

IN THE CIRCUIT COURT FOR ST. MARY'S COUNTY

STATE OF MARYLAND *
DEPARTMENT OF THE *
ENVIRONMENT, *

Plaintiff, *

SHORE THING SHELLFISH LLC, *
and *
POTOMAC RIVERKEEPER, INC., *
d/b/a POTOMAC RIVERKEEPER *
NETWORK, *

Case No: C-18-CV-22-000364

Plaintiff-Intervenors, *

v. *

ST. MARY'S COUNTY *
METROPOLITAN COMMISSION *

Defendant. *

* * * * *

CONSENT DECREE

WHEREAS, Plaintiff, the State of Maryland Department of the Environment (“Department”), filed a Complaint in this action on December 1, 2022, seeking injunctive relief and civil penalties pursuant to Title 9, Subtitle 3 of the Environment Article, Annotated Code of Maryland (“Envir.”), naming the St. Mary’s County Metropolitan Commission (“MetCom”) as Defendant; and

WHEREAS, Plaintiff-Intervenors Shore Thing Shellfish LLC and Potomac Riverkeeper, Inc., d/b/a Potomac Riverkeeper Network (collectively, the “Citizen Groups”), filed a Motion to Intervene and [Proposed] Complaint on January 5, 2023, and

a Complaint on March 3, 2023, against MetCom pursuant to Envir. § 9-344.1 for the violations alleged by the Department, as well as additional private claims, following the Citizen Groups' issuance of a 60-day Notice of Intent to Sue dated October 4, 2022, pursuant to 33 U.S.C. § 1365(b); and

WHEREAS, MetCom serves the citizens of St. Mary's County, Maryland, by operating several wastewater treatment plants, including the Marlay-Taylor Water Reclamation Facility, and a Collection System (as such term is defined herein in Section IV. G.) that conveys sewage to the Marlay-Taylor Water Reclamation Facility; and

WHEREAS, the Department alleged in its Complaint that MetCom has violated and continues to violate Envir. §§ 9-322 and 9-323 and Code of Maryland Regulations ("COMAR") 26.08.10.02 by discharging pollutants to waters of the State or to the ground surface where those pollutants are likely to enter waters of the State without a discharge permit issued by the Department; and

WHEREAS, the Citizen Groups alleged in their Complaint that MetCom has violated and continues to violate Envir. §§ 9-322 and 9-323 and COMAR 26.08.10.02 by discharging pollutants to waters of the State or to the ground surface where those pollutants are likely to enter waters of the State without a discharge permit issued by the Department, and further allege certain private claims on behalf of Plaintiff-Intervenor Shore Thing Shellfish, LLC under Maryland common law; and

WHEREAS, the Circuit Court for St. Mary's County granted the Citizen Groups' Motion to Intervene as Plaintiff-Intervenors on February 27, 2023 with consent from the Department and MetCom; and

WHEREAS, the Department alleges that MetCom committed additional violations of State law since the Department's Complaint was filed as follows: (1) an SSO (as such term is defined herein in Section IV. YY) December 15, 2022 that discharged 900 gallons of untreated sewage to waters of the State; (2) an SSO on January 13, 2023 that discharged 9,700 gallons of untreated sewage to waters of the State; (3) an SSO on June 16, 2023 that discharged approximately 3,300 gallons of untreated sewage to waters of the State; (4) an SSO on July 14, 2023 that discharged approximately 12,000 gallons of untreated sewage to waters of the State; (5) an SSO on August 18, 2023 that discharged approximately 1,870 gallons of sewage to waters of the State; (6) an SSO on October 17, 2023 that discharged approximately 300 gallons of sewage to waters of the State; (7) an SSO between February 7 and February 9, 2024 that discharged approximately 43,070 gallons of sewage to waters of the State; (8) an SSO on June 8, 2024 that discharged approximately 1,000 gallons of sewage to waters of the State; (9) an SSO on June 10, 2024 that discharged approximately 4,000 gallons of sewage to waters of the State; and (10) a violation of the concentration-based limits for the annual maximum loading rate for total phosphorous by 647 pounds (between September 28, 2022 and December 31, 2022) and total nitrogen by 7,823 pounds (between September 16, 2022 and December 31, 2022) in violation of State Discharge Permit Number 17-DP-0711, NPDES Permit Number MD0021679 (the "NPDES Discharge Permit"), Part II.A., for the Marlay-Taylor Water Reclamation Facility; and

WHEREAS, the Department, the Citizen Groups, and MetCom (collectively, the "Parties") agree, and this Court finds, that settlement of the injunctive relief and civil penalties claimed in Count I and Count II in the Complaints and the allegations in this

Consent Decree (the “Claims”) 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 to resolve the Claims; and

WHEREAS, the Parties’ mutual objective, by entering into this Consent Decree, is to provide for and achieve compliance with the environmental laws addressed by this Consent Decree in an expeditious manner to protect public health and the environment; and

WHEREAS, the Department believes that this Consent Decree is in the best interests of and will benefit the residents of the State of Maryland; and

WHEREAS, it is expressly understood that this Consent Decree pertains to the specific alleged violations for the Claims described in the Complaints filed by the Department and the Citizen Groups and alleged in this Consent Decree, the Parties have made no promises or representations other than those contained in this Consent Decree, no other promises or representations will be made unless in writing, and the Department makes no representations with regard to any criminal liability for the above-referenced allegations and has no authority over any criminal actions; and

WHEREAS, this Consent Decree does not resolve Counts III and IV of the Plaintiff-Intervenor Complaint (“Private Claims”); and

WHEREAS, this Consent Decree does not resolve the Citizen Groups’ claim for costs of litigation (including reasonable attorney and expert witness fees) (“Litigation Costs”); and

WHEREAS, the Collection System is comprised of approximately 163 miles of gravity sewer, 88 miles of Force Mains (as such term is defined herein in Section IV. W.), 3,711 manholes, 1,184 Grinder Pumps as such term is defined herein in Section IV. Y.), 530 vacuum breakers, 88 air release valves, and 61 Pump Stations (as such term is defined herein in Section IV. OO.); and

WHEREAS, MetCom has performed certain improvements to the Collection System, including commencing I/I (as such term is defined herein in Section IV. CC.) reduction on St. George's Island by elevating Grinder Pumps and replacing their lids with non-vented vault lids; completing the Pine Hill Run Rehabilitation and the Great Mills Wastewater Pump Station upgrade; and initiating design projects to construct, rehabilitate, or upgrade the Forest Run Wastewater Pump Station, the Piney Point Wastewater Pump Station, and the Piney Point Force Main to address SSOs; and

WHEREAS, MetCom has programmed related capital improvement projects to address SSOs in FY2024 through FY2029, including wastewater system renewal and rehabilitation; I/I sewer replacement, rehabilitation, and upgrades; and manhole rehabilitation; and

WHEREAS, MetCom agreed to begin flow and rainfall monitoring voluntarily prior to the Date of Entry (as such term is defined herein in Section IV. L.) of this Consent Decree, and the Department approved MetCom's proposed flow and rainfall monitoring plan on July 10, 2023; and

WHEREAS, MetCom began flow and rainfall monitoring activities on September 22, 2023 and concluded those activities on March 22, 2024 (the “Initial Flow Monitoring”); and

WHEREAS, MetCom will continue flow and rainfall monitoring as required by Article Two of this Consent Decree; and

WHEREAS, MetCom has developed a Hydraulic Model (as such term is defined herein in Section IV. AA.) for the Collection System and will use the Initial Flow Monitoring to verify the sufficiency of the Hydraulic Model’s Design Scenario (as such term is defined herein in Section IV. P.); and

WHEREAS, MetCom states that it completed the SD5 Field Investigation (as such term is defined herein in Section IV. RR.) by June 24, 2024 and retained all information from the SD5 Field Investigation to be reported and certified under Article One B.4.b.; and

WHEREAS, MetCom maintains certain electronic recordkeeping systems for maintenance, construction, and asset inventory; and

WHEREAS, MetCom does not admit any liability to the Department or to the Citizen Groups for the violations and claims alleged in their respective Complaints or this Consent Decree.

NOW THEREFORE, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the Parties and over the Claims in this action pursuant to Title 9, Subtitle 3 of the Environment Article, Annotated Code of Maryland.

The Department's Complaint and this Consent Decree state claims upon which relief may be granted pursuant to Envir. §§ 9-339 and 9-342 for injunctive relief and civil penalties. The Citizen Groups' Complaint states claims upon which relief may be granted pursuant to Envir. § 9-344.1 insofar as the Department's claims are concerned. Authority to bring this action on behalf of the Department is vested in the Office of the Attorney General of Maryland pursuant to Envir. § 9-344.

2. For purposes of this Consent Decree, or any action to enforce this Consent Decree, the Parties consent to this Court's jurisdiction over the Parties and this Consent Decree, and further consent to venue in this judicial district.

3. For purposes of this Consent Decree, MetCom agrees that the Department's Complaint and this Consent Decree state claims for which relief may be granted pursuant to Envir. §§ 9-339 and 9-342 for injunctive relief and civil penalties, and the Citizen Groups' Complaint states claims upon which relief may be granted insofar as the Department's claims are concerned pursuant to Envir. § 9-344.1.

4. Venue is proper in this Court under § 6-201 of the Courts and Judicial Proceedings Article, Annotated Code of Maryland because MetCom carries out its business in St. Mary's County, Maryland.

II. BINDING EFFECT

5. This Consent Decree applies to, is binding upon, and inures to the benefit of MetCom, the Department, the Citizen Groups, and their respective officers, directors, employees, agents, successors, assigns, and designees.

6. From the Date of Entry of this Consent Decree until its termination in

accordance with Section XXIV (Termination), MetCom shall give written notice of and provide a copy of this Consent Decree to any person or entity to whom MetCom may transfer ownership or operation of its wastewater treatment plants or any portion of its Collection System. MetCom shall notify the Department and the Citizen Groups in writing of any successor in interest at least 30 days prior to any such transfer.

7. Any transfer of ownership or operation of the Collection System, in whole or in part, to another entity must be conditioned upon the transferee's agreement to assume all of MetCom's obligations under this Consent Decree, as provided in a written agreement between MetCom and the proposed transferee, enforceable by the Department and the Citizen Groups as third-party beneficiaries of such agreement. At least 30 days prior to such transfer, MetCom shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to the Department and to the Citizen Groups in accordance with Section XXIII (Form of Notice).

8. Any transfer of ownership or operation of any part of or the whole Collection System without complying with Paragraph 7 is a violation of this Consent Decree and shall not relieve MetCom of its obligations under this Consent Decree.

9. Following the Date of Entry of this Consent Decree, upon approval by MetCom of any contract relating to work to be performed pursuant to this Consent Decree, MetCom shall provide a copy of all relevant and applicable portions of this Consent Decree to each firm retained to perform that work. For firms already retained by MetCom to perform work under this Consent Decree prior to the Date of Entry, MetCom shall provide

a copy of all relevant and applicable portions of this Consent Decree no later than 30 days after the Date of Entry. MetCom shall ensure that its employees receive any instruction or training necessary to comply with this Consent Decree. Any action taken by any contractor or consultant retained to fulfill MetCom's responsibilities under this Consent Decree shall be considered an action of MetCom for purposes of determining compliance with this Consent Decree. In an action to enforce this Consent Decree, MetCom shall not assert as a defense against the Department any act or failure to act by any of MetCom's officers, directors, employees, agents, servants, contractors, successors, or assigns.

III. PURPOSES

10. The express purposes of the Parties entering into this Consent Decree are for MetCom to take steps necessary to comply with Title 9, Subtitle 3 of the Environment Article, Annotated Code of Maryland, the regulations promulgated under that statute, the NPDES Discharge Permit, any renewals of such permit that occur before the termination of this Consent Decree in accordance with Section XXIV (Termination), and to resolve the Claims against MetCom.

