ALCOSAN shall consider such comments from Customer Municipalities and the public in further developing and finalizing the Wet Weather Plan.

75. Customer Municipality Input on Managing Sewer System Flow. As part of the evaluation of remedial controls and remedial activities that ALCOSAN shall undertake in developing the Wet Weather Plan in accordance with Appendix S (Wet Weather Plan Requirements for Presumption Approach) or Appendix V (Wet Weather Plan Requirements for Demonstration Approach), ALCOSAN shall solicit input from each Customer Municipality on the following:

a. the forecasts of total flow (in gallons per day and, if available, in gallons-per-day-per-inch-mile of sewer line), that each Point of Connection will contribute to the Conveyance and Treatment System upon implementation of the Wet Weather Plan, and the total service population for each Point of Connection;

b. a characterization of the flows from both the contributing Combined Sewer System and/or the Sanitary Sewer System at each Point of Connection, a description of how each such characterization was prepared, and a description of how such flows will be managed and/or maintained at each Point of Connection; and

c. a program for managing contributions from the Customer Municipality so that such contributions to the Conveyance and Treatment System do not result in exceedances of

system capacity or do not preclude compliance with the requirements of the Clean Water Act, consistent with EPA's Combined Sewer Overflow Policy.

76. Municipal Pollution Prevention Programs. Within 10 days of determining that conveyances of grease, litter, or chemicals from any Customer Municipality caused or are causing blockages within the Conveyance and Treatment System (including Regulators and backflow devices) that result in Dry Weather Discharges from the Conveyance and Treatment System, interference at the Sewage Treatment Plant, Sanitary Sewer Overflows from the Conveyance and Treatment System, and/or any other violation of the Clean Water Act, ALCOSAN shall notify the Customer Municipality that its pollution prevention program is insufficient to prevent these adverse impacts and provide a copy of this notice to EPA, PADEP, and ACHD.

#### **O. Public Participation**

77. Public Participation Plan. Within six months from the Date of Entry, ALCOSAN shall develop a "Public Participation Plan" to ensure that the public served by the Regional Collection System is actively involved in the development of the Wet Weather Plan.

78. Content of Public Participation Plan. ALCOSAN shall include in its Public Participation Plan, proposed activities for providing the public with notice and information regarding the development of the Wet Weather Plan, including (a) the goals of the Wet Weather Plan, (b) the types of remedial controls and remedial activities available and being considered in the Wet Weather Plan to meet the requirements of the Clean Water Act and this Consent Decree, (c) the process for evaluating the various remedial controls and remedial activities in the Wet Weather Plan, and (d) opportunities to comment upon the various remedial controls and remedial activities under consideration for the Wet Weather Plan.

79. Customer Municipality Advisory Committee. Within six months from the Date of Entry, ALCOSAN shall create an ALCOSAN-Customer Municipality Advisory Committee (“Advisory Committee”) with at least ten members. The Advisory Committee members may be appointed by the County Executive and shall be comprised of representatives from various Customer Municipalities, with at least one member from each of ALCOSAN’s eight watershed planning basins within the Regional Collection System. ALCOSAN shall arrange and attend a meeting with the Advisory Committee at least quarterly to discuss (a) the status and coordination of the RCS Flow Monitoring Plan, as hereinafter defined in Appendix M (Flow Monitoring); and (b) the development of the Wet Weather Plan and municipal comments on the Wet Weather Plan and related issues, which ALCOSAN shall consider in developing its Wet Weather Plan.

80. Informational Newsletters and Meetings. After the Date of Entry, ALCOSAN shall, on a quarterly basis, produce and distribute informational newsletters to each of the Customer Municipalities and to any persons or organizations requesting such information.

81. On at least an annual basis, ALCOSAN shall hold informational meetings open to the Customer Municipalities.

82. In the newsletters and meetings, ALCOSAN shall convey information on the status of the Wet Weather Plan, ALCOSAN-municipal cooperation, and steps that citizens within the Customer Municipalities may take to protect the receiving waters, including the proper disposal of litter and grease and the proper application and/or disposal of fertilizers and herbicides. In lieu of publishing some or all of its own quarterly newsletters, ALCOSAN may provide this information through newsletters published by third parties, including the “Overflow Connection,” as long as the newsletters reach the Customer Municipalities and any persons or organizations requesting such information.

83. Public Outreach Regarding Overflows. In accordance with Appendix K (Public Notification and Outreach), ALCOSAN shall implement a public educational outreach program to inform the public of the location of all Outfalls within the Conveyance and Treatment System, the possible health and environmental effects of Discharges of Sewage, and that recreational activities, such as swimming or boating, should be limited as a result of such Discharges.

**P. Overflow Response**

84. Overflow Response Plan. Within 30 days of the Date of Entry, ALCOSAN shall submit to EPA and ACHD, for review and approval, an “Overflow Response Plan” designed to mitigate potential harm to the health and welfare of persons in the event of a Sanitary Sewer Overflow from the Conveyance and Treatment System or a Combined Sewer Overflow to receiving waters. ALCOSAN shall include in its Overflow Response Plan the following:

a. a summary of the actions ALCOSAN will undertake to promptly advise ACHD of Discharges from a Combined Sewer Outfall and/or a Sanitary Sewer Outfall within the Conveyance and Treatment System to receiving waters, including notification if such Discharge has caused an adverse impact on water quality (as measured by reduced or elevated levels of dissolved oxygen, fecal coliform, and other relevant parameters for which Water Quality Standards are in effect);

b. a description of the actions ALCOSAN will undertake in the event of such Discharge to provide notice, as appropriate, to EPA, the United States Coast Guard Service, PADEP, local law enforcement authorities, and other appropriate federal, state and local agencies, including notification if such Discharge has caused an adverse impact on water quality (as measured by reduced or elevated levels of dissolved oxygen, fecal coliform, and other relevant parameters for which Water Quality Standards are in effect) and immediate notification



if such Discharge may cause an imminent and substantial endangerment to public health, welfare, or the environment;

c. procedures for implementation of institutional controls and actions to be employed in consultation with PADEP and ACHD, such as fencing, deployment of buoys, etc., to advise the public of, and limit access to and contact with, waterways, ground surfaces and resources affected by such Discharges;

d. procedures to identify the location and probable cause of each such Discharge;

e. a description of corrective actions to be taken to halt or minimize such Discharges and to reduce the volume of untreated wastewater transmitted to the portion of the Conveyance and Treatment System where the Discharge is occurring;

f. identification of personnel and resources to be made available by ALCOSAN, in coordination with federal, state, county, and municipal authorities, to identify and halt or minimize the source of such a Discharge, and a description of the response training and preparedness for the effective implementation of the Overflow Response Plan; and

g. a description of sampling, analysis, and reporting to determine whether and how receiving waters have been adversely impacted by such a Discharge, including:

i. criteria for determining when sampling is appropriate, the nature and extent of such sampling, including the frequency and duration of samples to be taken, the parameters to be sampled (5-day biochemical oxygen demand, fecal coliform, dissolved oxygen, and other relevant parameters for which Water Quality Standards are in effect), and the location of such sampling events;

ii. procedures for conducting laboratory analyses consistent with 40 C.F.R. Part 136 and approved quality assurance/quality control procedures approved by the Plaintiffs; and

iii. provisions for reporting of all such data and information to EPA, PADEP, ACHD, and other appropriate federal, state and local agencies.

85. In its proposed Overflow Response Plan, ALCOSAN may propose a “tiered” approach to responding to Sanitary Sewer Overflows from the Conveyance and Treatment System and Combined Sewer Overflows based on the varying levels of risk to human health, welfare, and the environment associated with a Sanitary Sewer Overflow from the Conveyance and Treatment System or a Combined Sewer Overflow, and considering factors such as:

a. whether the overflow results from hydraulic limitations of the Conveyance and Treatment System to be addressed in the Wet Weather Plan;

b. the volume and characteristics of the Discharge in relation to the volume and characteristics of the receiving waters;

c. the concentration of Sewage or Pollutants in the Discharge;

d. whether the Discharge contains hazardous Pollutants from an Industrial User;

e. whether the location of the Discharge is in a Sensitive Area; and

f. the nature and extent of precipitation events and receiving water usage at the time of the Discharge.

If ALCOSAN submits such a tiered approach, ALCOSAN must address for all tiers the requirements in Subparagraphs (a) through (g) of Paragraph 84, but ALCOSAN need not propose actions for each of the requirements in these Subparagraphs for those tiers that

correspond to overflows presenting only minimal risks to human health, welfare, and the environment.

