

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
and)	
)	
THE STATE OF OHIO,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 1:22-cv-02026-DCN
)	
THE CITY OF ELYRIA, OHIO,)	Hon. Donald C. Nugent
)	
Defendant.)	Hon. Thomas M. Parker
)	

CONSENT DECREE

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	JURISDICTION AND VENUE	3
III.	APPLICABILITY	3
IV.	OBJECTIVES	4
V.	DEFINITIONS.....	4
VI.	COMPLIANCE REQUIREMENTS.....	7
VII.	REVIEW, APPROVAL, AND IMPLEMENTATION OF DELIVERABLES	12
VIII.	REPORTING REQUIREMENTS	13
IX.	CIVIL PENALTY.....	15
X.	STIPULATED PENALTIES	16
XI.	FORCE MAJEURE	18
XII.	DISPUTE RESOLUTION	19
XIII.	RIGHT OF ENTRY AND INFORMATION COLLECTION AND RETENTION	21
XIV.	EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS.....	22
XV.	COSTS.....	23
XVI.	NOTICES.....	23
XVII.	EFFECTIVE DATE.....	26
XVIII.	RETENTION OF JURISDICTION.....	26
XIX.	MODIFICATION	26
XX.	TERMINATION.....	27
XXI.	PUBLIC PARTICIPATION	27
XXII.	SIGNATORIES/SERVICE	28
XXIII.	INTEGRATION	28
XXIV.	FINAL JUDGMENT	29
	LIST OF CSOs.....	APPENDIX A
	LIST OF SPECIFIED UNPERMITTED SSO LOCATIONS	APPENDIX B
	INTEGRATED WET WEATHER CONTROL PLAN.....	APPENDIX C
	POST-CONSTRUCTION MONITORING.....	APPENDIX D
	CAPACITY, MANAGEMENT, OPERATION & MAINTENANCE PROGRAM.	APPENDIX E

I. INTRODUCTION

WHEREAS, Plaintiff United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“EPA”), and Plaintiff the State of Ohio (“State”), on behalf of the Ohio Environmental Protection Agency (“Ohio EPA”), have filed a complaint in this action (“Complaint”) concurrently with this Consent Decree alleging that the Defendant, the City of Elyria, Ohio, (“Elyria”) violated Section 301 of the Clean Water Act (“CWA”), 33 U.S.C. § 1251 *et seq.*, and regulations promulgated thereunder; Ohio Rev. Code Ann. § 6111 and rules promulgated thereunder; and certain terms and conditions of the National Pollutant Discharge Elimination System (“NPDES”) permits issued to Elyria pursuant to the CWA relating to the municipal wastewater treatment plant (“WWTP”) and sewer system owned and operated by Elyria (“Sewer System”);

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

WHEREAS, in 1984, the United States sued Elyria for violations of the CWA arising from discharges from its sewer collection system and WWTP. In 1986, the parties entered into a Consent Judgment that required Elyria to build a dike around its WWTP to prevent flood damage, construct a new sludge handling facility and install new primary and secondary treatment facilities at the WWTP. *See United States v. Elyria and State of Ohio*, Civil Action No. 84-3729 (N.D. Ohio May 19, 1986). The 1986 Consent Judgment also required Elyria to make improvements necessary to meet its NPDES Permit final effluent limits, eliminate a number of overflows, and eliminate all bypasses at Elyria’s WWTP and from several pump stations. Elyria made the required improvements to its WWTP and various improvements to its collection system, including construction of the West Side interceptor, but did not eliminate all overflows and bypasses identified in the 1986 Consent Judgment;

WHEREAS, pursuant to its NPDES Permit, in November 2008, Elyria submitted to Ohio EPA a proposed Combined Sewer Overflow Long Term Control Plan (“2008 Draft LTCP”), Sewer System Characterization Report and a proposed System Evaluation and Capacity Assurance Plan (“SECAP”), all of which were made available for public review for at least 18 days, and for which Elyria held a public meeting on November 18, 2008, but received no public comments;