IV. DEFINITIONS

11. Unless otherwise defined herein, the terms used in this Consent Decree shall have the meaning given to those terms as defined in Title 9, Subtitles 1 and 3 of the Environment Article, Annotated Code of Maryland and the regulations established under those statutes. The following terms in this Consent Decree shall be defined as follows:

A. "Article" shall mean a subpart of Section V (Remedial Measures) of this Consent Decree.

B. “CAP Analysis” shall mean the Deliverable that MetCom shall prepare and submit under Article Three to verify the Pump Station projects in Article One will achieve Firm Capacity to convey wastewater flows under the Design Scenario without SSOs, identify any other areas of the Collection System that are calculated to lack Minimum Hydraulic Capacity, identify the corrective measures necessary to achieve Minimum Hydraulic Capacity without SSOs in areas of the Collection System that are calculated to lack Minimum Hydraulic Capacity, and utilize this information to develop the projects necessary to achieve Minimum Hydraulic Capacity without SSOs in areas of the Collection System that are calculated to lack Minimum Hydraulic Capacity in the SSES Rehabilitation Plan under Article Four.

C. “CCTV” shall mean an inspection technique that uses a closed-circuit television camera to observe the interior condition of a Gravity Sewer Segment or a Public Connection from within the Gravity Sewer Segment or Public Connection.

D. “Citizen Groups” shall mean the Plaintiff-Intervenors in this action, Shore Thing Shellfish LLC and Potomac Riverkeeper, Inc., d/b/a Potomac Riverkeeper Network.

E. “Claims” shall mean Count I and Count II in the Department’s Complaint, Count I and Count II in the Citizen Groups’ Complaint, and the allegations in this Consent Decree.

F. “CMOM Plan” shall mean the Capacity, Management, Operation, and Maintenance Plan Deliverable that MetCom shall prepare and submit in accordance with Article Seven to ensure the proper operation and maintenance of sewer lines, Gravity Sewer Segments, Force Mains, Pump Stations, Low Pressure Systems, and all other

components of its Collection System in general conformity with the EPA “Guide for Evaluating CMOM Programs at Sanitary Sewer Collection Systems” (EPA 305-B-05-002).

G. “Collection System” shall mean the collection and conveyance system in Sanitary District 5 and Sanitary District 8 (including all pipes, Public Connections, Force Mains, Gravity Sewer Segments, Low Pressure Systems, Pump Stations, storage systems, manholes, and other components) owned by MetCom on the Date of Entry of this Consent Decree that is designed to store or convey sewage to the Marlay-Taylor Water Reclamation Facility. For purposes of Section V (Remedial Measures), any collection or conveyance system constructed or acquired by MetCom between the Date of Entry and the date this Consent Decree is terminated that is designed to store or convey sewage to the Marlay-Taylor Water Reclamation Facility shall also be considered part of the Collection System.

H. “COMAR” shall mean the Code of Maryland Regulations, as amended.

I. “Complaints” shall mean the complaints, and any amendments thereto, filed by the Department and the Citizen Groups in this action.

J. “Component” shall mean any part of the Collection System.

K. “Consent Decree” shall mean this Consent Decree and all its appendices.

L. “Date of Entry” shall mean the date on which the Circuit Court for St. Mary’s County, Maryland signs and enters this Consent Decree on its docket.

M. “Day” or “days” shall mean a calendar day or calendar days. When the day a report, Deliverable, or other submittal is due under this Consent Decree falls on a Saturday, Sunday, or a holiday as set forth in Maryland Rule 1-202(k), MetCom shall have until the next calendar day that is not one of these days to submit the report, Deliverable,

or other submittal.

N. “Deliverable” shall mean a document that must be submitted to the Department and the Citizen Groups under Section V (Remedial Measures), which must be prepared in accordance with best practices and standards in the sanitary sewer industry, including applicable quality assurance and quality control (“QA/QC”) review practices, and is subject to Section VI (Review and Approval Procedures).

O. “Department” shall mean the Maryland Department of the Environment.

P. “Design Scenario” shall mean the hourly peaking factor approved by the Department as part of the I/I Characterization Report under Article Two.

Q. “Emergency Response Plan” shall mean the Deliverable that MetCom shall prepare and submit in accordance with Article Eight to respond adequately to SSOs and to protect public health, public welfare, and the environment.

R. “Envir.” shall mean the Environment Article of the Annotated Code of Maryland, as amended.

S. “EPA Handbook” shall mean the “Handbook: Sewer System Infrastructure Analysis and Rehabilitation, EPA\625\6-91\030,” October 1991.

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

U. “Excessive I/I” shall mean inflow that is greater than or equal to 275 gallons per person per day or infiltration that is greater than or equal to 120 gallons per person per day or as otherwise calculated using the EPA Quick Guide for Estimating Infiltration and Inflow for Region 1 NPDES Annual Reporting, dated June 2014 (i.e., infiltration per inch-diameter mile of gravity sewer in excess of 4,000 gpd) or percent of rainfall entering the

Collection System greater than 20%.

V. “Firm Capacity” shall mean a Pump Station’s flow capacity to meet peak hourly demand with the largest pump out of service.

W. “Force Main” shall mean any pipe that receives and conveys wastewater under pressure from the discharge side of a pump and is not a Low Pressure System.

X. “Gravity Sewer Segment” shall mean any pipe(s) that receive, contain, or convey wastewater not normally under pressure, but intended to flow unassisted under the influence of gravity between one manhole and the next closest manhole or Pump Station, whichever is closer, in the Collection System.

Y. “Grinder Pump” shall mean the mechanical pump and associated electrical components, level controls, valves, and related appurtenances, the pump vault, and the cover to the pump vault that are owned by MetCom and located in the Collection System.

Z. “Hydraulic Capacity Assessment” or “CAP” shall mean a Deliverable that MetCom shall prepare and submit to identify locations of potential SSOs under the Design Scenario that are calculated using the Hydraulic Model to lack Minimum Hydraulic Capacity.

AA. “Hydraulic Model” shall mean the hydraulic model of the Collection System that MetCom shall certify and use in accordance with Article Three to assess the Collection System’s existing and long-term capacity.

BB. “Illegal Discharge” shall mean a discharge of storm water or ground water that is not authorized by MetCom to its Collection System, whether such discharge occurs through an illegal connection or through an authorized connection, from a privately-owned

source of I/I, including but not limited to areaway drains, sump pumps, foundation drains, roof drains, defective privately-owned grinder pumps, defective cleanouts, or defective Private Connections.

CC. “I/I” or the terms “inflow” or “infiltration” shall be defined as those terms are defined in the EPA Handbook.

DD. “I/I Characterization Report” shall mean the Deliverable that MetCom shall prepare and submit under Article Two to recommend the Design Scenario, provide the results of the Initial Flow Monitoring, provide the results of the SD5 Field Investigation under Article One B.4.b., and identify any areas of the Collection System with Excessive I/I for investigation through the SSES under Article Four.

EE. “Initial Flow Monitoring” shall mean the flow and rainfall monitoring approved by the Department on July 10, 2023 that MetCom performed between September 22, 2023 and March 22, 2024.

FF. “Low Pressure System” shall mean all Grinder Pump(s), Public Connection(s) (where pressurized), roadway service box(es), backflow prevention device(s), and related appurtenances that are owned by MetCom and convey sewage under low pressure as part of the Collection System.

GG. “MetCom” shall mean the St. Mary’s County Metropolitan Commission.

HH. “Minimum Hydraulic Capacity” shall mean the calculated performance of the Collection System using the Design Scenario in the Hydraulic Model to demonstrate that (1) the gravity Collection System is calculated not to experience SSOs due to insufficient hydraulic capacity; (2) Pump Stations are calculated not to experience SSOs

due to insufficient Firm Capacity or downstream Force Main capacity; and (3) Force Mains are calculated not to exceed a velocity of 10 feet per second.

II. “Operational Acceptance” shall mean the date certified by MetCom’s Chief Engineer when a project is operationally complete in accordance with the contract documents and the contractor has completed any punch work identified in the operational walkthrough.

JJ. “Parties” shall mean the Department, the Citizen Groups, and MetCom.

KK. “Post-Construction Report” shall mean the Deliverable that MetCom shall prepare and submit under Section VII (Reporting Requirements).

LL. “Preventive Maintenance” shall mean any scheduled and routine inspection, condition assessment, equipment, or facility servicing, cleaning, upgrading, or other similar activity undertaken to help or maintain the components or the operation of the Collection System.

MM. “Private Connection” shall mean the portion of the sanitary sewer pipe that is privately-owned and extends from a dwelling or other structure on private property, a privately-owned low pressure system, or a privately-owned gravity sewer system to the Collection System.

NN. “Public Connection” shall mean the portion of the sanitary sewer pipe that is owned by MetCom and extends from a dwelling or other structure on private property, a privately-owned low pressure system, or a privately-owned gravity sewer system to the Collection System.

OO. “Pump Station” shall mean a facility located in the Collection System and

comprised of pumps that lift wastewater to a higher hydraulic elevation that are not Grinder Pumps, including all related electrical, mechanical, and structural systems necessary to the operation of that station.

PP. “Sanitary District 5” shall mean the area of the Collection System that serves the “Piney Point Sanitary District No. 5” as described in the St. Mary’s County, Maryland, Comprehensive Water and Sewerage Plan 2017 Update, as amended.

QQ. “Sanitary District 8” shall mean the area of the Collection System that serves the “Pine Hill Run Sanitary District No. 8” as described in the St. Mary’s County, Maryland, Comprehensive Water and Sewerage Plan 2017 Update, as amended.

RR. “SD5 Field Investigation” shall mean the comprehensive visual field inspection of the Low Pressure System (including photographs of any component(s) that require corrective action), except pressurized Public Connections, in Sanitary District 5 that MetCom performed and completed by June 24, 2024.

SS. “Section” shall mean a portion of this Consent Decree that is identified by a capitalized Roman numeral.

TT. “Semi-Annual” or “Semi-Annual Period” shall mean the six-month periods ending on June 30th and December 31st of each year.

UU. “Semi-Annual Report” shall mean the report that MetCom shall prepare and submit for each Semi-Annual Period.

VV. “Sewer System Evaluation Survey” or “SSES” shall mean the evaluation of areas in the Collection System with Excessive I/I, areas in the Collection System that are calculated to lack Minimum Hydraulic Capacity under the CAP Analysis, or areas in the

Collection System that have experienced SSOs since January 1, 2013 that MetCom shall perform in accordance with Article Four.

WW. “SSES Report” shall mean the Deliverable that MetCom shall prepare and submit under Article Four that details the methodology and results of the SSES.

XX. “SSES Rehabilitation Plan” shall mean the Deliverable that MetCom shall prepare and submit under Article Four that details the proposed rehabilitation measures and projects based on the SSES Report and the CAP Analysis, estimated costs, and the proposed schedule to implement these actions.

YY. “SSO” shall mean any loss of wastewater or discharge from the Collection System which results in the direct or potential discharge of raw, partially treated, or diluted sewage into waters of the State, including any overflow or discharge of raw or diluted sewage onto the surface of the ground, into waterways, storm drains, ditches, or other manmade or natural drainage conveyances to surface or ground waters, except:

1. An SSO of fifty (50) gallons or less to the ground that is cleaned up within one (1) hour of its occurrence; or
2. An SSO to an impervious surface that is contained effectively and cleaned up so there is no direct or potential pollution of waters of the State from the SSO.

ZZ. “Waters of the State” shall mean: (1) both surface and underground waters within the boundaries of the State of Maryland subject to its jurisdiction, including that part of the Atlantic Ocean within the boundaries of the State of Maryland, the Chesapeake Bay and its tributaries, and all ponds, lakes, rivers, streams, public ditches, tax ditches, and

public drainage systems within the State of Maryland, other than those designed and used to collect, convey, or dispose of sanitary sewage; and (2) the flood plain of free-flowing waters determined by the Department on the basis of the 100-year flood frequency.

V. REMEDIAL MEASURES

12. The following nine (9) Articles are the remedial measures that MetCom shall undertake to eliminate SSOs from the Collection System. MetCom shall use any additional remedial measures beyond those provided in Section V that are necessary to prevent SSOs except those caused by a Force Majeure event as provided in Section XIII (Force Majeure). All work performed under Section V shall be performed in accordance with best practices and standards in the sanitary sewer industry.