86. Nothing in this Subsection shall prohibit the Plaintiffs from requesting or ordering ALCOSAN to conduct additional sampling and analysis, or to take other actions, as deemed necessary by the Plaintiffs, to respond to a Discharge from a Combined Sewer Outfall and/or a Sanitary Sewer Outfall within the Conveyance and Treatment System to receiving waters.

87. ALCOSAN shall review the Overflow Response Plan on an annual basis and propose any modifications to its Overflow Response Plan to EPA and ACHD pursuant to Section VIII (Review and Approval of Submittals).

88. Overflow Reporting. Beginning 60 days from the Date of Entry, ALCOSAN shall provide to ACHD the information in Appendix W (Dry Weather Discharge Reporting Form) for each Dry Weather Discharge from the Conveyance and Treatment System to any waters of the United States and waters of the Commonwealth of Pennsylvania. Within 24 hours of any such Dry Weather Discharge, ALCOSAN shall provide to ACHD by facsimile or email an initial notification identifying the date and location of each such Discharge. Within five days of each such Discharge, ALCOSAN shall also submit to ACHD the information required in Appendix W (Dry Weather Discharge Reporting Form). In addition, ALCOSAN shall summarize all such Dry Weather Discharges in the progress reports that it submits to the Plaintiffs in accordance with Section VII (Reporting and Recordkeeping). Based upon the activities required by Appendix I (Operation and Maintenance of the Conveyance and Treatment System), ALCOSAN shall also provide to PADEP and ACHD, on a monthly basis, the results of ALCOSAN's inspections and investigations of any Dry Weather Discharges found within the Conveyance and Treatment System.

89. Beginning 60 days from Date of Entry, in accordance with the schedule set forth in Appendix X (Reporting Schedule), and for the portion of the Conveyance and Treatment System identified in Appendix X where ALCOSAN is modeling or monitoring Outfalls, ALCOSAN shall submit to PADEP and ACHD with the monthly DMRs a summary of all Combined Sewer Overflows that occurred during Wet Weather Flow and all Sanitary Sewer Overflows from the Conveyance and Treatment System.

90. ALCOSAN shall maintain copies of the notifications and reports required under the two preceding Paragraphs, as required by Paragraph 96.

**Q. Compliance With Nine Minimum Controls**

91. Interim Nine Minimum Controls. Prior to the date on which ALCOSAN commences implementation of its Revised Nine Minimum Control Plan, as hereinafter defined, ALCOSAN shall have commenced implementation of the following Nine Minimum Control activities:

- a. Proper operation and regular maintenance programs for the Conveyance and Treatment System, including the Combined Sewer Outfalls listed in Appendix A;
- b. Maximum use of the Conveyance and Treatment System for storage;
- c. Review and modification of pretreatment measures ALCOSAN has put in place in accordance with 40 C.F.R. § 403.5 and the NPDES Permit to ensure that impacts from Discharges from the Conveyance and Treatment System are minimized;
- d. Maximization of flow to the Sewage Treatment Plant for treatment;
- e. Elimination of Combined Sewer Overflows during Dry Weather Flow;
- f. Control of solid and floatable materials from Combined Sewer Overflows;
- g. Pollution prevention;

h. Public notification to ensure that the public receives adequate notification of Combined Sewer Overflows and the impacts from such Discharges; and

i. Monitoring to characterize the impacts of Combined Sewer Overflows and the efficacy of the Nine Minimum Controls.

92. Revised Nine Minimum Control Plan.

a. Within six months from the Date of Entry, ALCOSAN shall prepare and submit to the Customer Municipalities for comment a draft of revisions to its September 1996 - Combined Sewer Overflow Program Phase I Activity Report, "Implementation of the Nine Minimum Controls" ("Nine Minimum Control Plan"). ALCOSAN shall provide the Customer Municipalities with at least 90 days by which to submit comments on such draft plan.

b. To avoid duplication of effort and to enhance the effectiveness of control measures for Combined Sewer Overflows, ALCOSAN shall consider the comments submitted by the Customer Municipalities and all nine minimum control plans provided by the Customer Municipalities in developing and implementing ALCOSAN's revised Nine Minimum Control Plan for Combined Sewer Overflows.

c. Within 120 days after the due date for receiving comments from all the Customer Municipalities on ALCOSAN's draft revised Nine Minimum Control Plan, ALCOSAN shall submit to the Plaintiffs, in accordance with Section VIII (Review and Approval of Submittals), proposed revisions to its Nine Minimum Control Plan (the "Revised Nine Minimum Control Plan"). The Revised Nine Minimum Control Plan shall address the following activities for the Conveyance and Treatment System, and a schedule for implementation of each such activity:

i. Proper operation and regular maintenance programs for the Conveyance and Treatment System, including the Combined Sewer Outfalls listed in Appendix A;

ii. Maximum use of the Conveyance and Treatment System for storage;

iii. Review and modification of pretreatment measures that ALCOSAN has put in place in accordance with 40 C.F.R. § 403.5 and the NPDES Permit to ensure that impacts from Discharges from the Conveyance and Treatment System are minimized;

iv. Maximization of flow to the Sewage Treatment Plant for treatment;

v. Elimination of Combined Sewer Overflows during Dry Weather Flow;

vi. Control of solid and floatable materials from Combined Sewer Overflows;

vii. Pollution prevention;

viii. Public notification to ensure that the public receives adequate notification of Combined Sewer Overflows and the impacts from such Discharges; and

ix. Monitoring to characterize the impacts of Combined Sewer Overflows and the efficacy of the Nine Minimum Controls.

d. Upon approval by the Plaintiffs, ALCOSAN shall implement its Revised Nine Minimum Control Plan in accordance with the provisions and schedule set forth therein.

ALCOSAN shall use best efforts to implement its approved Revised Nine Minimum Control

Plan in coordination with the Customer Municipalities' Municipal Nine Minimum Control Plans, to maximize the overall effectiveness of the control measures in protecting receiving waters from the impacts of Combined Sewer Overflows.

93. Ongoing Review of Nine Minimum Control Plan. ALCOSAN shall, on at least an annual basis, evaluate the efficacy of the measures implemented under its Revised Nine Minimum Control Plan, as well as other measures undertaken by ALCOSAN pursuant to this Consent Decree, in reducing the impacts of Combined Sewer Overflows on receiving waters. Based on such evaluation, ALCOSAN may submit to the Plaintiffs for review and approval pursuant to Section VIII (Review and Approval of Submittals) additional proposed changes to its Revised Nine Minimum Control Plan, which ALCOSAN shall implement upon approval by the Plaintiffs in accordance with the provisions and schedule set forth therein.

## **VII. REPORTING AND RECORDKEEPING**

94. Progress Reports. Commencing six months from the Date of Entry, and continuing every year thereafter, ALCOSAN shall submit an annual progress report to EPA, PADEP, and ACHD. ALCOSAN shall include in these progress reports all information necessary to determine ALCOSAN's compliance with the terms of this Consent Decree. Such information shall include the following, for each activity under this Consent Decree not completed at that time:

a. the status of activities required under Paragraph 29 and Appendix E (Regulator Capacity Evaluation and Modification);

b. the status of activities required under Paragraph 30 and Appendix F (Reduction of Water Quality Impacts from Industrial Users);

- c. the status of activities required under Paragraph 31 and Appendix G (Control of Solid and Floatable Materials), and, as required by Paragraph 4 of Appendix G, the information required therein;
- d. the status of activities required under Paragraph 32 and Appendix H (Elimination of Dry Weather Discharges);
- e. the status of the ALCOSAN Sewer Pipe assessment and repair activities required under Paragraph 33;
- f. the status of system inventory and mapping activities required under Paragraph 34;
- g. all data and information that ALCOSAN is required to report to the Plaintiffs pursuant to the monitoring requirements set forth in Paragraphs 35-37 and 40-41 and Appendices L (Combined Sewer Overflow and Sanitary Sewer Overflow Monitoring), M (Flow Monitoring), N (Rainfall Monitoring), O (Combined Sewer Overflow Pollutant Monitoring) and Q (Receiving Water Quality Monitoring);
- h. all data and information that ALCOSAN is required to report to the Plaintiffs pursuant to the modeling requirements set forth in Paragraphs 39, 42 and 43 and Appendices P (Hydrologic and Hydraulic Model) and R (Receiving Water Quality Model);
- i. the status of actions undertaken by ALCOSAN to develop the Wet Weather Plan in accordance with this Consent Decree;
- j. the status of ALCOSAN's implementation of its approved Wet Weather Plan, including the requirements found in Section VI, Subsection M (Implementation of Wet Weather Plan);



k. the results and impacts of any routing or bypassing conducted pursuant to Section VI, Subsections K (Interim Routing and Treatment) and/or L (Wet Weather Routing Plan), including the information required pursuant to Paragraph 61 of this Consent Decree;

l. the status of all activities undertaken by ALCOSAN to coordinate with Customer Municipalities in accordance with Section VI, Subsection N (Coordination with Customer Municipalities);

m. the status of ALCOSAN's implementation of the approved Overflow Response Plan, as required by Section VI, Subsection P (Overflow Response); and

n. a list of all violations of the requirements of this Consent Decree, including the date of the violation, the provision(s) violated, a description of the nature of the violation, and any action taken to correct the violation.