WHEREAS, on May 2, 2011, Elyria submitted to Ohio EPA a Wet Weather Plan Summary and Proposed Schedule that consolidated projects from the 2008 Draft LTCP, the 2008 SECAP, and a 2010 Evaluation of Feasible Alternatives to Wet Weather Bypasses (the “2011 Wet Weather Control Plan”);

WHEREAS, Elyria has worked closely with the EPA and Ohio EPA to develop a comprehensive Integrated Wet Weather Control Plan that updates the 2011 Wet Weather Control Plan and addresses the construction and implementation of WWTP and Sewer System improvements and other measures with the goal of: (i) reducing the number, duration, and volume of wet weather Combined Sewer Overflows (“CSOs”); (ii) ensuring that any CSOs that do occur during wet weather comply with the technology and water quality-based requirements of the CWA, state law, any applicable federal and state regulations, and Elyria’s NPDES Permit;

and (iii) eliminating Sanitary Sewer Overflows (“SSO”). This updated Integrated Wet Weather Control Plan is attached to this Consent Decree as Appendix C. The Integrated Wet Weather Control Plan serves as Elyria’s Long Term Control Plan and is intended to satisfy the requirements of EPA’s Combined Sewer Overflow Control Policy found at 59 Fed. Reg. 18,688 (April 19, 1994);

WHEREAS, Elyria began implementing the 2011 Wet Weather Control Plan in 2012, and has initiated or completed several projects identified in the Integrated Wet Weather Control Plan including: Turner Street Pump Station, Pinewood & Overbrook Pump Station, Cascade Siphon & Bottleneck, Intermediate Storage Tank Wet Weather Storage, East Avenue Relief Sewer, WWTP Sludge Thickening, WWTP Disinfection Upgrade, WWTP Final Storage Tank #6/#7/#8 Improvements, control of Overflow 132, and elimination of CSO 170. Elyria has also completed construction of several phases of the new East Side Relief Sewer (Phases 1A, 1B North, 1B South, 1C, and 1CT). Elyria anticipates initiating two other construction projects in 2022: Phase 1D of the East Side Relief Sewer (to be completed over 3 years) and increasing the primary/secondary wet weather treatment capacity of the WWTP to 40 MGD (to be completed over 5 years). This Consent Decree sets forth additional improvements that are planned over a 15-year period (2020-2034), followed by a 10-year period in which further collection system efforts are planned to address specified CSOs and SSOs;

WHEREAS, Elyria maintains a comprehensive log of “Water in Basement Occurrences” that includes the date and address of every report of a sewer system backup into a building or other private property. Additional detail about those backups that were the responsibility of the City is compiled and included in its Annual SSO Report submitted to Ohio EPA. In some cases, sewer backups can present the potential for direct human contact to pathogens. The City responds to reports of basement backups and addresses those that are caused by features in its system beyond the homeowner’s private lateral. The Plaintiffs desire to continue monitoring such occurrences and Elyria’s response, with particular focus on those that fall within the responsibility of the City. The projects set forth in Elyria’s Wet Weather Control Plan are expected to greatly reduce, if not eliminate, the vast majority of basement backups that are not caused by the property owner’s lateral sewer line;

WHEREAS, the United States, the State, and Elyria (referred to herein collectively as the “Parties” and individually as a “Party”) intend to resolve all alleged violations of the Consent Judgment, together with the violations alleged in the Complaint, and replace the Consent Judgment with this Consent Decree;

WHEREAS, today, Elyria’s wastewater collection system contains approximately 170 miles of sewers that collect municipal sewage (which includes domestic, commercial, and industrial wastewater) from approximately 21,000 residences and almost 400 industrial and commercial properties. The total drainage area contained within the Elyria wastewater collection system is approximately 21 square miles. Elyria’s WWTP currently treats an average of approximately 9 million gallons per day (MGD) of wastewater and has a maximum wet weather secondary treatment capacity of 30 MGD (to be increased to 40 MGD under the Integrated Wet Weather Control Plan) with wet weather storage capacity of 3.4 million gallons;