Article One – Immediate Measures

A. General Requirements. MetCom shall perform each of the following projects and achieve Operational Acceptance of each project by the dates specified in this Article.

B. Specific Requirements. MetCom shall:

1. Rehabilitate the Piney Point Force Main (MetCom Project ID # 5171MS), summarized in Appendix A, incorporated herein, within 3.5 years from the date that the Department approves the CAP Analysis in accordance with Article Three.

2. Rehabilitate the Piney Point Wastewater Pump Station (MetCom Project ID # 5081SR), summarized in Appendix A, within 3.5 years from the date that the Department approves the CAP Analysis in accordance with Article Three.

3. Rehabilitate the Forest Run Wastewater Pump Station (MetCom Project ID # 8131SS), summarized in Appendix A, within 3.5 years from the date that the Department approves the CAP Analysis in accordance with Article Three.

4. Sanitary District 5 – Low Pressure System.

a. Corrective Action – MetCom shall repair or replace any Grinder Pump or other Low Pressure System component that MetCom identifies as a source of I/I in Sanitary District 5 during the SD5 Field Investigation in accordance with the following schedule:

(i) St. George Island, except Grinder Pump vaults – July 24, 2024;

(ii) Any Grinder Pump vault on St. George Island – September 30, 2024;

(iii) Any Grinder Pump or other Low Pressure System component, except Grinder Pump vaults, in the FEMA 100-year floodplain – December 31, 2024;

(iv) Any other Grinder Pump or other Low Pressure System component, including any Grinder Pump vaults – December 31, 2025.

b. MetCom shall include the following information from the SD5 Field Investigation for each Grinder Pump in the I/I Characterization Report under Article Two B.2.:

(i) Date and time of the inspection, weather conditions, and the inspector's name and title;

- (ii) Address(es) of the residence(s)/building(s) served;
- (iii) The general condition of each component of the Low Pressure System and specific observations of each Grinder Pump, including the cover, general condition (missing, broken, offset), whether it is watertight, whether it has been raised, and whether it is located in the FEMA 100-year floodplain;
- (iv) Whether any corrective action is needed;
- (v) Whether corrective action occurred during the inspection, and, if so, what corrective action occurred;
- (vi) What corrective action is required and the priority of that corrective action;
- (vii) Whether there is any indication that a Grinder Pump has been adjusted, removed, or damaged since the last documented inspection with specific attention to the cover and vault, and, if so, in what manner;
- (viii) Whether there is any indication of an Illegal Discharge (e.g., clearwater flow) and, if so, the results of any source identification and current or planned corrective actions to eliminate the Illegal Discharge; and
- (ix) Any additional information that MetCom believes is appropriate to provide.

c. Inventory and Asset Management – MetCom shall retain the

data specified in Article One B.4.b. as required in Article Seven B.10. All management and maintenance of Grinder Pumps following the SD5 Field Investigation shall be performed as required in Article Seven.

C. Review and Approval. Section VI (Review and Approval Procedures) shall govern this Article.

D. Semi-Annual Reporting Requirements. In the Semi-Annual Reports submitted pursuant to Section VII (Reporting Requirements) of this Consent Decree, MetCom shall report on its progress towards compliance with or shall provide a statement or certification regarding its compliance with the applicable provisions of this Article.

Article Two – Flow and Rainfall Monitoring

A. General Requirements. MetCom shall use the Initial Flow Monitoring to evaluate peaking factors for the Design Scenario, to calibrate and verify the Hydraulic Model in Article Three, and to identify areas of the Collection System with Excessive I/I; and MetCom shall perform ongoing flow and rainfall monitoring as provided in this Article.

B. Specific Requirements.

1. Hourly Peaking Factor for Design Scenario – MetCom shall use the results of its Initial Flow Monitoring to evaluate the hourly peaking factor for the Design Scenario and shall propose an hourly peaking factor to the Department using the methodology in Appendix B, incorporated herein. MetCom shall use the hourly peaking factor approved by the Department, after consultation with the Citizen Groups, for its Design Scenario. At minimum, MetCom shall use an hourly peaking

factor of 4.25 for its Design Scenario. MetCom shall summarize the results of this analysis and the proposed Design Scenario in its I/I Characterization Report.

2. I/I Characterization Report – MetCom shall submit to the Department and the Citizen Groups an I/I Characterization Report by September 30, 2024. The I/I Characterization Report shall provide the information specified in Article One B.4.b., provide the results of the Initial Flow Monitoring, identify any areas of the Collection System with Excessive I/I, and include the proposed hourly peaking factor for the Department’s approval with the information specified in Article Two B.1. The I/I Characterization Report shall include available SCADA data from MetCom’s Pump Stations (e.g., alarm log, control log, access log, comment log, journals) between January 1, 2021 and December 31, 2023 to inform the locations for investigation in the SSES under Article Four.

3. Ongoing Flow and Rainfall Monitoring – Beginning on the date that Operational Acceptance is achieved for the Piney Point Wastewater Pump Station and the Forest Run Wastewater Pump Station, respectively, and continuing until termination of this Consent Decree in accordance with Section XXIV (Termination), MetCom shall perform ongoing flow and rainfall monitoring at the Piney Point Wastewater Pump Station and the Forest Run Wastewater Pump Station. MetCom shall use the results of this flow and rainfall monitoring to calibrate, verify, update, and maintain its Hydraulic Model.

C. Review and Approval. Section VI (Review and Approval Procedures) shall govern this Article.

D. Semi-Annual Reporting Requirements. In the Semi-Annual Reports submitted pursuant to Section VII (Reporting Requirements) of this Consent Decree, MetCom shall report on its progress towards compliance with or shall provide a statement or certification regarding its compliance with the applicable provisions of this Article.

Article Three – Hydraulic Model

A. General Requirements. MetCom shall calibrate and verify its existing Hydraulic Model of the Collection System using the results of the Initial Flow Monitoring and the ongoing flow and rainfall monitoring required by Article Two. MetCom shall utilize the Hydraulic Model to identify portions of the Collection System that are calculated to lack Minimum Hydraulic Capacity under the Design Scenario, to plan Collection System improvements, and to make determinations regarding future development of the Collection System.

B. Specific Requirements.

1. The Hydraulic Model shall be:

a. Configured based on representative, accurate, and verified Collection System component data (e.g., pipe sizes, invert elevations, manhole rim elevations, etc.);

b. Calibrated using spatially and temporarily representative rainfall data and contemporary flow data collected pursuant to Article Two;
and

c. Verified with the rainfall and flow data collected pursuant to Article Two.

2. Within 60 days after the Department's approval of the I/I Characterization Report under Article Two, MetCom shall:

- a. Configure, calibrate, and verify the Hydraulic Model; and
- b. Describe the updates to the Hydraulic Model and certify to the

Department that:

- (i) The Hydraulic Model can perform the functions required by this Consent Decree; and

- (ii) The Hydraulic Model is configured, calibrated (including the performance of sensitivity analysis), and verified using actual flow data from the Initial Flow Monitoring.

3. Hydraulic Capacity Assessment (CAP) Analysis:

- a. MetCom shall use the updated Hydraulic Model to perform a Hydraulic Capacity Assessment ("CAP") for the Collection System to identify locations where the Collection System is calculated to lack, both current and future, Minimum Hydraulic Capacity under the Design Scenario.

- b. MetCom shall submit a report detailing the methodology and results of the CAP (the "CAP Analysis") to the Department within 90 days following certification of the Hydraulic Model under Article Three B.2. The CAP Analysis shall be used to:

- (i) Determine whether the Piney Point Wastewater Pump Station project and the Forest Run Wastewater Pump Station project described in Article One B.2. and B.3 are designed appropriately to

ensure Firm Capacity to convey wastewater flows under the Design Scenario without SSOs; and

(ii) Identify any locations in the Collection System that are calculated to lack Minimum Hydraulic Capacity under the Design Scenario and identify any corrective measures that are necessary to achieve Minimum Hydraulic Capacity without SSOs in those areas of the Collection System.

c. The corrective measures identified in Article Three B.3.b.(ii) shall be integrated into the SSES Rehabilitation Plan under Article Four and prioritized in accordance with that Article.

4. Post-Construction Hydraulic Model Update – Within 60 days after achieving Operational Acceptance of all projects identified in the approved SSES Rehabilitation Plan under Article Four, MetCom shall:

a. Configure, calibrate, and verify the Hydraulic Model with actual data from at least the most recent three years of the flow and rainfall monitoring required in Article Two B.3.; and

b. Certify to the Department and the Citizen Groups that the Hydraulic Model has been updated in accordance with these requirements.

5. Post-Construction CAP – Within 90 days after certifying the updated Hydraulic Model in accordance with Article Three B.4., MetCom shall:

a. Use the certified, updated Hydraulic Model to verify that the Collection System has Minimum Hydraulic Capacity to convey sewage

without experiencing an SSO under the Design Scenario; and

b. Certify to the Department and the Citizen Groups that MetCom has completed this analysis.

C. Review and Approval. Section VI (Review and Approval Procedures) shall govern this Article.

D. Semi-Annual Reporting Requirements. In the Semi-Annual Reports submitted pursuant to Section VII (Reporting Requirements) of this Consent Decree, MetCom shall report on its progress towards compliance with or shall provide a statement or certification regarding its compliance with the applicable provisions of this Article.

Article Four – Sewer System Evaluation Survey (SSES)

A. General Requirements. MetCom shall perform an SSES in any area(s) of the Collection System where the I/I Characterization Report under Article Two has identified Excessive I/I, any areas of the Collection System that are calculated to lack Minimum Hydraulic Capacity under the Design Scenario according to the approved CAP Analysis under Article Three B.3., or any areas of the Collection System where any SSO(s) have been documented since January 1, 2013. The SSES shall be a systematic examination of these areas to identify I/I sources and structural defects through investigation (e.g., cleaning and CCTV, smoke testing, dye testing, visual inspection, sonar, 360-degree video, laser imaging, pole camera, physical entry, or other techniques commonly used by sewer management agencies that are recommended in EPA guidance) of the Collection System and a presentation of the methodology and results of this investigation in an SSES Report. MetCom shall recommend remedial measures to address the issues described in the SSES

Report with prioritization of remedial measures to address SSOs and associated cost estimates in a SSES Rehabilitation Plan.

B. Specific Requirements. The SSES shall include the following elements as described below.

1. Investigation – MetCom shall investigate the gravity Collection System and the Low Pressure System to identify sources of I/I and structural defects that contribute to SSOs in any areas with Excessive I/I, areas that are calculated to lack Minimum Hydraulic Capacity under the Design Scenario according to the approved CAP Analysis under Article Three B.3., or any locations with a documented SSO since January 1, 2013. MetCom shall use CCTV, visual inspection, smoke testing, sonar, 360-degree video, laser imaging, pole camera, physical entry, dye testing, or other techniques commonly used by sewer management agencies that are recommended in EPA guidance of Gravity Sewer Segments, Public Connections, manholes, and related components in accordance with the EPA Handbook. MetCom shall investigate the Low Pressure System by performing a comprehensive visual field inspection of each Grinder Pump, photographing any component(s) of the Low Pressure System (excluding pressurized Public Connections) that require corrective action, and documenting the information specified in Article One B.4.b. MetCom may omit inspection of any areas of the Low Pressure System that were inspected during the SD5 Field Investigation and may also omit inspection of Public Connections that are pressurized as part of the Low Pressure System and cannot be inspected via CCTV

from a Gravity Sewer Segment. All CCTV and manhole inspections shall be performed consistent with the National Association of Sewer Service Companies' (NASSCO) PACP, MACP, and LACP standards.