If in any reporting period there is no change in the progress of ALCOSAN's compliance with a requirement under this Consent Decree, ALCOSAN may simply cross-reference and summarize the status of its compliance from previous progress reports.

95. Maintaining Records. ALCOSAN shall maintain the following documents for five years from the date that they are created:

a. all written reports prepared pursuant to Section VI, Subsection P (Overflow Response);

b. all complaints received by ALCOSAN from a Customer Municipality or other entity pertaining to the matters addressed by this Consent Decree;

c. all the documents required to be maintained pursuant to Appendix I (Operation and Maintenance of the Conveyance and Treatment System), Paragraph 6(g);

d. documentation of all measures undertaken by ALCOSAN to comply with the terms of this Consent Decree; and

e. all work orders and documents associated with each investigation of system problems related to Combined Sewer Overflows and Sanitary Sewer Overflows from the Conveyance and Treatment System and all reports prepared by ALCOSAN pursuant to Section VI, Subsection P (Overflow Response).

96. ALCOSAN shall maintain records of the following information for a period of five years after termination of the Consent Decree:

a. all data and information developed by ALCOSAN pursuant to the monitoring requirements set forth in Section VI, Subsection G (Monitoring and Modeling) and Appendix L (Combined Sewer Overflow and Sanitary Sewer Overflow Monitoring);

b. all reports, plans, permits and documents submitted to EPA, PADEP, and ACHD pursuant to this Consent Decree, including all underlying research and data; and

c. a summary of each investigation of system problems related to Combined Sewer Overflows and Sanitary Sewer Overflows from the Conveyance and Treatment System and all reports prepared by ALCOSAN pursuant to Section VI, Subsection P (Overflow Response).

97. ALCOSAN shall notify EPA, PADEP, and ACHD no less than 30 days prior to the disposal or destruction of the records listed in Paragraphs 95 and 96. For the documents in Paragraph 95, ALCOSAN shall make such records available to EPA, PADEP, and ACHD upon request. For the documents in Paragraph 96, ALCOSAN shall, upon EPA's, PADEP's, and ACHD's request for some or all of such records, deliver such records prior to such disposal or destruction.

### **VIII. REVIEW AND APPROVAL OF SUBMITTALS**

98. This Section shall govern ALCOSAN's submission of each plan, proposal, report, or other document required by this Consent Decree.

99. Except as specifically noted in this Consent Decree, ALCOSAN shall provide all submittals to EPA and PADEP for review and approval, and to ACHD for review and comment.

100. Upon receipt of a submittal, EPA and PADEP may:

- a. request additional information to enable EPA and PADEP to adequately evaluate the submittal;
- b. approve the complete submission;
- c. approve specifically identified portions of the submission;
- d. approve the complete submission or portions of the submission upon specified conditions; and/or
- e. disapprove the submission, in whole or in part, and direct that ALCOSAN modify the submission consistent with the comments provided by EPA and PADEP.

Notwithstanding the foregoing, ALCOSAN need not obtain EPA and PADEP approval of the periodic progress reports that it submits pursuant to Section VII (Reporting and Recordkeeping), although EPA and PADEP may request additional information or determine that the submittal fails to meet the requirements of this Consent Decree.

101. The Plaintiffs shall use their best efforts to coordinate the timing and substance of their responses to ALCOSAN and shall provide their responses in accordance with the timeframes for the Plaintiffs' review set forth in Appendix Y (Schedule for Agency Review of Submittals) to this Consent Decree.

- a. In the event that ALCOSAN's subsequent obligations run from the date of approval of a submittal, and the Plaintiffs do not provide their respective approvals on the same date, ALCOSAN's subsequent obligation shall run from the latter or last of the required approvals.

b. In the event that the Plaintiffs fail to respond in accordance with the timeframes for the Plaintiffs' review set forth in Appendix Y (Schedule for Agency Review of Submittals) for the various listed submittals, and that failure is not due to the incompleteness of ALCOSAN's submittal, ALCOSAN shall be entitled to an extension of time for each subsequent affected obligation equal to the amount of time the Plaintiffs' responses exceeds the particular approval timeframe for that submittal in Appendix Y. In the event that the Plaintiffs fail to respond in a timely manner to any submittal not listed in Appendix Y (Schedule for Agency Review of Submittals), ALCOSAN may request an extension of time for each subsequent affected obligation.

c. In the event that the respective responses of the Plaintiffs impose inconsistent obligations upon ALCOSAN which make it impossible for ALCOSAN to comply with all obligations, then ALCOSAN shall notify the Plaintiffs, who shall endeavor to expeditiously resolve any inconsistency. During this period, ALCOSAN's obligation under the Consent Decree shall be stayed until the Plaintiffs' resolution of such inconsistency. If one of the Plaintiffs' responses is inconsistent only to the extent that it imposes additional and/or more stringent requirements, however, ALCOSAN shall comply with the additional and/or more stringent requirements, subject to its right to invoke the procedures in Section XIV (Dispute Resolution).

102. In the event that EPA or PADEP requests additional information, ALCOSAN shall provide the additional information to EPA and PADEP, with a copy to ACHD, in accordance with the timeframes set forth in the request, but in no instance shall EPA or PADEP provide ALCOSAN with less than 30 days to provide the additional information.

103. In the event EPA and PADEP approve the complete submission, ALCOSAN shall proceed to take the actions identified in the plan, proposal, or other approved document, in

accordance with the associated approved schedule. If no date for initiating the actions is identified in the approval or the approved document, ALCOSAN shall begin implementation as soon as practicable, but no later than 60 days following receipt of both EPA's and PADEP's approvals and shall continue such implementation unless specifically provided otherwise in this Consent Decree.

104. In the event EPA and PADEP either approve a specifically-identified portion of a submission or approve a specifically-identified portion of the submission upon specified conditions, ALCOSAN shall proceed to take the actions identified in the approved portion of the submission, unless ALCOSAN establishes that it cannot carry out those actions due to EPA's and PADEP's failure to approve another portion of the same submission or of another related submission. ALCOSAN shall implement these actions in accordance with all conditions and schedules in the document approved by EPA and PADEP, and if no schedule is set forth in such document, as soon as practicable but no later than 60 days following receipt of both EPA's and PADEP's approvals and continuing on an on-going basis. Implementation of any approved portion of a submission shall not eliminate the potential for ALCOSAN to incur stipulated penalties pursuant to Section XII (Stipulated Penalties) for any portion of the submission that does not comply with the terms and provisions of this Consent Decree. However, if ALCOSAN establishes that it cannot carry out the actions in the approved portion due to EPA's and PADEP's disapproval of a deficient portion of the same submission or another related submission, ALCOSAN shall not be subject to stipulated penalties for failing to implement the approved portion of the submission.

105. In the event EPA and PADEP disapprove all or a portion of a submission, ALCOSAN shall revise the submission to address all of EPA's and PADEP's written comments. ALCOSAN shall resubmit the revised submission to EPA and PADEP within 60 days of receipt

of EPA's and PADEP's written comments and disapproval of the prior submission, unless within 15 days of such receipt ALCOSAN requests additional time and EPA and PADEP grant such request, or unless ALCOSAN invokes the procedures in Section XIV (Dispute Resolution). ALCOSAN shall continue to resubmit a revised submission based on comments or disapproval from EPA or PADEP in this manner until ALCOSAN receives written approval for the submission or a determination pursuant to the procedures set forth in Section XIV (Dispute Resolution).

106. If ALCOSAN does not dispute EPA's and PADEP's disapproval of a submission or portion of a submission, or if EPA's and PADEP's disapproval of a submission or portion of a submission is upheld following ALCOSAN's invocation of dispute resolution, then stipulated penalties shall accrue for such violation from the date upon which ALCOSAN received written notification that the submission or portion of a submission was disapproved.