WHEREAS, since at least 1984, when the Black River was identified as a Great Lake Area of Concern by the International Joint Commission, the Black River and its tributaries have been the subject of much study and effort to improve its water quality under the Black River Remedial Action Program. Further control of Elyria's WWTP discharges and elimination or control of outfalls and bypasses will further improve the Black River's water quality;

WHEREAS, Elyria is committed to ongoing efforts that improve the quality of the Black River for its aquatic inhabitants, the wildlife and birds that live along its banks, and Elyria's residents. At the same time, Elyria seeks to achieve these improvements without causing undue financial hardship for its residents and in a manner that provides opportunities for growth and flexibility for their future;

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

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section II (Jurisdiction and Venue), and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367, and Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and over the Parties. Venue lies in this District pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and 1395(a), because Elyria is located in this judicial district and the alleged violations occurred in this District. The Complaint states claims upon which relief may be granted. Authority for the United States to bring its action is vested in the United States Department of Justice pursuant to Section 506 of the CWA, 33 U.S.C. § 1366, and 28 U.S.C. §§ 516 and 519; authority for the State to bring its action is vested in the Ohio Attorney General pursuant to Ohio Rev. Code Ann. §§ 6111.07 and 6111.09.

2. For purposes of this Consent Decree or any action to enforce this Consent Decree, Elyria consents to the Court's jurisdiction over this Consent Decree, over any action to enforce this Consent Decree, and over Elyria. For purposes of this Consent Decree, Elyria agrees that the Complaint states claims upon which relief may be granted. Elyria also consents to venue in this judicial district.

III. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States, the State, and upon Elyria and any of its successors and assigns, its officers, directors, employees, and agents in their capacities as such, and all other persons and entities as provided for in Fed. R. Civ. P. 65(d).

4. No transfer of ownership or operation of the WWTP, the Sewer System, or any portion of the WWTP or Sewer System, whether in compliance with the procedures of this

Paragraph or otherwise, shall relieve Elyria of its obligation to ensure that the terms of this Consent Decree are implemented. At least 30 Days prior to such transfer, Elyria 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 State, EPA, the United States Attorney for the Northern District of Ohio, and the United States Department of Justice, in accordance with Section XVI (Notices). Any attempt to transfer ownership or operation of the WWTP, the Sewer System, or any portion of the WWTP or Sewer System without complying with this Paragraph constitutes a violation of this Consent Decree.

5. Elyria shall provide a copy of this Consent Decree to all officers, employees, and agents of Elyria whose duties might reasonably include compliance with any provision of this Consent Decree, and shall make an electronic copy available to any contractor retained by Elyria to perform work required under this Consent Decree. Elyria shall include all information and requirements in any such contract as is necessary to ensure that the work performed is in conformity with the terms of this Consent Decree.

6. In any action to enforce this Consent Decree, Elyria will not raise as a defense the failure of its officers, directors, agents, contractors, employees or any other persons or entities provided for in Fed. R. Civ. P. 65(d) to take any actions necessary to comply with the provisions of this Consent Decree.

IV. OBJECTIVES

7. It is the express purpose of the Parties in entering into this Consent Decree to require Elyria, through implementation of its Integrated Wet Weather Control Plan, to take all measures necessary to fulfill the objectives of the CWA, to achieve and maintain compliance with the CWA, Ohio Rev. Code Ann. § 6111, its NPDES Permit, and any applicable Federal and State regulations, including, but not limited to, the elimination of Unauthorized Releases, SSOs and Dry Weather Overflows from the Sewer System and WWTP, and the reduction of discharges from the CSO outfalls listed in the NPDES Permit.

V. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the CWA, 33 U.S.C. § 1251, *et seq.*, or in federal regulations promulgated pursuant to the CWA at 40 C.F.R. Part 122 shall have the meanings assigned to them in the CWA or such regulations, unless otherwise provided in this Consent Decree. Terms used in this Consent Decree that are not defined in the CWA or in federal regulations promulgated pursuant to the CWA, but that are defined in Ohio Rev. Code Ann. § 6111 or in state regulations promulgated pursuant to Ohio Rev. Code Ann. § 6111, shall have the meanings assigned to them in Ohio Rev. Code Ann. § 6111 or such regulations, unless otherwise provided in this Consent Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. “Achievement of Full Operation” or “Achieve Full Operation” or “AFO” shall mean completion of construction and installation of equipment or infrastructure such that the equipment or infrastructure has been placed in full operation and is expected to both function and perform as designed; all shakedown and related activities are complete; all operations and

maintenance manuals are complete, including as modified during shakedown and related activities; and all control systems and instrumentation necessary for normal operations and all residual handling systems are installed and operational. Certain specified Control Measures set forth in Appendix C consist of separate projects or components. For those specified Control Measures, "Achievement of Full Operation" shall not be achieved until the last project or the last component is installed and operational.

b. "Building/Private Property Backup" shall mean a release of municipal sewage (which includes domestic, commercial, and industrial wastewater) that may or may not also include stormwater into a building or onto private property that is caused in whole or in part by blockages, flow conditions, or other conditions in the Sewer System.

c. "Bypass" shall have the meaning set forth in 40 C.F.R. § 122.41(m).

d. "Combined Sewer Overflow" or "CSO" shall mean any discharge from a CSO Outfall.

e. "Combined Sewer Overflow Outfall" or "CSO Outfall" shall mean a location designated in Appendix A, or as may be so designated in Elyria's NPDES Permit.

f. "Combined Sewer Overflow Policy" or "CSO Policy" shall mean the policy issued by EPA regarding combined sewer overflows, entitled "Combined Sewer Overflow Control (CSO) Policy," 59 Fed. Reg. 18,688 (April 19, 1994), 33 U.S.C. § 1342(q).

g. "Complaint" shall mean the complaint filed by the United States and the State in this action.

h. "Consent Decree" or "Decree" shall mean this Consent Decree and all appendices hereto.

i. "Control Measures" shall mean the Control Measures listed in Appendix C.

j. "Date of Lodging of this Consent Decree" or "Date of Lodging" shall mean the date that this Consent Decree is filed for lodging, pending solicitation of public comment, with the Clerk of the Court for the United States District Court for the Northern District of Ohio.

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

l. "Design Criteria" shall mean numeric and narrative specifications included in the Integrated Wet Weather Control Plan included at Appendix C that must be met in designing and constructing Control Measures required by this Consent Decree.

- m. “Dry Weather” shall mean a period in which there has not been a measurable precipitation event (greater than 0.01 inches) within the preceding twenty-four-hour period. A measurable precipitation event may include the impact of snow melt even when there has been no precipitation in the preceding 24-hour period.
- n. “Dry Weather Overflow” shall mean any CSO during Dry Weather.
- o. “Effective Date” shall have the definition provided in Section XVII (Effective Date).
- p. “Elyria” or “City” shall mean the Defendant City of Elyria, Ohio.
- q. “EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
- r. “Integrated Wet Weather Control Plan” or “Plan” shall mean the plan attached to this Consent Decree as Appendix C and any revisions to the Plan that have been approved by EPA, after consultation with the Ohio EPA.
- s. “MGD” or “mgd” shall mean million gallons per day.
- t. “NPDES Permit” or “Permit” shall mean NPDES Permit No. 3PD00034*MD (OH0025003) issued to Elyria by Ohio EPA on May 12, 2021, effective on June 1, 2021, or as subsequently modified or reissued and legally in effect (i.e., the Permit is not stayed).
- u. “Ohio EPA” shall mean the Ohio Environmental Protection Agency and any successor departments or agencies of the State.
- v. “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral.
- w. “Parties” shall mean the United States, the State, and Elyria.
- x. “Performance Criteria” shall mean the numeric and narrative requirements included for each Control Measure in the Integrated Wet Weather Control Plan set forth in Appendix C.
- y. “Private Lateral” shall mean pipes and any other appurtenances not owned or operated by Elyria that are used to convey wastewater from a building or buildings to the Sewer System.
- z. “Receiving Waters” shall mean the Black River and its tributaries.
- aa. “Sanitary Sewer Overflow” or “SSO” shall mean any discharge of municipal sewage from Elyria’s Sewer System to Receiving Waters, except for CSOs. Known locations of SSOs are included in Appendix B.