2. SSES Report – MetCom shall submit a report to the Department and the Citizen Groups that details the methodology and results of the SSES and characterizes the Collection System. The SSES Report shall include:

a. Maps of the Collection System that identify sewer pipes 8-inches in diameter or larger, wastewater treatment plants, Pump Stations, Low Pressure Systems, Force Mains, wastewater storage and sewer vaults, and flow control valves, if available;

b. Identification of the geographic areas that contribute flow to the Collection System;

c. Identification (where available) of the frequency, date, duration, and volume of each documented SSO (sorted by event/date) between January 1, 2013 and the Date of Entry of this Consent Decree;

d. Identification of any cause or condition that contributed to each documented SSO (if known);

e. Identification and description of the methodology and results of the SSES; and

f. Identification of all structural defects, I/I sources, and Illegal Discharges and their respective locations (by nearest street address) that were discovered during the SSES.

3. SSES Rehabilitation Plan – MetCom shall submit a plan to the Department and the Citizen Groups that details the remedial measures necessary to correct the issues identified in the approved SSES Report under Article Four B.2. and to ensure Minimum Hydraulic Capacity under the Design Scenario as detailed in the approved CAP Analysis under Article Three B.3.b.(ii). The SSES Rehabilitation Plan shall include:

a. Identification of all structural defects and I/I sources identified in the SSES Report under Article Four B.2. and the remedial measures necessary to ensure Minimum Hydraulic Capacity under the Design Scenario as detailed in the CAP Analysis under Article Three B.3.b.(ii).;

b. A prioritized implementation schedule for the remedial measures;

c. Explanation of the specific methodology used to prioritize remedial measures in developing the implementation schedule to address and prevent SSOs. Prioritization of remedial measures shall consist of a risk analysis based on the consequence of failure and the likelihood of failure based on structural condition assessment, the CAP Analysis, historical records, material type, remaining service life, and maintenance history. Remedial measures to address Excessive I/I shall generally be prioritized based on the relative amount of Excessive I/I;

d. Remedial measures to eliminate any verified physical connections (i.e., cross-connections) between the Collection System and any

storm water collection system;

e. A proposed schedule not to extend beyond December 31, 2033 for the Operational Acceptance of all remedial measures in the SSES Rehabilitation Plan;

f. Post-construction inspection protocols to evaluate and determine the effectiveness of the SSES Rehabilitation Plan at removing I/I from the Collection System, correcting structural defects, and ensuring Minimum Hydraulic Capacity;

g. A cost estimate for implementation of the SSES Rehabilitation Plan; and

h. A listing of all components with structural defects or I/I sources that are identified in the SSES Report and are not proposed for remedial measures in the SSES Rehabilitation Plan, and a plan and a timeframe for reinspecting these components in accordance with the CMOM Plan required under Article Seven.

4. Timeframe for SSES Report and SSES Rehabilitation Plan – MetCom shall submit the SSES Report and the SSES Rehabilitation Plan to the Department and the Citizen Groups within 18 months following approval of the I/I Characterization Report in Article Two.

C. Review and Approval. Section VI (Review and Approval Procedures) shall govern this Article.

D. Semi-Annual Reporting Requirements. In the Semi-Annual Reports

submitted pursuant to Section VII (Reporting Requirements) of this Consent Decree, MetCom shall report on its progress towards compliance with this Article; propose any modification(s) to the SSES Rehabilitation Plan as appropriate to maximize reduction in SSOs; and include the following information for each contract awarded by MetCom to perform work under the SSES Rehabilitation Plan, as applicable:

1. Contract number;
2. Purpose (e.g., inspection, design, construction);
3. Numeric metrics for each project (e.g., linear feet of pipe rehabilitated, method(s) of rehabilitation, number and type(s) of point repairs);
4. The scheduled date to begin work;
5. The date that work began;
6. The approximate percentage completion for ongoing work;
7. The scheduled completion date;
8. The date of Operational Acceptance, if applicable;
9. Upon completion, the estimated total cost;
10. Post-construction inspection protocol(s) used to evaluate the project;

and

11. Any additional information that MetCom believes is relevant.

E. Public Access. MetCom shall post the SSES Report and the SSES Rehabilitation Plan on its website within 10 days after approval by the Department. MetCom shall ensure that these documents remain accessible to the public through MetCom's website until termination of this Consent Decree in accordance with Section

XXIV (Termination).

Article Five – Illegal Discharges

A. General Requirements. MetCom shall, using CCTV, smoke testing, dye testing, visual inspection, or other industry acceptable means of testing during the performance of the SSES required pursuant to Article Four and the CMOM Plan required pursuant to Article Seven, identify and eliminate Illegal Discharges where such discharges to the Collection System are in or upstream of service areas where there is Excessive I/I as reflected in the I/I Characterization Report under Article Two.

B. Specific Requirements.

1. Elimination of Illegal Discharges

a. Within 60 days of confirming an Illegal Discharge that originates from private or local government property, MetCom shall notify the owner(s) of such connection (including all associated Private Connections or other privately-owned conduits used to transport discharge to the connection) that such connection is the source of an Illegal Discharge and shall require the owner(s) to take all appropriate steps to eliminate the Illegal Discharge. If an Illegal Discharge is confirmed to originate from property that is owned or operated by the State of Maryland or the United States, MetCom shall notify the Department within 30 days of verifying the location(s) of the Illegal Discharge.

b. If the owner(s) has/have failed to eliminate the Illegal Discharge or fail to agree to perform a plan and schedule for corrective action

that is acceptable to MetCom within 180 days after notification from MetCom under Article Five B.1.a., MetCom shall take all appropriate steps, including initiation of enforcement action to cause the repair, rehabilitation, replacement, or termination of that service connection.

c. The foregoing remedies shall not be exclusive of other administrative or judicial remedies provided by law or regulation.

C. Semi-Annual Reporting Requirements. In its Semi-Annual Reports submitted pursuant to Section VII (Reporting Requirements) of this Consent Decree, MetCom shall report on its progress towards compliance with or shall provide a statement or certification regarding its compliance with the applicable provisions of this Article, including a list of Illegal Discharges confirmed by MetCom during the Semi-Annual Period with the following information for each Illegal Discharge:

1. Location(s) (e.g., address) where the Illegal Discharge originates;
2. What type of Illegal Discharge was identified (e.g., defective Private Connection, illegally connected drain, etc.), if determinable;
3. Whether the Illegal Discharge originates from local, State, federal, or private property;
4. Date that the Illegal Discharge was verified;
5. Method(s) of verification (e.g., smoke testing, dye testing);
6. Date(s) of notice to the property owner(s), if applicable;
7. Step(s) taken by MetCom to initiate enforcement, if applicable;
8. Date(s) when enforcement action was initiated, if applicable; and

9. Status (e.g., abated, ongoing).

Article Six – Pump Stations

A. General Requirements. MetCom shall continue its proactive inspections and maintenance of Pump Stations in its Collection System.

B. Specific Requirements.

1. MetCom shall continue to inspect, operate, and maintain each Pump Station in its Collection System in accordance with its Standard Operating Procedures (“SOPs”), which shall be appropriate to the type, size, and capacity of each Pump Station and shall be incorporated in the CMOM Plan under Article Seven.

2. For each Pump Station in its Collection System, MetCom’s Preventive Maintenance shall provide for:

- a. Adequate inventory of equipment, pumps, and motors;
- b. Appropriate, necessary, and periodic servicing and calibration of Pump Station instrumentation;
- c. Periodic inspection of the Pump Station; and
- d. Servicing of all Pump Station equipment in accordance with manufacturer specifications.

3. All Preventive Maintenance Program activities undertaken at any Pump Station shall be documented and tracked in an appropriate management tracking program.

4. By December 31 of each year following the Date of Entry, MetCom

shall maintain, review, and update as-needed SOPs for each of its Pump Stations, appropriate in detail and format to the type, size, and capacity of each Pump Station. For purposes of this provision, if any physical or operational changes are made at a Pump Station, the periodic review and update of the SOP shall occur no later than 90 days from completion of the physical change or initial implementation of the operational change in question.

C. Review and Approval. Section VI (Review and Approval Procedures) shall govern this Article.

D. Semi-Annual Reporting Requirements. In its Semi-Annual Reports submitted pursuant to Section VII (Reporting Requirements) of this Consent Decree, MetCom shall report on its progress towards compliance with, or shall provide a Statement or Certification regarding its compliance with the applicable provisions of this Article.

Article Seven – CMOM Plan

A. General Requirements. Within 180 days from the Date of Entry of this Consent Decree, MetCom shall complete and submit for review and approval a comprehensive CMOM Plan for the Collection System, including its Gravity Sewer Segments, Force Mains, manholes, Low Pressure Systems, Pump Stations, and other components to provide for the proper operation and maintenance of equipment while minimizing failures, malfunctions, and line blockages that could contribute to SSOs. For purposes of this Article, cleaning may include hydraulic flushing, FOG control, root control, or mechanical cleaning in accordance with field conditions. The CMOM Plan shall be generally consistent with USEPA 2005, Guide for Evaluating Capacity,

Management, Operation, and Maintenance (CMOM) Programs at Sanitary Sewer Collection Systems, EPA-305-B-05-002.

B. Specific Requirements. The CMOM Plan shall include:

1. A cleaning and CCTV inspection program as follows:

a. A program for routine cleaning and CCTV inspection of Gravity Sewer Segments based on age, material (e.g., vitrified clay), history (e.g., prior SSOs), susceptibility to corrosion, prior CCTV inspections, and condition assessments performed during the SSES in Article Four that includes a response matrix for corrective action and re-inspection frequency based on condition assessment results that is consistent with NASSCO's PACP standards.

b. A CCTV inspection program for the removal of Gravity Sewer Segments from Preventive Maintenance as follows:

(i) Before removing any Gravity Sewer Segment from Preventive Maintenance, CCTV shall be performed for visual confirmation of current conditions.

(ii) The review process documentation shall be maintained in the maintenance information system.

2. Routine Preventive Maintenance of Pump Stations as described in Article Six.

3. Routine visual inspection and condition assessment of manholes consistent with the NASSCO MACP standard during CCTV inspections or at higher

frequencies based on manhole condition assessment results.

4. Inspection of the Low Pressure System at least once every 2 years after June 24, 2024, except pressurized Public Connections, provided that MetCom may propose a longer timeframe following the completion of the initial 2-year inspection on the basis that a longer timeframe is reasonable based on the inspection results, procedures for prompt corrective action when defects are identified, and maintaining a standing inventory of replacement parts to ensure prompt corrective action when defects are identified (e.g., valves, lids, Grinder Pumps).

5. Procedures for inspecting Force Main air relief valves and inspecting Force Mains by visually examining any exposed area(s) of the Force Main and the ground surface above the Force Main, if applicable. When an inspection reveals evidence of Force Main failure, the relevant section of Force Main shall be excavated and physically examined.

6. Procedures for ensuring that new Gravity Sewer Segments, manholes, Force Mains, Low Pressure Systems, Public Connections, and related components are designed and constructed properly (including testing of new installations) to prevent SSOs and I/I.

7. Procedures for ensuring that rehabilitation projects are properly designed and constructed.

8. A routine maintenance plan that includes prioritized Gravity Sewer Segment cleaning and evaluation, as needed.

9. A general description of the resources committed by MetCom to

proactive and reactive Collection System maintenance.

10. An electronic maintenance management system or systems to update and collect information regarding the operation and maintenance of the Collection System, including maintenance history, condition assessment results, cleaning observations, corrective action history, SSO history, and the status of maintenance work to be implemented and completed under this Consent Decree.

11. An electronic geographic information system (“GIS”) map for the Collection System that includes the following:

- a. All Collection System components;
- b. Attribute data for Gravity Sewer Segments including:
 - (i) Date of installation or date range of installation (if available),
 - (ii) Pipe length,
 - (iii) Inverts at manholes (if available),
 - (iv) Slope,
 - (v) Diameter (or dimensions if no cylindrical),
 - (vi) Type (e.g., gravity or pressure),
 - (vii) Material (if available), and
 - (viii) Geographic location;
- c. Display attribute data for structures including:
 - (i) Structure type (e.g., siphon, manhole, vacuum breaker, junction box, Force Main, air relief valve),

- (ii) Invert elevation of manholes (if available),
- (iii) Elevation of each Grinder Pump (if available),
- (iv) Geographic location, and
- (v) Age or age range (if available);

d. Display the location of the 100-year FEMA floodplain.