107. All submittals approved pursuant to this Consent Decree, including approved modifications thereof, shall become incorporated into and enforceable under this Consent Decree upon such approval. In the event the Plaintiffs approve a portion of a plan, proposal or other document pursuant to this Section, then the approved portion shall become incorporated into and enforceable under this Consent Decree.

108. With each plan, proposal or report submitted by ALCOSAN under this Consent Decree, ALCOSAN shall have the Executive Director of ALCOSAN, or other person authorized pursuant to 40 C.F.R. § 122.22, certify under penalty of law that the information contained in the submittal is true, accurate, and complete, by signing the following statement:

I certify under penalty of law that the information contained in and accompanying this document, to the extent prepared by ALCOSAN or its contractors, is true, accurate, and complete. With respect to any portions of this document and its attachments for which I cannot personally verify the truth and accuracy, I

certify that such portions developed by ALCOSAN and its contractors were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

#### **IX. EFFECT OF SETTLEMENT**

109. In consideration of ALCOSAN's obligations under this Consent Decree, this Consent Decree resolves the civil claims that were alleged in the Complaint filed by the Plaintiffs based on ALCOSAN's alleged violations through the Date of Lodging.

#### **X. CIVIL PENALTY**

110. ALCOSAN shall pay a civil penalty to the United States, the Commonwealth and ACHD in the total amount of \$ 1,200,000 for violations as alleged by the United States, Commonwealth and ACHD in the Complaint and all unauthorized Discharges and noncompliant Discharges through the Date of Lodging. ALCOSAN shall pay this civil penalty in three equal payments, first to the United States, second to the Commonwealth, and third to ACHD. Specifically, ALCOSAN shall pay \$ 400,000 to the United States within 30 days after the Date of Entry, \$ 400,000 to the Commonwealth within 180 days after the Date of Entry, and \$ 400,000 to ACHD within 360 days after the Date of Entry.

111. The United States, the Commonwealth, and ACHD shall be deemed a judgment creditor for purposes of collection of this penalty.

112. ALCOSAN shall pay the civil penalty as follows:

a. Payment of the civil penalty to the United States shall be made by Electronic Funds Transfer (EFT) to the U.S. Department of Justice (DOJ) lockbox bank,

referencing DOJ No. 90-5-1-1-4414. Payment shall be made in accordance with instructions provided by the United States to ALCOSAN following execution of this Consent Decree. Any EFT received at the DOJ lockbox bank after 11:00 A.M. Eastern Time shall be credited on the next business day.

b. Payment of the civil penalty to the Commonwealth shall be made by tendering a certified or cashier's check for the appropriate amount payable to the "Commonwealth of Pennsylvania, Clean Water Fund." The payment shall be mailed to:

Program Manager, Water Management  
Pennsylvania Department of Environmental Protection,  
Southwest Region  
400 Waterfront Drive  
Pittsburgh, Pennsylvania 15222-4745

c. Payment of the civil penalty to ACHD shall be by certified check made payable to the "Allegheny County Environmental Health Fund" and forwarded to:

Chief, Public Drinking Water and Waste Management  
Allegheny County Health Department  
3901 Penn Avenue, Building #5  
Pittsburgh, PA 15224-1318

113. Upon making payment of the civil penalty to the United States, the Commonwealth, and/or ACHD, ALCOSAN shall mail notice thereof simultaneously to the following:

Docket Clerk (3RC00)  
U.S. EPA - Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029;

Regional Counsel (3RC00)  
U.S. EPA - Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029; and



Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Re: DOJ No. 90-5-1-1-4414.

The transmittal letter forwarding such notice shall include the caption, civil action number and judicial district of this action.

114. If ALCOSAN fails to tender all or any portion of the civil penalty payments as required by this Section (Civil Penalty), interest on the unpaid amount shall accrue in accordance with the provisions of 28 U.S.C. § 1961 and ALCOSAN shall pay such interest from the date that a payment is due until the full amount owed is paid.

#### **XI. SUPPLEMENTAL ENVIRONMENTAL PROJECTS**

115. Description of Project. Within 120 days after the Date of Entry, ALCOSAN shall submit to EPA and PADEP for review and approval, and to ACHD for review and comment, a proposal to perform stream restoration activities in accordance with EPA's May 1, 1998, EPA Supplemental Environmental Projects Policy. In its proposal, ALCOSAN shall select among the projects listed in Appendix J (Supplemental Environmental Projects). ALCOSAN shall also include in its proposal the following information:

- a) the reasons for selecting the particular project(s) in its proposal;
- b) the estimated cost to implement the proposed project(s);
- c) the proposed schedule, including interim milestones, for performing and completing the implementation of the particular project(s); and
- d) the specific construction activities it proposes to undertake as part of the proposed project.

116. SEP Amount. ALCOSAN shall expend no less than \$ 3,000,000 in the implementation of this Supplemental Environmental Project ("SEP"). Such expenditures may

include engineering and design costs incurred within two years of Date of Lodging to carry out the subsequently approved SEP.

117. Stipulated Penalties. If ALCOSAN does not expend the total expenditure for the SEP set forth in Paragraph 116, but EPA and PADEP determine that ALCOSAN has made a good faith effort to complete the SEP and ALCOSAN demonstrates that it has expended at least 90 percent of the SEP amount set forth in Paragraph 116 above, ALCOSAN shall not be liable for any stipulated penalty relating to the SEP. If, except as set forth above, EPA and PADEP determine that the SEP has not been completed in accordance with this Consent Decree, or ALCOSAN fails to expend the full SEP amount, ALCOSAN shall pay to EPA, PADEP, and ACHD, collectively, the accrued stipulated penalty and any portion of the SEP amount not expended as an additional civil penalty.

118. Schedule. ALCOSAN shall complete the approved SEP for one or more stream projects listed in Appendix J in accordance with the requirements and timeframes set forth in its proposal, as approved by EPA and PADEP, but in no case later than three years from the date of approval of the SEP proposal.

119. No Independent SEP Obligation or Credit. ALCOSAN hereby certifies that, as of the date of this Consent Decree, ALCOSAN is not required to perform or develop the SEP described herein by any federal, state or local law or regulation; nor is ALCOSAN required to perform or develop the SEP by any other agreement or grant, or as injunctive relief in this or any other case. ALCOSAN further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP described herein. In addition, ALCOSAN certifies that prior to the commencement of the negotiations for this Consent Decree, the SEP described herein had not been started by ALCOSAN, or funds committed thereto by ALCOSAN, and that this SEP is being performed in settlement of this litigation.

120. SEP Reports.

a. SEP Progress Reports. Beginning six months after the commencement of ALCOSAN's approved SEP, and continuing every six months thereafter until the SEP is completed, ALCOSAN shall submit a semi-annual progress report to EPA, PADEP, and ACHD. In these reports, ALCOSAN shall provide written summaries of the SEP implementation progress, and such summaries shall describe, at a minimum:

- i. the actions taken to implement the SEPs in the preceding half year;
- ii. the actions planned to implement the SEP in the forthcoming half year;
- iii. any current or foreseeable delays in implementing the SEP, and the actions being taken to address such delays; and
- iv. an itemized accounting of the costs expended for the preceding period and to date.

b. SEP Completion Report. Within 120 days after the completion of the approved SEP described in ALCOSAN's approved SEP proposal, ALCOSAN shall submit a report ("SEP Completion Report") to EPA, PADEP, and ACHD. The SEP Completion Report shall contain the following information:

- i. A description of the SEP as implemented, including a description of any deviations from ALCOSAN's SEP proposal as approved by EPA and PADEP, and, if deviations were necessary, a justification for each such deviation;
- ii. Itemized costs for the SEP;

iii. Certification that the approved SEP for one or more streams has been completed pursuant to ALCOSAN's approved SEP proposal and the provisions of this Consent Decree; and

iv. A description of the environmental and public health benefits resulting from the implementation of the SEPs.

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

121. SEP Documentation. ALCOSAN shall maintain legible copies of documentation of the underlying data and information for all documents or reports submitted to EPA, PADEP, and ACHD pursuant to this Section, and shall provide the documentation of any such underlying data and information not more than 60 days after ALCOSAN's receipt of a request for such information. In all reports that are to be submitted by ALCOSAN under this Section, ALCOSAN shall include the certification required under Section VIII (Review and Approval of Submittals).

122. ALCOSAN shall submit all notices required by this Section in accordance with Section XVIII (Notices) and all other submittals in accordance with Section VIII (Review and Approval of Submittals).