bb. “Section” shall mean a portion of this Consent Decree that has a heading identified by an upper-case Roman numeral.

cc. “Sewer System” shall mean the collection and conveyance system owned or operated by Elyria that is designed and constructed to collect and convey municipal sewage in a single pipe to the WWTP, to collect and convey municipal sewage and stormwater in a single pipe to Elyria’s WWTP or to a CSO Outfall, and to collect and convey stormwater only in a single pipe to the Receiving Waters. “Sewer System” does not include Private Laterals or the WWTP.

dd. “State” shall mean the State of Ohio.

ee. “Unauthorized Release” shall mean any overflow, spill, diversion, or release of municipal sewage from Elyria’s Sewer System, except for CSOs. For purposes of this Consent Decree, “Unauthorized Release” shall include Building/Private Property Backups.

ff. “United States” shall mean the United States of America, acting on behalf of EPA.

gg. “Wastewater Treatment Plant” or “WWTP” shall mean the wastewater treatment plant owned and operated by Elyria and located at 1194 Gulf Road, Elyria, Ohio, and any future wastewater treatment facilities connected to the Sewer System.

VI. COMPLIANCE REQUIREMENTS

9. Permanent Injunction. Elyria shall achieve and maintain full compliance with the terms and conditions of its NPDES Permit, including compliance with effluent limitations therein; the CWA, 33 U.S.C. § 1251 *et seq.*, and the rules promulgated thereunder; Ohio Rev. Code Ann. § 6111 and the rules promulgated thereunder; and the compliance measures and the schedules set forth below.

10. Prohibited Releases and Discharges. Unauthorized Releases and Dry Weather Overflows are prohibited.

11. Integrated Wet Weather Control Plan Implementation. Elyria shall perform the activities and construct and operate the Control Measures in accordance with the Design Criteria and by the Achievement of Full Operation Critical Milestone dates in the Integrated Wet Weather Control Plan (“Plan”) as set forth in Appendix C. Elyria shall ensure that all Control Measures are designed and operated in accordance with sound engineering practices and to ensure Performance Criteria will be achieved. Each Control Measure in Appendix C is identified as occurring in either Stage I or Stage II. Stage I consists of Control Measures that shall Achieve Full Operation by or before December 31, 2034, as more specifically identified in Appendix C. Stage II consists of Control Measures that shall Achieve Full Operation over the subsequent 10 years of implementation with Control Measures Achieving Full Operation during the first three-year period of Stage II (i.e., January 1, 2035 – December 31, 2037), the next grouping of Control Measures Achieving Full Operation during the next three-year period (i.e., January 1, 2038 – December 31, 2040) and the remaining Control Measures Achieving Full Operation during the

final four years (January 1, 2041 – December 31, 2044), as more specifically described in Appendix C. All Control Measures must Achieve Full Operation by December 31, 2044 (“Plan Completion Date”).

a. By December 31, 2032, Elyria may submit an update to the Stage II Control Measures (“Stage II Plan Update”) for review and approval by EPA, in consultation with Ohio EPA, that revises or updates Control Measures, including Design Criteria and a revised schedule for each Control Measure’s Achievement of Full Operation Critical Milestone date, provided the following: (i) Elyria demonstrates that the Stage II Plan Update will provide equal or greater environmental system-wide benefit as compared to the Stage II Control Measures in Appendix C at the time the Court enters this Consent Decree; (ii) the Performance Criteria as identified in Appendix C will be met; (iii) the Achievement of Full Operation Critical Milestone dates for the revised Critical Milestones follow the three-year, three-year, four-year approach described above, or another similar approach that ensures Control Measures are being completed over the course of Stage II; and, (iv) the Plan Completion Date will be met. The Stage II Plan Update shall incorporate any swapping of projects undertaken in accordance with Subparagraph 11.b. Upon approval by EPA, in consultation with Ohio EPA, Elyria shall implement the Stage II Plan Update as approved and the Stage II Plan Update shall be incorporated into and amends Appendix C and becomes an enforceable requirement under this Consent Decree.