12. Within 120 days of completing any inspection, testing, condition assessment activity, or rehabilitation activity of a Collection System component required pursuant to this Consent Decree or when MetCom becomes aware of reliable information that any attribute data is incorrect or incomplete, MetCom shall use its best efforts to update that attribute data.

13. MetCom shall use its best efforts to locate components that cannot be located in the field, including the use of GIS, as-built drawings, surveying, or Global Positioning Systems.

C. Annual Review. MetCom shall review the CMOM Plan by December 31 each year following the Date of Entry and update the CMOM Plan as appropriate. An update of the CMOM Plan shall be subject to Section VI (Review and Approval Procedures).

D. Review and Approval. Section VI (Review and Approval Procedures) shall govern this Article.

E. Semi-Annual Reporting Requirements. In its Semi-Annual Reports submitted pursuant to Section VII (Reporting Requirements) of this Consent Decree, MetCom shall report on its progress towards compliance with or shall provide a Statement

or Certification regarding its compliance with the applicable provisions of this Article.

F. Public Access. MetCom shall post its approved CMOM Plan, and any approved updates to the CMOM Plan, on its website within 10 days after approval by the Department and ensure that the CMOM Plan remains accessible to the public through the website until termination of this Consent Decree in accordance with Section XXIV (Termination).

Article Eight – Emergency Response Plan

A. General Requirements. MetCom shall develop and implement an Emergency Response Plan to respond to SSO events and to protect public health and the environment if an SSO occurs.

B. Specific Requirements. Within 90 days of the Date of Entry, MetCom shall submit the Emergency Response Plan for review and approval in accordance with Section VI (Review and Approval Procedures).

1. For SSOs, the Emergency Response Plan shall include, but not be limited to, the following:

a. A description of the actions MetCom shall undertake to provide notice to the public in accordance with Envir. § 9-331.1 and the regulations established thereunder, as amended, including a timeframe to post SSO notifications on the homepage of MetCom’s website and its social media platform(s) for at least 10 days following approval by the St. Mary’s County Health Department;

b. A description of how MetCom shall notify the Department and

the St. Mary's County Health Department when SSOs occur;

c. A description of how MetCom shall coordinate with the St. Mary's County Health Department to post areas using visible signage and test surface water where an SSO has occurred in accordance with Envir. § 9-331.1 and the regulations established thereunder, as amended;

d. A detailed plan describing the standard operating procedures to be followed by MetCom personnel in responding to an SSO event, including the steps to be taken to minimize the volume of unpermitted wastewater discharge as a result of an SSO, to clean the affected area, and to follow directives from the St. Mary's County Health Department;

e. A detailed plan describing the post-SSO analysis that MetCom shall implement to determine the root cause of each SSO and to prevent future SSOs, including the CCTV analysis that is required in Article Eight B.1.f., the process by which MetCom shall analyze that data and any related information to determine the root cause and ensure that the repairs made will prevent future SSOs, and the process by which MetCom shall implement the recommendations of that root cause analysis to prevent future SSOs, if applicable;

f. CCTV in accordance with the NASSCO PACP Standards of any Gravity Sewer Segment where an SSO event has occurred within 10 days after the SSO event, unless the SSO was caused by a Pump Station failure that was un-related to the Gravity Sewer Segment;

g. Identification of those locations at which an SSO is likely to occur first in the event of Pump Station failure for each Pump Station. The Emergency Response Plan shall identify existing Pump Station operating wet well capacity, additional onsite storage capacity, if any, and any in-line storage capacity. In addition, any annual updates to the Emergency Response Plan shall reflect the findings of, and improvements made pursuant to the SSES or the CAP Analysis. The Emergency Response plan shall include Pump station-specific emergency procedures and bypass strategies and estimated storage capacity (i.e., maximum volume of sewage that can be stored or pumped and hauled in the event of a Pump Station failure without causing an SSO and the estimated time, average flow rate, and maximum flow rate during which sewage can be stored or pumped and hauled before an SSO will occur);

h. A general identification of resources that MetCom shall make available to correct or repair conditions causing or contributing to the SSO; and

i. A plan to ensure annual training of MetCom personnel who respond to SSOs on their role(s) in the Emergency Response Plan, the importance of preventing SSOs, and adverse impacts of SSOs on public health and the environment (e.g., shellfish harvesting, water contact recreation, aquatic life, etc.)

2. In the event of an SSO, MetCom shall perform monitoring, sampling,

and analysis in accordance with Envir. § 9-331.1 and the regulations established thereunder, as amended. MetCom shall provide copies of field reports and laboratory analysis results to the Department upon request.

C. Annual Review. MetCom shall review the Emergency Response Plan by December 31 each year following the Date of Entry and update the plan as necessary until termination of this Consent Decree in accordance with Section XXIV (Termination). Updates or revisions to the Emergency Response Plan shall be subject to Section VI (Review and Approval Procedures).

D. Semi-Annual Reporting Requirements. In the Semi-Annual Reports submitted pursuant to Section VII (Reporting Requirements) of this Consent Decree, MetCom shall report on its progress toward compliance with, or shall provide a Statement or Certification regarding its compliance with this Article.

E. Review and Approval. Section VI (Review and Approval Procedures) shall govern this Article.

F. Public Access. MetCom shall post the approved Emergency Response Plan, and any approved update(s) to the Emergency Response Plan, to its website within 10 days after approval by the Department. MetCom shall ensure that the approved Emergency Response Plan remains accessible to the public through MetCom's website until termination of this Consent Decree in accordance with Section XXIV (Termination).

Article Nine – SSO Reporting and Recordkeeping

A. General Requirements. MetCom shall report information to the Department about SSOs and shall keep records as set forth below.

B. Specific Requirements for SSOs.

1. MetCom shall continue to orally report SSO events to the Department in accordance with Envir. § 9-331.1 and the regulations established thereunder, MetCom's NPDES Discharge Permit(s), and applicable federal law, as amended.

2. MetCom shall continue to submit written reports on SSO events to the Department in accordance with Envir. § 9-331.1 and the regulations established thereunder, MetCom's NPDES Discharge Permit(s), and applicable federal law, as amended.

C. Record Retention. MetCom shall maintain the following records until termination of this Consent Decree in accordance with Section XXIV (Termination):

1. Written SSO reports required by Article Eight; and
2. List and description of any complaints from customers or others related to reported SSOs.

D. Semi-Annual SSO Map and Report. Until this Consent Decree is terminated in accordance with Section XXIV (Termination), MetCom shall submit an SSO Map and Report for the preceding Semi-Annual Period with each Semi-Annual Report required under Section VII of this Consent Decree (Reporting Requirements) that provides:

1. Map Required: A map of the Collection System that identifies the known location of all SSOs that occurred during the Semi-Annual Period for which the Semi-Annual Report is being submitted, with a coding system identifying the cause(s), if known, of each SSO;

2. Report Requirement: A report listing all SSOs that occurred during

the Semi-Annual Period for which the Semi-Annual Report is being submitted that includes, at minimum, the following information for each SSO:

- a. Date(s) of occurrence;
- b. Location(s) (e.g., nearest street address and longitude/latitude);
- c. Duration (e.g., number of hours or minutes, if applicable);
- d. Volume (e.g., estimated number of gallons discharged);
- e. Affected area(s) (e.g., paved or unpaved ground surface, ditch, storm drain, receiving waterbody);
- f. Weather conditions (e.g., wet weather, wet weather within past 12 hours, dry);
- g. Cause(s), if known (e.g., blockage caused by rags/debris, roots, fat/oil/grease, corrosion, cracked pipe);
- h. Point(s) of failure, if known (e.g., Gravity Sewer Segment, Public Connection, Force Main, Low Pressure System, valve, Pump Station);
- i. Method(s) of abatement (e.g., point repair, pipe replacement, flushing);
- j. Which area(s) affected by the SSO were posted with signage to alert the public, if any;
- k. Summary of conclusion(s) from root cause analysis required in Article Eight; and
- l. What specific action(s), if any, MetCom is performing to prevent reoccurrence of an SSO in that location.

E. Semi-Annual Reporting Requirements for SSOs. MetCom shall certify that it has reported all SSOs in the preceding Semi-Annual Period in accordance with this Article in each Semi-Annual Report.

VI. REVIEW AND APPROVAL PROCEDURES

13. MetCom shall submit all Deliverables simultaneously to the Department and the Citizen Groups. Electronic submission is preferred, where practicable. All Deliverables shall be submitted in accordance with Section XXIII (Form of Notice). All instances in this Consent Decree where it is noted that the Department acts in consultation with the Citizen Groups shall be for work related to Title 9, Subtitle 3 of the Environment Article, Annotated Code of Maryland only.

14. The Department shall promptly review each Deliverable and may approve, disapprove, or require revisions to the Deliverable. The Department shall consult with the Citizen Groups on all approvals, disapprovals, or required revisions, as set forth below.

15. The Citizen Groups shall have the right to review all Deliverables and provide the Department with written comments within 30 days of the Citizen Groups' receipt of the Deliverable. The Department and the Citizen Groups shall consult and make best efforts to resolve any disagreements or concerns that may arise regarding the adequacy of MetCom's Deliverables collaboratively prior to the Department making its final determination on the Deliverable.

16. The Department shall notify MetCom in writing within 45 days of submission if the Department determines that a Deliverable is substantially deficient or flawed and shall set forth the basis for that determination in such notification.

17. If the Department requires revisions to a Deliverable, MetCom shall provide a revised Deliverable within 30 days of the Department's notice unless a later time period is agreed to by the Department.

18. All plans, studies, schedules, deadlines, and reports set forth in Deliverables approved by the Department shall be incorporated by reference into this Consent Decree and enforceable as if fully set forth herein. MetCom shall perform all approved Deliverables fully in accordance with their respective schedules.

VII. REPORTING REQUIREMENTS

19. Beginning with the first full Semi-Annual Period after the Date of Entry and continuing with each Semi-Annual Period thereafter until termination of this Consent Decree, MetCom shall submit a Semi-Annual Report to the Department and the Citizen Groups at the address provided in Section XXIII (Form of Notice). The Semi-Annual Report shall be due on the 45th day after the end of each Semi-Annual Period. At minimum, the Semi-Annual Report shall include the information specified in Section V (Remedial Measures).

20. In preparing Semi-Annual Reports, if a requirement due to be completed during the reporting period was not completed, an explanation must be provided for why the requirement was not completed, what steps are being taken to ensure its prompt completion, and when it is anticipated that the requirement will be completed. Further, in preparing Semi-Annual Reports, if MetCom knows of any problems that may prevent it from meeting future due dates under this Consent Decree, MetCom shall notify the Department and the Citizen Groups of those anticipated problems.

21. Within 90 days after certifying the completion of the post-construction CAP in accordance with Article Three B.5., MetCom shall submit a Post-Construction Report to the Department and the Citizen Groups that includes the following:

A. A certification that each requirement of Section V (Remedial Measures) is completed in accordance with this Consent Decree;

B. A summary of the results of the post-construction CAP required under Article Three B.5. that describes the results with particularity for each area of the Collection System that were previously calculated to lack Minimum Hydraulic Capacity as identified in the CAP Analysis under Article Three B.3.;

C. Identification of any area(s) of the Collection System that are identified in the post-construction CAP in Article Three B.5. as calculated to currently lack Minimum Hydraulic Capacity to prevent SSOs;

D. Identification of any area(s) of the Collection System that experienced an SSO when the hourly peaking factor was within the Design Scenario despite having Minimum Hydraulic Capacity to prevent SSOs according to the Hydraulic Model; and

E. Any additional measures that are necessary to ensure Minimum Hydraulic Capacity to prevent SSOs, if any, and a proposed timeframe to implement these additional measures with estimated costs for implementation.

22. MetCom's Executive Director or its authorized designee shall certify the Semi-Annual Reports and the Post-Construction Report to be true to the best of the signatory's information and belief under penalty of perjury with the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my directions and my inquiry of the person(s) who manage the system, or the person(s) directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

23. MetCom shall post all Semi-Annual Reports and the Post-Construction Report on its website within 10 days after submittal to the Department. MetCom shall ensure that each Semi-Annual Report and the Post-Construction Report remain accessible to the public through MetCom's website until termination of this Consent Decree in accordance with Section XXIV (Termination).