123. Review of SEP Completion Report.

- a. After receipt of a SEP Completion Report pursuant to Paragraph 120(b), above, EPA and/or PADEP shall provide ALCOSAN with one of the following:
  - i. a written Notice of Deficiency specifying any deficiencies in the SEP Completion Report and a grant of 120 days in which ALCOSAN may correct such deficiencies and resubmit the revised SEP Completion Report;
  - ii. a written Notice of SEP Completion in which EPA and/or PADEP conclude that the SEP has been completed satisfactorily; or
  - iii. a written Notice of SEP Noncompletion in which EPA and/or PADEP conclude that the SEP has not been completed satisfactorily.
- b. If EPA and/or PADEP provide ALCOSAN with a notice pursuant to either option (i) or (iii), above, then EPA and/or PADEP shall permit ALCOSAN the opportunity to object in writing to the notice within 45 days of receipt of such notice. The Parties shall then have an additional 30 days from the receipt by EPA and/or PADEP of the objection to reach agreement on changes necessary. During such review period, ALCOSAN's obligation to take any further action in regard to the disputed deficiencies set forth in any such notice shall be governed by Paragraphs 104 and 105. If agreement cannot be reached on any such issue within this 30 day period, EPA and/or PADEP shall provide a written statement of its decision on adequacy of the completion of the SEP to ALCOSAN, which decision shall be final and binding upon ALCOSAN unless ALCOSAN invokes the procedures set forth in Section XIV (Dispute Resolution).

124. Public Statements About SEP Activities. Any public announcement, oral or written, made by ALCOSAN pertaining to ALCOSAN undertaking the SEPs shall include the

following language: “This project was undertaken in connection with the settlement of an enforcement action taken on behalf of the U.S. Environmental Protection Agency, the Pennsylvania Department of Environmental Protection, and the Allegheny County Health Department.”

**XII. STIPULATED PENALTIES**

125. ALCOSAN shall be liable to the Plaintiffs for the following stipulated penalties per violation, in accordance with this Section:

a. for failure by ALCOSAN to perform any of the activities identified in the Wet Weather Plan (or revised Wet Weather Plan), as approved by EPA and PADEP, in accordance with the terms and schedules therein:

<u>Period of Violation</u>	<u>Penalty per day per violation</u>
1-30 days	\$ 1,500
31-60 days	\$ 2,000
Each day over 60 days	\$ 2,500

b. for failure by ALCOSAN to provide a plan, proposal, or other submittal as required under this Consent Decree:

<u>Period of Violation</u>	<u>Penalty per day per violation</u>
1-30 days	\$ 1,000
31-60 days	\$ 1,500
Each day over 60 days	\$ 2,000

c. for failure by ALCOSAN to perform any of the activities identified in this Consent Decree other than providing plans, proposals, and submittals and other than the activities required by the approved Wet Weather Plan (or an approved revised Wet Weather Plan):

<u>Period of Violation</u>	<u>Penalty per day per violation</u>
1-30 days	\$750
31-60 days	\$1,000
Each day over 60 days	\$1,500

d. for Dry Weather Discharges occurring from the combined sewer portion of the Conveyance and Treatment System, including Dry Weather Discharges from the Combined Sewer Outfalls, prior to the completion of construction of the remedial controls and implementation of the remedial activities set forth in the approved Wet Weather Plan, \$1000 per such Dry Weather Discharge per day; provided, however, that ALCOSAN shall not be liable for stipulated penalties under this Subparagraph if it certifies, prior to the approval of ALCOSAN's (i) Revised Nine Minimum Control Plan, (ii) Operations and Maintenance Plan, (iii) Overflow Response Plan, (iv) Wet Weather Plan, and (v) Dry Weather Discharge Elimination Plan, that it is otherwise in compliance with this Consent Decree, and if it certifies, after the approval of these plans, that it is in compliance with these plans to the extent they have been approved by the Plaintiffs. ALCOSAN shall provide such certifications on at least a quarterly basis, in accordance with the requirements set forth in Paragraph 108 of this Consent Decree, for each quarter in which such a Dry Weather Discharge occurs.

e. for Dry Weather Discharges occurring from the combined sewer portion of the Conveyance and Treatment System, including Dry Weather Discharges from the Combined Sewer Outfalls, after the completion of construction of the remedial controls and implementation of the remedial activities set forth in the approved Wet Weather Plan, \$1,500 per such Dry Weather Discharge per day.

f. for Discharges occurring from the sanitary sewer portion of the Conveyance and Treatment System, including Discharges from the Sanitary Sewer Outfalls

identified in Appendix B, prior to completion of construction of the remedial controls and implementation of the remedial activities set forth in the approved Wet Weather Plan, \$500 per such Discharge per day; provided, however, that ALCOSAN shall not be liable for stipulated penalties under this Subparagraph if it certifies, prior to the approval of ALCOSAN's (i) Revised Nine Minimum Control Plan, (ii) Operations and Maintenance Plan, (iii) Overflow Response Plan, and (iv) Wet Weather Plan, that it is otherwise in compliance with this Consent Decree, and if it certifies, after the approval of these plans, that it is in compliance with these plans to the extent they have been approved by the Plaintiffs. ALCOSAN shall provide such certifications on at least a quarterly basis, in accordance with the requirements set forth in Paragraph 108 of this Consent Decree, for each quarter that such a Discharge occurs.

g. for Discharges occurring from the sanitary sewer portion of the Conveyance and Treatment System, including Discharges from the Sanitary Sewer Outfalls, collectively, in each calendar month after the completion of construction of the remedial controls and implementation of the remedial activities set forth in the approved Wet Weather Plan:

Monthly Sanitary Sewer Discharges Penalty per Discharge Per Day

1-5	\$ 500
6-25	\$ 1,000
Over 25	\$ 2,000

126. ALCOSAN shall not be liable for more than one stipulated penalty for the same violation, but ALCOSAN may be liable for more than one stipulated penalty where an event results in separate violations of Subparagraphs 125(a) through 125(g), above.

127. ALCOSAN shall divide the preceding stipulated penalties referenced in Subparagraphs 125(a) through 125(g) into three equal payments and tender such payments to the United States, the Commonwealth, and ACHD in accordance with this Section.



128. Stipulated civil penalties shall automatically begin to accrue on the first day ALCOSAN fails to satisfy an obligation or requirement of this Consent Decree as set forth in Subparagraphs 125(a) through 125(g), and shall continue to accrue until the violation or deficiency is corrected. Stipulated penalties shall continue to accrue throughout all dispute resolution processes; provided, however, that stipulated penalties (a) shall not accrue, if, pursuant to Paragraph 144, the Director of the Water Protection Division, EPA Region 3, PADEP's Southwest Regional Director, and/or the Chief of ACHD's Public Drinking Water & Waste Management Program, take more than 90 days after the receipt of ALCOSAN's reply to the Plaintiffs' Statements of Position, as hereinafter defined, to issue a final decision resolving the dispute or (b) shall not accrue, if, pursuant to Paragraph 147, the United States, the Commonwealth and/or ACHD provide irreconcilable positions in their respective Statements of Position on the disputed matter.

129. Payment of stipulated civil penalties as set forth above shall be in addition to all other rights or remedies which may be available to the Plaintiffs by reason of ALCOSAN's failure to comply with the requirements of this Consent Decree and all applicable Federal, state or local laws, regulations, wastewater discharge permit(s) and all other applicable permits. The United States, the Commonwealth, and ACHD, reserve the right to take additional enforcement action and seek additional penalties up to the statutory maximum for each day of continuing noncompliance. ALCOSAN shall receive a credit against any stipulated penalty owed under this Consent Decree, however, if ALCOSAN also pays a civil penalty to the United States, the Commonwealth, and/or ACHD outside of this Consent Decree for the same violation.

130. Stipulated civil penalties shall be paid no later than 30 days following the first day in which the United States, the Commonwealth, and/or ACHD send to ALCOSAN a demand for payment of the stipulated penalties which have accrued to date.

a. Payment of stipulated civil penalties to the United States shall be made electronically or by submitting a certified or cashier's check payable to "Treasurer, the United States of America," and tendered to:

United States Attorney, Western District of Pennsylvania  
633 U.S. Post Office & Courthouse  
Pittsburgh, PA 15219

b. Payment of stipulated civil penalties to the Commonwealth shall be made by a cashier's or certified check made payable to the "Commonwealth of Pennsylvania, Clean Water Fund" and sent to:

Program Manager, Water Management  
Pennsylvania Department of Environmental Protection,  
Southwest Region  
400 Waterfront Drive,  
Pittsburgh, Pennsylvania 15222-4745.

c. Payment of stipulated penalties to ACHD shall be by certified check made payable to the "Allegheny County Environmental Health Fund" and forwarded to:

Chief, Public Drinking Water and Waste Management  
Allegheny County Health Department  
3901 Penn Avenue, Building #5  
Pittsburgh, PA 15224-1318.