24. MetCom shall not object to the accuracy, authenticity, or admissibility into evidence of any certified Semi-Annual Report or the Post-Construction Report in any proceeding to enforce this Consent Decree.

VIII. CIVIL PENALTY

25. A judgment is entered in favor of the Maryland Department of the Environment, against MetCom, in the total amount of \$250,500 ("Total Penalty"), for the Claims alleged by the Department through the Date of Entry of this Consent Decree. MetCom shall pay 50% of the Total Penalty (\$125,250) ("Initial Penalty") to the Department within 30 days after the Date of Entry. MetCom shall satisfy its obligation to pay the remaining 50% of the Total Penalty (\$125,250) ("SEP Payment") through the completion of the Potomac River Oyster Restoration Supplemental Environment Project ("Oyster SEP") pursuant to the instructions set forth in Paragraph 27.

26. The Initial Penalty shall be paid by check payable to the “Maryland Clean Water Fund,” and mailed to the following address: Maryland Department of the Environment, P.O. Box 2057, Baltimore, Maryland 21203-2057. The following must be noted on the check or on enclosed correspondence with each check: Case No.: CJ-25-2979, PCA: 13710, OBJ: 7545, SFX: 408, GL: 0544, MDE v. St. Mary’s County Metropolitan Commission. A copy of the check shall also be mailed to: Principal Counsel, Office of the Attorney General, Maryland Department of the Environment, 1800 Washington Boulevard, Suite 6048, Baltimore, Maryland 21230. An invoice for payment of the Initial Penalty under this Consent Decree will be mailed by the Department via Certified Mail, return receipt requested to MetCom, with a copy to the Citizen Groups. The lack of receipt of an invoice has no effect on MetCom’s obligation to make timely payment to the Department.

27. MetCom shall complete the Oyster SEP, which the Plaintiffs believe will have significant environmental benefits, in accordance with the following:

A. The Oyster SEP shall consist of: (i) a directed contribution equal to the amount of the SEP Payment by August 15, 2024 from MetCom to the Potomac River Fisheries Commission (“PRFC”), which is an intergovernmental entity established by the Potomac River Compact of 1958 between the State of Maryland and the Commonwealth of Virginia to, *inter alia*, regulate, survey, and propagate oysters in specified areas of the Potomac River watershed; and (ii) follow-up reporting. *See, e.g.*, Md. Code, Nat. Res. § 4-306 (codifying the PRFC and its authority).

B. MetCom's contribution to the PRFC shall be for the purpose of funding oyster restoration projects in the Potomac River watershed that have a reasonable nexus to water quality impacts associated with the violations that are the subject of this Consent Decree.

C. MetCom and the Department shall enter into a separate agreement with the PRFC, in substantially the same form as Appendix C, consistent with this Section VIII, which shall: (i) document MetCom's contribution to the PRFC, which shall be held by the PRFC in a dedicated fund; (ii) provide that the PRFC shall ensure that funds are awarded for one or more oyster restoration projects in the Potomac River watershed; (iii) establish a detailed schedule for restoration with interim milestones to ensure timely completion of the Oyster SEP; (iv) limit the PRFC's administrative expenses to no more than 1% of the total cost of the Oyster SEP; (v) establish a reporting requirement by which the PRFC shall submit timely reports to the Department and MetCom on its expenditure of MetCom's contribution, the status of the oyster restoration project(s), a closeout report that evaluates the success of the oyster restoration project(s), and any balance remaining in the dedicated fund; (vi) provide that, if any amount of the SEP Payment remains unspent by the PRFC on December 31, 2026, that amount shall revert to the Department as a civil penalty in accordance with this Consent Decree. The termination of the Consent Decree is not contingent on the PRFC's award of funds.

28. The Department will send invoices for MetCom to: St. Mary's County Metropolitan Commission, Attn: George A. Erichsen, Director, 23121 Camden Way,

California, Maryland 20619. Each invoice shall reflect: Case No.: CJ-25-2979, PCA: 13710, OBJ: 7545, SFX: 408, GL: 0544, MDE v. St. Mary's County Metropolitan Commission. A copy of the invoice shall also be mailed to MetCom's legal counsel: *gunnercooke* LLP, Attn: Robin Christopher Beaver, Esq., 475 Park Avenue South, 23rd Floor, New York, New York 10016. If this information changes or MetCom has any questions regarding payment, MetCom shall notify the Department as soon as practicable.

29. Failure to pay any penalty that is required by this Consent Decree may result in this case being referred to the State of Maryland's Central Collection Unit ("Central Collection Unit") as a debt owed to the State of Maryland. The Central Collection Unit is authorized to collect outstanding debts resulting from unpaid penalties. The Central Collection Unit will add a collection fee of 17%, plus interest, to the amount owed by MetCom. In addition, § 3-304(c) of the State Finance and Procurement Article authorizes the Central Collection Unit to report the debt to consumer reporting agencies.

IX. STIPULATED PENALTIES

30. MetCom shall be liable for stipulated penalties to the Department for violations of this Consent Decree, upon demand. Stipulated penalties due and owing under this Section shall be paid in the manner specified in Section VIII (Civil Penalty). Stipulated penalties, for which a demand has been made, shall be paid unless excused under Section XIII (Force Majeure) or by the terms of this Section.

A. If MetCom fails to meet any deadline or schedule under this Consent Decree, including but not limited to those set forth in plans, submittals or Deliverables incorporated herein, MetCom shall pay \$1,000 per day of non-

compliance for the first one to 30 days of noncompliance, \$2,500 per day of non-compliance between 31 and 60 days, and \$6,000 per day of non-compliance thereafter until the requirement is met.

B. Stipulated Penalties for SSO Events. MetCom shall pay stipulated penalties to the Department for each SSO that occurs after the Date of Entry in the amounts set forth below:

Less than 100 gallons – \$500

100 to 2,499 gallons – \$1,000

2,500 to 9,999 gallons – \$2,500

10,000 to 49,999 gallons – \$5,000

50,000+ gallons – \$10,000

For purposes of this subsection, an SSO shall be considered one (1) SSO, even when a discharge occurs from more than one (1) point source, provided that each discharge is caused by the same blockage or failure and occurs on the same day. Further, for purposes of this subsection and SSO Reporting and Recordkeeping under Article Nine, when an SSO is reported by someone other than an employee or agent of MetCom, and an employee or agent of MetCom, upon inspection, determines that an SSO is occurring, timing of the SSO, for purposes of calculating volume of the discharge, shall commence at the date and time that MetCom received notice of the SSO event.

31. Stipulated penalties are payable to the Department within 30 days after MetCom receives a written demand from the Department unless MetCom invokes Section

XIV (Dispute Resolution).

32. Stipulated penalties shall automatically begin to accrue on the day after performance is due, or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree. Interest on stipulated penalties shall not begin to accrue until 30 days after the Department has made a written demand for a stipulated penalty.

33. The Department may, in its discretion, reduce or waive any stipulated penalty if it determines that noncompliance is due to an event of Force Majeure as set forth in this Consent Decree, or for any other reason deemed appropriate by the Department.

34. Stipulated penalties shall continue to accrue during any Dispute Resolution but need not be paid until 30 days after final resolution of the dispute, including any judicial appeal(s).

35. Payment of stipulated penalties shall be in addition to any rights or remedies which may be available to the Department by reason of MetCom's failure to comply with the requirements of this Consent Decree or any other applicable State laws, regulations, discharge permit(s), or other applicable permits.

36. Except as otherwise expressly set forth in this Consent Decree, none of the stipulated penalties in this Consent Decree shall be construed as an election of remedy or other limitation on the Department's discretion to seek any other remedy or sanction available to it for violations of this Consent Decree or any other violation of State law or regulation not expressly made the subject of this Consent Decree. The Department's

failure to demand any stipulated penalty under this Consent Decree does not constitute a waiver of the Department's right to make such a demand.

37. Except as otherwise expressly set forth in this Consent Decree, payment of any stipulated penalty shall not relieve MetCom from the obligations imposed by this Consent Decree, or any permit that may be issued or any other statute or regulation, nor shall such payment limit the right of the Department or Citizen Groups to seek enforcement, including all judicially available remedies, of the terms of this Consent Decree or any other statute or regulation.

X. U.S. INTERNAL REVENUE SERVICE REPORTING REQUIREMENTS

38. The Parties recognize and acknowledge that the Department is required to report certain fines, penalties, and other amounts to the United States Internal Revenue Service pursuant to 26 U.S.C. § 6050X. MetCom agrees to cooperate with the Department in meeting its reporting obligations, to promptly provide information requested by the Department, and to complete the Information Form attached hereto as Appendix D. The Parties acknowledge that this Consent Decree is not executed fully until a completed Appendix D is attached.

39. Penalty payments under this Consent Decree pursuant to Section VIII (Civil Penalty) or Section IX (Stipulated Penalties) are penalties within the meaning of Section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), and 26 C.F.R. § 1.162-21(a)(3)(i), and MetCom shall not deduct any civil penalties or the SEP Payment paid under this Consent Decree pursuant to Section VIII (Civil Penalty) or Section IX (Stipulated Penalties) in calculating its federal income tax.

40. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2)(iii)(A), performance of the actions required by this Consent Decree is restitution, remediation, or required to come into compliance with the law.

XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

41. Effective upon the Date of Entry of this Consent Decree, and in consideration of the civil penalty, the SEP Payment, and the injunctive relief under this Consent Decree, except as expressly set forth in this Consent Decree, the Department agrees to refrain from pursuing or continuing any civil or administrative action against MetCom for the Claims, and the Citizen Groups agree to refrain from pursuing or continuing any civil action against MetCom for injunctive relief or civil penalties alleged in Counts I and II through the Date of Entry. Upon the full completion of all the obligations set forth in this Consent Decree, the Department agrees to release MetCom of any civil or administrative liability for the Claims through the Date of Entry. Upon the full completion of all the obligations set forth in this Consent Decree, the Citizen Groups agree to release MetCom of any civil liability for Counts I and II of the Citizen Groups' Complaint through the Date of Entry except the Private Claims and Litigation Costs.

42. This Consent Decree shall not be construed to prevent or limit the Department's rights to obtain civil penalties, administrative penalties, or injunctive relief under the Environment Article of the Annotated Code of Maryland, the regulations promulgated thereunder, or permit conditions, except as expressly specified herein.

43. It is expressly understood that this Consent Decree pertains to the Claims,

and the Department and the Citizen Groups have made no promises or representations other than those contained in this Consent Decree and that no other promises or representations will be made unless in writing. The Department has made no promises or representations regarding any criminal liability for the Claims and has no authority over any criminal actions.

44. MetCom agrees to undertake and complete all actions required by this Consent Decree. In any action by the Department or Citizen Groups to enforce the terms of this Consent Decree, MetCom consents to and agrees not to contest the authority or jurisdiction of the Department or the Citizen Groups to enforce this Consent Decree and agrees not to contest the validity of this Consent Decree or its terms or conditions. MetCom agrees this Consent Decree is a contract and upon entry by the Court, a final order enforceable in a judicial forum. However, nothing in this Paragraph prevents MetCom from proposing a modification to this Consent Decree.

45. Except as provided in Section XIV (Dispute Resolution), no action or decision by the Department pursuant to this Consent Decree shall constitute final agency action giving rise to any right by MetCom to seek judicial review prior to the Department's or Citizen Groups' initiation of a judicial action to enforce this Consent Decree, including an action for penalties or an action to compel MetCom's compliance with the terms and conditions of this Consent Decree.

46. Reservations of Rights.

A. By the Department.

Nothing in this Consent Decree shall limit the Department's authority to

issue any orders or to take any action it deems necessary to protect public health, safety, or the environment. Notwithstanding any other provision of this Consent Decree, the Department reserves, and this Consent Decree is without prejudice to, all rights against MetCom with respect to all matters other than those expressly included in the Department's Complaint, including but not limited to the following:

1. Civil or administrative action(s) for violations that occur before or after the Date of Entry of this Consent Decree unless those violations are subject to stipulated penalties or other remedies pursuant to this Consent Decree;
2. Any claims based on a failure by MetCom to meet a requirement of this Consent Decree;
3. Any claims for stipulated penalties, if any, under the terms of this Consent Decree;
4. Any criminal liability; or
5. Violation of any other State law or regulation that does not arise from the facts or circumstances recited in this Consent Decree.

B. By the Citizen Groups.

Notwithstanding any other provision of this Consent Decree, the Citizen Groups reserve, and this Consent Decree is without prejudice to, all rights against MetCom with respect to all matters other than those expressly included in Counts I and II of the Citizen Groups' Complaint through the Date of Entry. The Citizen Groups expressly reserve all rights to pursue any other claims against MetCom,

including the right to continue their litigation of the Private Claims, to amend their Complaint, and to seek recovery of their Litigation Costs.

XII. THIRD PARTIES

47. Except as provided in Section XI (Effect of Settlement/Reservation of Rights), the Parties intend that nothing in this Consent Decree shall be construed as a release or covenant not to sue any third party not a signatory to this Consent Decree. Nothing contained in this Consent Decree shall affect any right, claim, cause of action, or defense of any party hereto with respect to any third party. The Parties specifically reserve all rights, defenses, claims, demands, and causes of action, which the Parties may have against any third party relating in any way to the subject matter of this Consent Decree.

48. This Consent Decree does not and is not intended to create or limit any existing, right(s), claim(s), or benefit(s) for any third party. No third party shall have any legally enforceable right(s), claim(s), or benefit(s) under this Consent Decree. No act of performance by the Parties, nor forbearance to enforce any term of this Consent Decree by the Department or the Citizen Groups shall be construed as creating any right(s), claim(s), or benefit(s) for any third party.

49. Neither the terms nor the conditions of this Consent Decree, nor any act of performance by the Parties, shall collaterally estop the Department in any other proceeding with any third party.

XIII. FORCE MAJEURE

50. MetCom shall perform the requirements of this Consent Decree in the manner and within the time limits set forth herein, unless the performance is delayed by

events or circumstances arising from causes not reasonably foreseeable or beyond the reasonable control of MetCom, which cannot be avoided, and which delays or prevents performance in the manner or by a date required by this Consent Decree.

51. Circumstances beyond the reasonable control of MetCom include: earthquake, flood, hurricane, tornado, severe weather or other act of God, war, riot, terrorism, threat of terrorism, injunction, fire, pandemic, and compliance with any law, rule, or Decree of any governmental body either existing now or hereafter created that conflicts with the requirements or obligations of this Consent Decree. Such circumstances do not include increased costs of performance, changed economic circumstances, normal inclement weather, or failure to obtain federal, State, or local permits unless MetCom has made timely and complete application for such permits.

52. For purposes of this Consent Decree, a supply chain delay that causes an obligation under this Consent Decree to be impossible to perform due to lack of essential good(s) is a Force Majeure if MetCom demonstrates each of the following circumstances in its notice under Paragraph 54:

A. A Consent Decree obligation is impossible to perform without access to certain good(s);

B. MetCom could not reasonably have taken the supply chain delay into account when developing plans or implementation schedules for the Consent Decree obligation;

C. MetCom made timely efforts to commence and diligently pursue purchasing the good(s) from a supplier after MetCom knew, or should have known,

that it would need the good(s). Such efforts include, at minimum, contacting all suppliers that ordinarily carry the good(s) within 5 days after MetCom knew, or should have known, about the supply chain delay;

D. The good(s) are unavailable from any supplier contacted above at any price within the time required for MetCom to perform the Consent Decree obligation that MetCom asserts should be subject to a Force Majeure; and

E. Any other information required under Paragraph 54 not specifically addressed in MetCom's demonstration of the above circumstances.

53. The mere existence of a novel coronavirus or COVID-19 in the state in which the work contemplated by this Consent Decree and plans submitted hereunder does not excuse performance. MetCom must take all reasonable steps to mitigate any delay that may occur as a result of the novel coronavirus or COVID-19. Delays attributable to the novel coronavirus or COVID-19 may only constitute a Force Majeure where MetCom could not reasonably have taken the known circumstances associated with COVID-19 into account when developing plans and implementation schedules.

54. Within 30 business days after becoming aware that an event MetCom believes constitutes an unforeseeable event or circumstance beyond their reasonable control may prevent or delay performance of an obligation under this Consent Decree, MetCom shall notify the Department and the Citizen Groups of such event. MetCom's notification shall describe in detail the precise cause or causes of the delay, the anticipated length of the delay, any measures taken or to be taken by MetCom to prevent or minimize the delay, and a timetable for any measures to be implemented. MetCom shall make all

reasonable and available measures to avoid or minimize any such delay. MetCom shall include in the notification a request to extend the deadline associated with any obligation under this Consent Decree whose performance may be prevented or delayed by unforeseeable events or circumstances beyond MetCom's reasonable control.

55. Failure by MetCom to provide notice as set forth in the preceding Paragraph constitutes a waiver of MetCom's right to request an extension of the applicable deadline associated with an obligation to be performed under this Consent Decree unless the Department determines otherwise with input from the Citizen Groups.

56. If the Department determines, with input from the Citizen Groups, that the event or anticipated event which has caused or will cause the delay constitutes an unforeseeable event or circumstance beyond the control of MetCom, the time for performance hereunder shall be extended for an appropriate period of time as determined by the Department, with input from the Citizen Groups, but not less than a period of time substantially equal to the length of the necessary delay, and any stipulated penalty shall not accrue during the period of extension. The Department shall inform MetCom in writing of its approval or denial and provide the Citizen Groups a copy of such notification.

57. In the event the Department, with input from the Citizen Groups, and MetCom cannot agree that a delay or failure has been or will be caused by a Force Majeure event or if there is no agreement on the length of the extension, the dispute shall be resolved in accordance with Section XIV (Dispute Resolution).

XIV. DISPUTE RESOLUTION

58. The dispute resolution procedures of this Section shall be the exclusive mechanism for the Parties to raise and resolve disputes arising under or with respect to this Consent Decree. Nothing herein shall be construed to prohibit the Department or the Citizen Groups from exercising any other remedy available at law or in equity to enforce the terms of this Consent Decree, including seeking enforcement of the provisions of this Consent Decree by the Court.

59. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the Department, Citizen Groups, and MetCom in an attempt to resolve the dispute in a good faith and expeditious manner. A dispute shall be considered to have arisen when one party sends all other parties a written Notice of Dispute. Electronic mail is the preferred delivery method for a Notice of Dispute to the Parties.

60. The Parties shall have 30 days following receipt of a Notice of Dispute to reach agreement unless this period is extended by written agreement of the Parties. The Parties shall have the right to meet jointly and confer at least once during this 30-day period (or extended period as agreed by the Parties). If the Parties cannot reach agreement on the disputed issue, the Department shall serve on the Parties a written statement setting forth its proposed resolution of the dispute within 15 days after expiration of the initial 30-day period (or extended period as agreed by the Parties). The dispute shall be resolved in accordance with the Department's proposed resolution unless, within 60 days after receipt of such proposed resolution, the disputing party files a petition for resolution of the dispute

with the Court. Any such petition shall describe the nature of the dispute and the disputing party's proposal for resolution of the dispute. The Department and the non-disputing party shall have 30 days after service of such petition to file a response to the petition.

61. The Court shall have exclusive and continuing jurisdiction to issue any Decree or resolve any dispute arising between or among the Parties with respect to matters within the scope of this Consent Decree. With respect to the resolution of any dispute pursuant to a petition to the Court, the Court shall resolve the dispute in accordance with applicable law.

62. The existence of any dispute initiated under the process provided by this Section shall not excuse, toll, or suspend any compliance obligation or deadline required, or stipulated penalty accruing, pursuant to this Consent Decree during the pendency of the dispute resolution process.

XV. RETENTION OF JURISDICTION

63. This Court shall retain exclusive and continuing jurisdiction of this matter for the purposes of implementing and enforcing the terms and conditions of this Consent Decree, entering orders to modify this Consent Decree, and 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.

XVI. MODIFICATION

64. The terms of this Consent Decree are contractual and not mere recitals. This Consent Decree contains the entire agreement of the Parties and shall not be modified by any prior oral or written agreement, representation, or understanding. This Consent Decree

may only be modified by the mutual written agreement of all the Parties, and approval of the Court. Upon approval by the Court, this Consent Decree is not only contractual but constitutes a Court Order. Any minor modifications, as determined by the Department, must be made through written agreement of the Parties. Any major modifications must be approved by the Court in writing.

65. Any request to modify an approved Deliverable under Section V (Remedial Measures) shall be made in writing at least 10 days prior to expiration of the required deadline.

66. Except as provided below, any request to modify an approved Deliverable shall be made to both the Department and the Citizen Groups and shall be subject to the review and approval process in Section VI (Review and Approval Procedures).

67. Any request to modify work shall not excuse, toll, or suspend any compliance obligation or deadline required pursuant to this Consent Decree or as set forth in any approved Submittals during the pendency of the Department's consideration of the request, nor shall it stay the accrual of stipulated penalties unless agreed to by the Parties. The Department shall use best efforts to respond to a request to modify in writing within 60 days from receipt of a complete request. A failure by the Department to respond in writing to a request to modify within 60 days shall not constitute approval of any such request.

XVII. RIGHT OF ENTRY

68. The Department and any authorized representatives of the Department, including contractors, are authorized to enter the MetCom's property at all reasonable times upon presentation of credentials and other documents as may be required by law, for the

purposes of, *inter alia*, interviewing MetCom's personnel and contractors performing work under this Consent Decree, inspecting non-privileged records related to the work performed hereunder, reviewing MetCom's progress in carrying out the terms of the Consent Decree, conducting such tests, sampling, or monitoring as the Department deems necessary, using a camera, sound recording, or other documentary-type equipment, and verifying reports and data submitted to the Department. The Department may also exercise its right of entry through use of an unmanned aircraft system to conduct inspections, collect samples, or make visual observations through photographic or video recordings. MetCom shall permit the Department or the authorized representatives of the Department to inspect and copy non-privileged records, files, photographs, documents, and other writings, including sampling and monitoring data, that pertain to the work undertaken pursuant to this Consent Decree. Nothing herein shall be interpreted as limiting the inspection authority of the Department under Maryland law. The Department agrees that it and its authorized representatives will comply with all applicable laws, regulations, ordinances, or procedures related to access to the MetCom's property, including, but not limited to, all security laws, regulations, or procedures, and any site-related health and safety protocols and procedures established by MetCom.

69. At the Department's request, MetCom shall allow the Department, or an authorized representative of the Department, to take split or duplicative samples of any sample collected by MetCom pursuant to this Decree. Similarly, at MetCom's request, the Department shall allow MetCom to take split or duplicative samples of any sample collected by the Department or its authorized representatives. The Department shall notify

MetCom at least 5 business days before conducting any sampling pursuant to this Consent Decree unless an emergency makes advance notice impracticable.

70. Nothing herein shall be interpreted as limiting the sampling authority of the Department under any federal or State law or regulation or permit.

XVIII. NOT A PERMIT/COMPLIANCE WITH OTHER LAWS

71. This Consent Decree is not and shall not be construed as a permit, nor as a modification of any existing permit so issued, nor shall it in any way relieve MetCom of its obligations otherwise to obtain required permits and to comply with the requirements of any applicable permit, permit modification, or any other applicable State law or regulation. In any subsequent enforcement action brought by the Department or the Citizen Groups not involving matters addressed in this Consent Decree, the Department, MetCom, and the Citizen Groups retain all legal and equitable defenses available to them.

72. Nothing herein shall be construed as relieving MetCom of its duty to comply with Title 9, Subtitle 3 of the Environment Article, Annotated Code of Maryland, the regulations established under those statutes, and all applicable permits issued under those statutes and regulations.