131. Upon payment of stipulated penalties to the United States, the Commonwealth, and/or ACHD, ALCOSAN shall send copies of the certified check or cashier's check, together with a letter describing the stated basis for the penalties, to the U.S. Department of Justice, EPA, PADEP, and ACHD at the addresses provided in Section XVIII (Notices). In the transmittal letter, ALCOSAN shall reference the caption and civil action number for this case, as well as DOJ number 90-5-1-1-4414.

132. In the event that a stipulated civil penalty is not paid when due, the stipulated civil penalty shall be payable with interest from the original due date to the date of payment at the statutory judgment rate set forth at 28 U.S.C. §1961(a).

133. ALCOSAN shall not be liable for the stipulated penalties set forth in this Section if it establishes that the underlying violation is the result of a *force majeure* event in accordance with Section XIII (Force Majeure).

134. The United States, the Commonwealth, and ACHD, in their sole and unreviewable discretion, may waive all or part of their portion of the stipulated penalties that accrue against ALCOSAN pursuant to this Consent Decree.

### **XIII. FORCE MAJEURE**

135. Force Majeure Events. “Force Majeure,” for the purposes of this Consent Decree, is defined as an event arising from causes beyond the control of ALCOSAN or the control of its employees, agents, consultants, and contractors, which delays or prevents the performance of any obligation under this Consent Decree. Unanticipated or increased costs or expenses associated with implementation of this Consent Decree and changed financial circumstances shall not be considered Force Majeure events. In addition, the failure by ALCOSAN to apply for a required permit or approval or to provide in a timely manner all information required to obtain a permit or approval that is necessary to meet the requirements of this Consent Decree, or failure of ALCOSAN to approve contracts, shall not be considered a Force Majeure event.

136. Notice of Force Majeure Events. When ALCOSAN knows or should have known, by the exercise of due diligence, of an event that might delay completion of any requirement of this Consent Decree, whether or not the event is a Force Majeure event, ALCOSAN shall notify EPA, PADEP, and ACHD, in writing, within 15 business days after ALCOSAN first knew, or in the exercise of due diligence under the circumstances, should have known, of such event. The notice shall indicate whether ALCOSAN claims that the delay should be excused due to a Force Majeure event. The notice shall describe in detail the basis for ALCOSAN’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 seek to prevent or minimize the delay, and the timetable by which those measures shall be implemented. ALCOSAN shall adopt all reasonable measures to avoid or minimize such delay. Failure to so notify EPA, PADEP, and ACHD shall render this Section void and of no effect as to the event in question, and shall be a waiver of ALCOSAN's right to obtain an extension of time for its obligations based on such event, unless such failure to comply with the foregoing procedure regarding notification is itself attributable to a Force Majeure event.

137. Extensions Based on Force Majeure. If EPA, PADEP, and ACHD find that a delay in performance is, or was, caused by a Force Majeure event, they shall extend the time for performance, in writing, for a period equal to the period of delay and stipulated penalties shall not be due for such period. In proceedings on any dispute regarding a delay in performance, the dispute resolution provisions of Section XIV (Dispute Resolution) shall apply, and ALCOSAN 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.

138. No Automatic Extensions of Subsequent Obligations Based on Force Majeure. An extension of one compliance date based on a particular event shall not automatically extend any other compliance date, although ALCOSAN may request Force Majeure consideration for additional extensions for subsequent requirements, provided that ALCOSAN demonstrates at a subsequent time that the Force Majeure event will affect or has affected the timely completion of subsequent requirements of the Consent Decree.

139. Commercial Unavailability The failure by ALCOSAN to secure equipment, materials or vendors required by this Consent Decree due to the commercial unavailability of equipment, materials, or vendors shall not constitute a Force Majeure event under this Consent Decree, but shall be governed by this Paragraph as follows:

a. ALCOSAN shall be solely responsible for compliance with any deadline and the performance of any work as described in Section VI (Clean Water Act Remedial Controls and Remedial Activities) that requires the acquisition and installation of equipment, materials, or contracting with a vendor.

b. If it appears that the commercial unavailability of equipment, materials or vendor may delay ALCOSAN's performance of such work according to an applicable implementation schedule, ALCOSAN shall:

i. notify EPA, PADEP, and ACHD of any such delays as soon as ALCOSAN reasonably concludes that the delay could affect its ability to comply with any of the implementation schedules required by this Consent Decree, and

ii. propose a modification to the applicable schedule of implementation.

c. Prior to providing the notice required by this Paragraph, ALCOSAN shall have undertaken reasonable efforts to obtain such equipment and/or contacted a reasonable number of vendors and shall have obtained a written representation that the equipment, materials or the vendor(s) are in fact commercially unavailable. In the notice, ALCOSAN shall reference this Paragraph of this Consent Decree, identify the milestone date(s) it contends it will not be able to meet, provide EPA, PADEP, and ACHD with written correspondence to the vendor identifying efforts made to secure the equipment, materials or services of the vendor, and describe the specific efforts ALCOSAN has taken and will continue to take to secure such equipment, materials, or services. ALCOSAN may propose a modified schedule or modification of other requirements of this Consent Decree to address such commercial unavailability.

d. If EPA, PADEP, and ACHD do not accept ALCOSAN's proposed modification based on commercial unavailability, ALCOSAN shall continue to comply with the schedules either set forth in this Consent Decree or approved by the Plaintiffs pursuant to this Consent Decree; provided, however, that ALCOSAN may invoke Section XIV (Dispute Resolution) to contest EPA's, PADEP's, and ACHD's disapproval of ALCOSAN's claim of commercial unavailability.

#### **XIV. DISPUTE RESOLUTION**

140. Exclusive Mechanism for Resolving Disputes. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve any and all disputes raised by ALCOSAN arising under or with respect to this Consent Decree. The procedures set forth in this Section shall not apply, however, to actions by the United States, the Commonwealth, and ACHD to enforce obligations of ALCOSAN that have not been disputed in accordance with this Section.

141. Notice of Disputes. If ALCOSAN believes it has a dispute with respect to this Consent Decree with all or some of the other Parties, it shall, within 14 days of the circumstances giving rise to the dispute, serve upon the United States, the Commonwealth, and ACHD a notice, in writing, setting forth the matter(s) in dispute ("Notice of Dispute"). The dispute shall be considered to have arisen when ALCOSAN sends the other Parties the Notice of Dispute.

142. Informal Dispute Resolution. Any dispute which ALCOSAN raises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the Parties. The period for informal negotiations shall not exceed 20 days from the date that the United States, the Commonwealth, and ACHD receive from ALCOSAN the Notice of Dispute, unless this 20-day period is modified by written agreement of ALCOSAN and the United States, Commonwealth, and ACHD.

143. Formal Dispute Resolution. If the dispute cannot be resolved by the Parties within 20 days from receipt of the Notice of Dispute, ALCOSAN shall comply with the position of the United States, the Commonwealth, and ACHD unless, within 50 days of the Plaintiffs' receipt of such Notice of Dispute, ALCOSAN invokes the formal dispute resolution procedures of this Section by serving on the United States, the Commonwealth, and ACHD a written statement reflecting its position on the dispute ("ALCOSAN's Statement of Position"). ALCOSAN's Statement of Position shall set forth the nature of the dispute with a proposal for its resolution as well as any factual data, analysis or opinion supporting that position and any supporting documentation relied upon. The United States, the Commonwealth, and ACHD may, within 30 days of receipt of ALCOSAN's Statement of Position, serve upon ALCOSAN their respective or collective positions on the dispute ("Plaintiffs' Statement(s) of Position") on the dispute with an alternate proposal for resolution as well as any factual data, analysis, or opinion supporting those positions and all supporting documentation relied upon by the United States, the Commonwealth, and ACHD. In any such dispute invoked by ALCOSAN, it shall have the burden of demonstrating that the position of the United States, the Commonwealth, and ACHD is arbitrary and capricious or not in compliance with applicable law or this Consent Decree. The foregoing standard of review shall apply to all disputes which arise under or with respect to this Consent Decree. Within 10 days after ALCOSAN's receipt of the Plaintiffs' Statement(s) of Position, ALCOSAN may serve a reply upon the United States, the Commonwealth and ACHD ("Reply").