XIX. FAILURE OF COMPLIANCE

73. The Department and the Citizen Groups do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that MetCom's complete compliance with this Consent Decree will result in compliance with Title 9, Subtitle 3 of the Environment Article, Annotated Code of Maryland or with any permits issued to MetCom. Notwithstanding the Department's review or approval of any plans, reports, policies, or

procedures formulated pursuant to this Consent Decree, MetCom shall remain solely responsible for any non-compliance with the terms of this Consent Decree, State laws and regulations, and all applicable permits. Compliance by MetCom with the terms of this Consent Decree shall not relieve MetCom of its obligation to comply with any other applicable local, State, or federal laws and regulations. The pendency or outcome of any proceeding concerning issuance, reissuance, or modification of any NPDES Discharge Permit shall not affect or postpone MetCom's duties and obligations as set forth in this Consent Decree. MetCom reserves all legal and equitable defenses to enforcement under this Consent Decree that are not specifically waived.

XX. NON-WAIVER PROVISIONS

74. The Parties agree that MetCom is responsible for achieving and maintaining compliance with all applicable statutes, regulations, and permits, and that compliance with this Consent Decree shall be no defense to any actions commenced pursuant to said statutes, regulations, or permits, except as otherwise expressly specified in this Consent Decree.

75. The Department and the Citizen Groups reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree.

76. This Consent Decree shall not limit any authority of the Department or the Citizen Groups under any applicable statute, including the authority to seek information from MetCom or to seek access to MetCom's property.

77. MetCom's performance of this Consent Decree 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 MetCom shall not be cause for extension of any required compliance date in this Consent Decree.

78. The signing of this Consent Decree and each Party's consent shall not limit or otherwise preclude the Department from taking additional action pursuant to the powers granted to it under State and federal law to address violations of laws or regulations not otherwise addressed by this Consent Decree, or to reduce or eliminate risks to public health or the environment that were not known to the Department at the time of approval of this Consent Decree or at the time of approval of work to be performed hereunder.

79. The signing of this Consent Decree and each Party's consent shall not limit or otherwise preclude the Citizen Groups from taking action pursuant to State and Federal law to address violations of laws or regulations not otherwise specifically addressed by this Consent Decree, or to reduce or eliminate risks to public health or the environment that were not known to the Citizen Groups at the time of approval of this Consent Decree or at the time of approval of work to be performed hereunder.

80. The Department and the Citizen Groups reserve all remedies available to them for violations of the Clean Water Act and Title 9, Subtitle 3 of the Environment Article, Annotated Code of Maryland by MetCom which are not alleged in the Complaints, and for any violations of the Clean Water Act, 33 U.S.C. § 1251, *et seq.*, and Title 9, Subtitle 3 of the Environment Article, Annotated Code of Maryland by MetCom which occur after the Date of Entry of this Consent Decree except as otherwise specified in this Consent Decree.

81. In the event that MetCom fails to comply with any provision of this Consent Decree, including but not limited to failure to complete the work or pay the civil penalty, the SEP Payment, or any stipulated penalties due hereunder, the Department and the Citizen Groups shall have the right to seek any and all legal and equitable remedies available to them for any such failure, and all other provisions of this Consent Decree shall remain in full force and effect.

XXI. COSTS OF SUIT

82. Costs of Suit.

A. The Department and MetCom

The Department and MetCom shall each bear their own costs and attorney's fees with respect to matters resolved by this Consent Decree, except that the Department may be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty, SEP Payment, or any Stipulated Penalties due but not paid under this Consent Decree. For purposes of this Paragraph, Stipulated Penalties are not "due" until the conclusion of dispute resolution proceedings, if any, brought pursuant to Section XIV (Dispute Resolution) of this Consent Decree.

B. Citizen Groups' Costs

1. The Citizen Groups' claim for Litigation Costs from MetCom is unresolved and shall not be resolved by the entry of this Consent Decree. The Citizen Groups reserve all rights to apply to the Court under any applicable provision of law for recovery of their Litigation Costs from

MetCom.

2. MetCom reserves all rights to oppose the Citizen Groups' application to the Court for Litigation Costs.

XXII. RECORDKEEPING

83. MetCom shall maintain copies of all documents, including paper and electronic files, relating to this matter for at least 3 years after termination of this Consent Decree, unless a longer period is prescribed by law or permit. MetCom shall submit such documents to the Department upon request.

84. In addition to the reports and documentation required to be provided by MetCom under the terms of this Consent Decree, MetCom shall also provide, upon demand, any analytical data or any other documents requested by the Department to review work done, or to be done, by MetCom, or to determine MetCom's compliance with the terms of this Consent Decree.

XXIII. FORM OF NOTICE

85. Unless otherwise specified, all reports, notices, plans, Deliverables, or any other written communications required by or relating to this Consent Decree shall be sent via email or, upon written request, by one (1) of the following methods: (a) hand delivery; (b) first class mail; or (c) overnight mail by private courier. Any party may change the method, person, or address applicable to it by providing notice of the change to all Parties. Notice shall be sent to the following:

Department:

Program Manager, Compliance Program

Water and Science Administration
Maryland Department of Environment
1800 Washington Blvd.
Suite 420
Baltimore, MD 21230

Principal Counsel
Maryland Department of the Environment
Office of the Attorney General
1800 Washington Blvd.
Suite 6048
Baltimore, MD 21230

MetCom:

St. Mary's County Metropolitan Commission
Attn: George A. Erichsen
Director
23121 Camden Way
California, MD 20619

R. Christopher Beaver, Esq.
gunnercooke LLP
475 Park Avenue South, 23rd Floor
New York, New York 10016
christopher.beaver@gunnercooke.com

As to the Citizen Groups:

Van Ness Feldman
Attn: Michael Goodstein, Esq.
Regarding Matter Number: 20932.00001
1050 Thomas Jefferson St. NW
Washington, DC 20007
Mgoodstein@vnf.com

Shore Thing Shellfish, LLC
P.O. Box 74
Tall Timbers, MD 20690
Shorethingshellfish@gmail.com

Potomac Riverkeeper Network
Attn: Senior Legal Counsel
3070 M. St. NW
Washington, DC 20007
David@prknetwork.org

Notifications to or communications with the Department and the Citizen Groups shall be deemed submitted on the date they are received.

XXIV. TERMINATION

86. Except for the Release contained in Section XI (Effect of Settlement/Reservation of Rights), this Consent Decree shall terminate and be of no further force and effect upon the occurrence of all of the following events: (a) MetCom's payment of the full civil penalty and SEP Payment as set forth in Section VIII (Civil Penalty); (b) MetCom's payment of all stipulated penalties that may be demanded by the Department under this Consent Decree; and (c) the Department's approval of the Post-Construction Report unless the Post-Construction Report recommends additional remedial measures. Notwithstanding the foregoing in this Paragraph, the Parties may terminate this Consent Decree at any time by mutual written agreement and the approval of the Court.

87. If the Post-Construction Report identifies additional remedial measures, then this Consent Decree shall remain in full force and effect and shall not terminate until all additional remedial measures approved by the Department have been implemented and approved by the Department and MetCom satisfies all other requirements in Paragraph 86. Within 90 days of completing all additional remedial measures, MetCom shall initiate termination by submitting a Supplemental Closeout Report certifying completion of all

additional remedial measures, which shall be subject to the Department's review and approval.

XXV. SIGNATORIES

88. Each undersigned representative of the Department, MetCom, and the Citizen Groups certifies that they are fully authorized by the party to enter into and execute the terms and conditions of this Consent Decree and to execute and legally bind such party to this Consent Decree on their behalf.

89. This Consent Decree may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one agreement. The execution of one counterpart by any party shall have the same force and effect as if that party had signed all other counterparts.

XXVI. EFFECTIVE DATE

90. The Citizen Groups and MetCom shall execute this Consent Decree first, followed by the Department. This Consent Decree shall become effective as a contract upon approval and signature by the Department (the "Effective Date"). This Consent Decree shall become effective as a Court Order upon entry by the Circuit Court Judge.

XXVII. GENERAL PROVISIONS

91. This Consent Decree and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree and supersede all prior agreements and understandings, whether oral or written. No other document, representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Decree or the settlement it

represents, nor shall it be used in construing the terms of this Consent Decree.

92. The Parties represent that prior to signing this Consent Decree, each has read it, understands its terms and conditions, consulted with counsel, and chosen to sign the Consent Decree voluntarily.

93. This Consent Decree shall be construed without regard to any presumption or other rule requiring construction against the party causing the Consent Decree to be drafted.

94. This Consent Decree is governed by, and interpreted according to, the laws of the State of Maryland without regard to conflict of laws principles.

95. If any provision or authority of this Consent Decree or the application of this Consent Decree to any party or circumstance is held by any judicial authority to be invalid, the application of such provision or authority to other parties or circumstances and the remainder of this Consent Decree shall not be affected thereby and shall remain in full force.

96. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment among the Department, MetCom, and the Citizen Groups.

IT IS SO DECREED AND ORDERED this 28th day of August, 2024:



Judge, Circuit Court for St. Mary's County
Joseph M. Stanalonis

(Parties' Signatures on Following Pages)

08/28/2024 9:58:16 AM

Signature Page for Consent Decree in *State of Maryland, Department of the Environment
et al. v. St. Mary's County Metropolitan Commission*

FOR THE MARYLAND DEPARTMENT OF THE ENVIRONMENT:

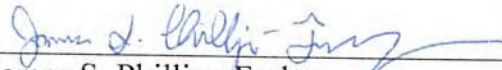
July 24, 2024

DATE



D. Lee Currey
Director
Water and Science Administration
Maryland Department of the Environment

Approved as to form and legal sufficiency this 24th of July, 2024:

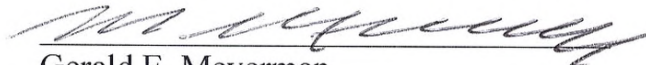


James S. Phillips-Farley
Assistant Attorney General

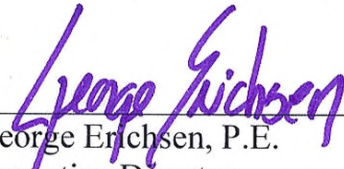
Signature Page for Consent Decree in *State of Maryland, Department of the Environment et al. v. St. Mary's County Metropolitan Commission*

FOR THE ST. MARY'S COUNTY METROPOLITAN COMMISSION:

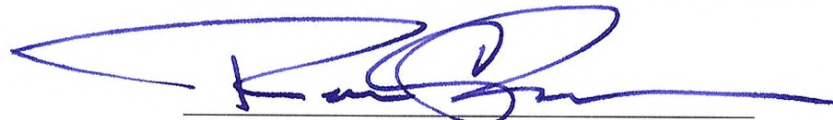
7-9-2024
DATE


Gerald E. Meyerman
Chair
St. Mary's County Metropolitan Commission

7.9.2024
DATE


George Erichsen, P.E.
Executive Director
St. Mary's County Metropolitan Commission

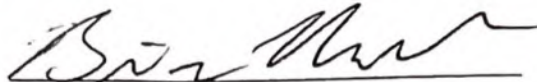
7/9/2024
DATE


R. Christopher Beaver, Esq.
Counsel
Gunnercooke LLP

Signature Page for Consent Decree in *State of Maryland, Department of the Environment et al. v. St. Mary's County Metropolitan Commission*

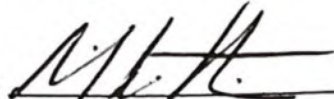
FOR SHORE THING SHELLFISH LLC AND POTOMAC RIVERKEEPER, INC.,
D/B/A POTOMAC RIVERKEEPER NETWORK:

7/22/24
DATE



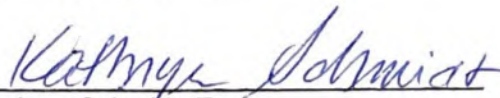
Brian Russell
Co-Owner and Founding Member
Shore Thing Shellfish, LLC

7/23/24
DATE

By: 

Michael D. Goodstein
Counsel
Potomac Riverkeeper, Inc., D/B/A Potomac
Riverkeeper Network

7/25/24
DATE



Kathryn Schmidt, Esq.
Counsel
Van Ness Feldman LLP