144. Decision on Dispute and Appeal. Following (a) the United States', the Commonwealth's, and ACHD's receipt of ALCOSAN's Statement of Position, (b) ALCOSAN's receipt of the Plaintiffs' Statement(s) of Position and (c) the United States', the Commonwealth's, and ACHD's receipt of any Reply by ALCOSAN, the Director of the Water

Protection Division, EPA Region 3, the PADEP's Southwest Regional Director, and/or the Chief of ACHD's Public Drinking Water & Waste Management Program (to the extent that each agency or department is involved in the dispute), shall issue a final decision resolving the dispute, and shall endeavor to coordinate their respective decisions in a joint response, no later than 90 days after the receipt of ALCOSAN's Reply, if any. The decision of EPA's Director of the Water Protection Division, PADEP's Southwest Regional Director, and/or the Chief of ACHD's Public Drinking Water & Waste Management Program shall be binding on ALCOSAN unless, within 30 days of receipt of the decision, or if ALCOSAN fails to receive such a decision within 90 days after sending ALCOSAN's Reply, ALCOSAN files with the Court and serves on the United States, the Commonwealth, and ACHD, a motion for judicial review of the decision setting forth the matter in dispute, the process undertaken by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute should be resolved to ensure orderly implementation of the Consent Decree. The United States, the Commonwealth, and ACHD may file a response to ALCOSAN's motion.

145. Dispute Resolution Documentation. All documents required by this Section to be served upon another Party shall be served upon the addressees and in the manner identified in Section XVIII (Notices).

146. No Extension of Deadlines During Dispute Resolution. 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 grants an order extending such deadlines.

147. Accrual of Stipulated Penalties During Dispute Resolution. Stipulated penalties with respect to a disputed matter shall continue to accrue but payment thereof shall be stayed pending resolution of a dispute as provided in this Section; provided, however, that stipulated



penalties shall not continue to accrue for any matter being addressed under the dispute resolution procedures of this Section (Dispute Resolution) when, and as long as, the United States, the Commonwealth and/or ACHD have provided irreconcilable positions (and not merely additional or more stringent positions) on the disputed matter in their respective Plaintiffs' Statements of Position. Notwithstanding the stay of payment, and subject to the foregoing exception, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that ALCOSAN does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XII (Stipulated Penalties). In the event that ALCOSAN prevails on the disputed issue, ALCOSAN shall not be liable for stipulated penalties for any violations of the Consent Decree arising from the disputed issue.

#### **XV. RIGHT OF ENTRY**

148. The United States, the Commonwealth, and ACHD and their authorized representatives and contractors shall have authority at all times, upon the presentation of credentials, to enter the premises of ALCOSAN to:

- a. Monitor the progress of activities required by this Consent Decree;
- b. Verify any data or information submitted to the United States, the Commonwealth, and ACHD;
- c. Obtain samples, and, upon request, obtain a portion ("split") of any sample collected by ALCOSAN or its consultants and contractors;
- d. Observe performance tests;
- e. Inspect and evaluate any portion of the Conveyance and Treatment System; and
- f. Inspect and review any record required to be kept under the terms and conditions of this Consent Decree, the NPDES Permit, and/or the Clean Water Act.

These inspection rights are in addition to, and in no way limit or otherwise affect, the statutory and regulatory authorities of the United States, the Commonwealth, or ACHD to conduct inspections, to require monitoring, and to obtain information from ALCOSAN as authorized by law. Upon request by ALCOSAN, the United States, the Commonwealth, and/or ACHD shall provide to ALCOSAN a split, if and where practicable, as well as the analytical laboratory and/or field results and associated documentation, of any samples obtained from the Conveyance and Treatment System or on ALCOSAN's premises.

#### **XVI. COMPLIANCE WITH LAW**

149. ALCOSAN shall at all times comply with the Clean Water Act and the regulations promulgated thereunder.

150. This Consent Decree in no way affects or relieves ALCOSAN of any responsibility to comply with any federal, state, or local law or regulation.

151. ALCOSAN is responsible for achieving and maintaining compliance with all applicable federal and state laws, regulations, and permits, and compliance with this Consent Decree shall be no defense to any actions commenced pursuant to such laws, regulations, or permits, except as otherwise expressly specified in the Consent Decree.

152. This Consent Decree is not and shall not be construed as a permit issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. §1342, state law, or local law, or as a modification of any existing permit so issued.

153. This Consent Decree shall not in any way relieve ALCOSAN of: its obligation to comply with other applicable federal, state, or local law or regulation; its obligation to obtain a permit for the Conveyance and Treatment System or any portion thereof or any other facilities; or, subject to the provisions of Paragraph 21(c) of this Consent Decree, of its obligation to comply with the requirements of any NPDES permit.

154. ALCOSAN shall comply with any new permit, or modification of existing permits in accordance with applicable federal and state laws and regulations.

155. The Plaintiffs do not warrant or aver in any manner that ALCOSAN's compliance with this Consent Decree will result in compliance with the provisions of the Clean Water Act, 33 U.S.C. §§1251 *et seq.*, the Clean Streams Law, 35 P.S. §§691.1 *et seq.*, the Local Health Administration Law, Act 315 of August 24, 1951, P.L. 1304, as amended, 16 P.S. §12001, *et seq.*, and/or Rules and Regulations of the Allegheny County Health Department promulgated thereunder, or with the NPDES Permit.

156. Irrespective of EPA's, PADEP's, and ACHD's review or approval of any plans, reports, policies, or procedures formulated pursuant to this Consent Decree, ALCOSAN shall remain solely responsible for any noncompliance with the terms of this Consent Decree, all applicable permits, the Clean Water Act and the regulations promulgated under that Act.

#### **XVII. RESERVATION OF RIGHTS**

157. This Consent Decree does not limit or affect the rights of the Parties as against any third party.

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

159. Except for the civil claims resolved pursuant to Paragraph 109, this Consent Decree shall not limit any authority of the Plaintiffs under the Clean Water Act, Clean Streams Law or any applicable statute, law or regulation, including the authority to seek information from ALCOSAN or to seek access to the property of ALCOSAN.

160. Performance of the terms of this Consent Decree by ALCOSAN is not conditioned on the receipt of any federal, state or local funds. 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 ALCOSAN shall not be cause for extension of any required compliance date in this Consent Decree.

161. The Plaintiffs reserve all remedies available to them for violations of the Clean Water Act and Clean Streams Law by ALCOSAN which are not alleged in the Complaint and for violations of the Clean Water Act, the Clean Streams Law and/or other similar statutes by ALCOSAN which occur after the Date of Lodging.

162. This Consent Decree does not resolve criminal liability, if any, that any person might have for violations of the Clean Water Act and the Clean Streams Law.

163. Nothing in this Consent Decree shall be construed to limit the authority of the United States, Commonwealth, and ACHD to undertake any action against any person, including ALCOSAN, in response to conditions that may present an imminent and substantial endangerment to the environment or to the public health or welfare.

#### **XVIII. NOTICES**

164. Unless otherwise specified, 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:

For the United States:  
Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
Post Office Box 7611  
Ben Franklin Station  
Washington, DC 20044-7611

Reference DOJ Case No. 90-5-1-1-4414

For EPA:  
Office of Regional Counsel  
Yvette Roundtree (3RC-20)  
United States Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103

Water Protection Division  
Branch Chief (3W3P1)  
United States Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103

For PADEP:

Water Manager  
Southwest Region  
Department of Environmental Protection  
400 Waterfront Drive  
Pittsburgh, PA 15222-4745

For ACHD:  
Program Chief  
Public Drinking Water and Waste Management Program  
Allegheny County Health Department  
3901 Penn Avenue, Building #5  
Pittsburgh, PA 15224-1318

For ALCOSAN:  
Director, Environmental Compliance  
Allegheny County Sanitary Authority  
3300 Preble Avenue  
Pittsburgh, PA 15233-1092

Notifications or communications under this Consent Decree shall be deemed submitted on the date they are received.

**XIX. MODIFICATION**

165. The Consent Decree may be modified by written consent of all of the Parties.

With the exception of modifications pertaining to scheduling and other matters deemed minor by

the Plaintiffs, any modification of this Consent Decree by the Parties shall be in writing and filed with the Court before it will be deemed effective.

## **XX. TERMINATION**

166. Subject to Section XIX (Modification), this Consent Decree shall be terminated when ALCOSAN has fulfilled all requirements of this Consent Decree, including the following:

a. ALCOSAN has completed the construction of all remedial controls and implemented the remedial activities required by its approved Wet Weather Plan, and ALCOSAN has conducted, for at least two years, the Post-Construction compliance monitoring program in the Wet Weather Plan, as approved by EPA and PADEP;

b. the remedial controls and remedial activities in the Wet Weather Plan, as built and/or as implemented, meet the design performance criteria for those controls and activities set forth in the Wet Weather Plan and/or the Consent Decree;

c. ALCOSAN has achieved and maintained continuous compliance with its then-effective NPDES Permit for a period of at least one year, unless the PADEP has notified ALCOSAN that the NPDES Permit should be modified or reissued in accordance with Section IV(B)(2)(g) of EPA's Combined Sewer Overflow Policy, in which case ALCOSAN must demonstrate that it has achieved and maintained continuous compliance for a period of at least one year with the permit that is modified or reissued in accordance with the notice from PADEP; provided, however, that for the purposes of satisfying the termination provisions of this Section only, ALCOSAN need not achieve and maintain compliance with a modified or reissued permit, and shall demonstrate that it has achieved and maintained compliance with its then-effective permit, if the permit has been modified or reissued more than once since the completion of construction of the remedial controls and implementation of the remedial activities in the approved Wet Weather Plan; and

d. ALCOSAN has provided to EPA information demonstrating compliance with the requirements of this Paragraph and has certified that the information is true, accurate, and complete in accordance with the certification requirements in Section VIII (Review and Approval of Submittals).

167. When the conditions of the preceding Paragraph are met, ALCOSAN may move the Court for termination of this Consent Decree. The United States, the Commonwealth, or ACHD may oppose such motion, in which case ALCOSAN shall have the burden of proof.

## **XXI. GENERAL PROVISIONS**

168. Compliance with a requirement of this Consent Decree shall not by itself constitute compliance with any other federal, state, or local law or regulation.

169. In any subsequent administrative or judicial action initiated by United States, the Commonwealth, or ACHD for injunctive relief or civil penalties relating to the facilities covered by this Consent Decree, ALCOSAN shall not assert any defense or claim based upon principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim preclusion, claim splitting, or other defense based upon any contention that the claims raised by the Plaintiffs in the subsequent proceeding should have been brought in the Complaint.

170. Nothing in this Consent Decree, including the *force majeure* provisions set forth in Section XIII (Force Majeure), shall prohibit ALCOSAN from asserting, or shall affect ALCOSAN's assertion of the validity of, a defense to performance or to stipulated penalties under this Consent Decree based on the assertion that it is legally prohibited from raising or receiving funds and cannot comply with one or more of the requirements of this Consent Decree based upon such prohibition. The Plaintiffs preserve their respective rights, however, to oppose any such defense asserted by ALCOSAN.

171. Each Party to this Consent Decree action shall bear its own costs and attorneys' fees, except as follows:

a. Should this Court determine that ALCOSAN has violated the terms of this Consent Decree, the Court may also determine that ALCOSAN shall be liable to the Plaintiffs for any costs and attorneys' fees incurred by the Plaintiffs in such actions against ALCOSAN for non-compliance with the requirements of this Consent Decree.

b. The Court may also determine that ALCOSAN's failure to timely pay the stipulated penalties required by this Consent Decree shall also render ALCOSAN liable for all charges, costs, fees, and penalties established by law for the benefit of a creditor, the United States, the Commonwealth, and/or ACHD in securing payment.

172. This Consent Decree constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree, and supercedes all prior agreements and understandings among the Parties related to the subject matter herein. No document, representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Decree or the settlement it represents, nor shall they be used in construing the terms of this Consent Decree; provided, however, that the documents expressly referenced in this Consent Decree may be used to construe those provisions in which they are referenced or any other provisions to which they apply. The Appendices, as well as any submittal approved by the Plaintiffs pursuant to Section VIII (Review and Approval of Submittals), are incorporated into, and considered part of, this Consent Decree.

173. The Effective Date of this Consent Decree shall be the Date of Entry of this Consent Decree.

174. The Parties agree and acknowledge that final approval by United States and entry of this Consent Decree is subject to the procedures 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 the right of the United States to withdraw or withhold consent if the comments disclose facts or considerations that indicate that the Consent Decree is inappropriate, improper, or inadequate. The Parties also recognize the right of the Commonwealth to withdraw or withhold consent if the comments disclose facts or considerations that indicate that the Consent Decree is inappropriate, improper, or inadequate.

175. ALCOSAN agrees not to oppose entry of this Consent Decree by this Court unless the United States, the Commonwealth, or ACHD have notified ALCOSAN in writing that the United States, the Commonwealth, or ACHD no longer support entry of the Consent Decree.

176. If a date by which ALCOSAN must meet an obligation of this Consent Decree falls on a holiday or week-end, the due date shall be the following day that business is conducted.

177. The Parties agree that the Section and Paragraph headings, titles and/or descriptions herein are for identification and organizational purposes only, and do not constitute obligations of this Consent Decree.

## **XXII. SIGNATORIES AND SERVICE**

178. Each undersigned representative certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind that entity to this document.

179. This Consent Decree may be signed in counterparts, and such counterpart signature pages shall be given full force and effect.

180. ALCOSAN hereby agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree, and to waive the formal service

requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

**XXIII. RETENTION OF JURISDICTION**

181. 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.

**XXIV. FINAL JUDGMENT**

182. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between the United States, the Commonwealth, ACHD, and ALCOSAN.

SO ORDERED, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2007.

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UNITED STATES DISTRICT COURT JUDGE

Signature Page for Consent Decree in United States v. Allegheny County Sanitary Authority

FOR PLAINTIFF THE UNITED STATES OF AMERICA:

DATE: \_\_\_\_\_

\_\_\_\_\_  
MATTHEW J. McKEOWN  
Acting Assistant Attorney General  
Environment and Natural Resource Division  
United States Department of Justice

DATE: \_\_\_\_\_

\_\_\_\_\_  
MATTHEW W. MORRISON  
Senior Counsel  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice

Signature Page for Consent Decree in United States v. Allegheny County Sanitary Authority

FOR PLAINTIFF ENVIRONMENTAL PROTECTION AGENCY:

DATE: \_\_\_\_\_

\_\_\_\_\_  
DONALD S. WELSH  
Regional Administrator  
U.S. Environmental Protection Agency, Region III

DATE: \_\_\_\_\_

\_\_\_\_\_  
WILLIAM C. EARLY  
Regional Counsel  
U.S. Environmental Protection Agency, Region III

DATE: \_\_\_\_\_

\_\_\_\_\_  
YVETTE C. ROUNDTREE  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region III

Signature Page for Consent Decree in United States v. Allegheny County Sanitary Authority

FOR PLAINTIFF ENVIRONMENTAL PROTECTION AGENCY:

DATE: \_\_\_\_\_

\_\_\_\_\_  
GRANTA Y. NAKAYAMA  
Assistant Administrator  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency

Signature Page for Consent Decree in United States v. Allegheny County Sanitary Authority

FOR PLAINTIFF THE COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION:

DATE: \_\_\_\_\_

\_\_\_\_\_  
STEPHEN R. BALTA  
Program Manager for Water Management  
Commonwealth of Pennsylvania  
Department of Environmental Protection

DATE: \_\_\_\_\_

\_\_\_\_\_  
BRUCE M. HERSCHLAG  
Assistant Counsel  
Commonwealth of Pennsylvania  
Department of Environmental Protection

Signature Page for Consent Decree in United States v. Allegheny County Sanitary Authority

FOR PLAINTIFF COUNTY OF ALLEGHENY, ACHD:

DATE: \_\_\_\_\_

\_\_\_\_\_  
BRUCE W. DIXON, M.D.  
Director  
Allegheny County Health Department

DATE: \_\_\_\_\_

\_\_\_\_\_  
HENRY MILLER, III  
Solicitor  
Allegheny County Health Department

DATE: \_\_\_\_\_

\_\_\_\_\_  
REBECCA MORRIS-CHATTA  
Assistant Solicitor  
Allegheny County Health Department

Signature Page for Consent Decree in United States v. Allegheny County Sanitary Authority

FOR DEFENDANT ALLEGHENY COUNTY SANITARY AUTHORITY:

DATE: \_\_\_\_\_

\_\_\_\_\_  
ARLETTA SCOTT WILLIAMS  
Executive Director  
Allegheny County Sanitary Authority

DATE: \_\_\_\_\_

\_\_\_\_\_  
RICHARD S. WIEDMAN  
Eckert Seamans Cherin & Mellott, LLC  
Counsel to Alcosan

DATE: \_\_\_\_\_

\_\_\_\_\_  
JOEL L. LENNEN  
Eckert Seamans Cherin & Mellott, LLC  
Counsel to Alcosan