b. Elyria may, upon written notice to EPA and the State, move any Stage II Control Measure from Appendix C into Stage I, in which case Elyria may defer a corresponding amount of St. Jude / Eastern Heights rainfall-derived inflow and infiltration (“RDI/I”) control work, as required by Control Measure 8, to Stage II. This “swapping” of Control Measures does not require a modification of this Consent Decree as it is only a change in priority and scheduling, without changing the Design Criteria or Performance Criteria and without affecting the Plan Completion Date. Elyria shall complete the Stage II Project moved forward to Stage I expeditiously, and in no case shall it Achieve Full Operation later than December 31, 2034. Likewise, Elyria shall complete the deferred St. Jude / Eastern Heights RDI/I control work by December 31, 2044. The notice shall include: (i) the identification of Control Measure(s) from Stage II that are being moved to Stage I; (ii) the specifics of Control Measure 8 RDI/I work that is being moved to Stage II; (iii) the revised scheduling for the swapped Control Measure(s) and RDI/I work; and (iv) the method by which Elyria is defining and quantifying the corresponding amount of work swapped between Stage I and Stage II.

c. Where Control Measures identified in Appendix C require work on private property, requiring access and cooperation of property owners, Elyria shall make best efforts to obtain access. Should Elyria be unsuccessful in gaining access to private property, Elyria may, upon written notice to EPA and the State, implement additional RDI/I control work or additional sewer system rehabilitation work on public property to remove an equivalent amount of RDI/I remaining in the Sewer System as a result of the owners’ refusal to grant access to private property. The notice shall include: (i) the address of each property to which Elyria has been unsuccessful in gaining access to implement RDI/I control work; (ii) the Appendix C Control Measure to which each property identified in 11.c.i corresponds; (iii) an estimate of the total amount of RDI/I that will not be removed due to the denial of access to private property; (iv) the specific RDI/I control work or sewer system rehabilitation work and the location(s) of that work that Elyria intends to perform to remove an equivalent amount of RDI/I remaining in the Sewer

System; (v) the method by which Elyria quantified the RDI/I equivalency; and (vi) the proposed schedule for completion of the alternative work by no later than December 31, 2044. In the event that the alternative work cannot be completed by the deadline set forth in Appendix C for the specific Control Measure about which Elyria is notifying EPA and the State pursuant to this paragraph, Elyria's notice shall include a request for an extension for review and approval. EPA, in consultation with Ohio EPA, will review and may approve an extension of no more than six months without modification of the Consent Decree.

12. Adaptive Management for Integrated Wet Weather Control Plan Control Measures. No less than two years prior to the date of Achievement of Full Operation for Control Measures 1-3 and 6-21 in Appendix C, Elyria may submit a proposal to EPA for review and approval, in consultation with Ohio EPA, to revise and/or provide alternative Control Measure(s). Elyria will provide additional advance time for EPA review of more complex proposals, as appropriate. Each proposal for a revised and/or alternative Control Measure(s) shall:

a. Provide detailed project information (such as the size and length of new sewer lines, sewer infrastructure rehabilitation, number of inflow source disconnections or storage capacity; the volume of storage, or scope of sewer separation activities; and the anticipated discharge volume reduction or level of service);

b. Include an implementation schedule for completion of the revised and/or alternative Control Measure(s) by the same Achievement of Full Operation date as the original Control Measure(s) set forth in Appendix C; and

c. Demonstrate that any revised and/or alternative Control Measure(s) that propose any change to the Design Criteria in Appendix C will achieve equal or better environmental benefits, as demonstrated by meeting or exceeding the Performance Criteria associated with the original Control Measure(s); and

d. Include a description of the public engagement process concerning the revised and/or alternative Control Measures.

EPA disapproval of a request under this Paragraph is subject to Section XII (Dispute Resolution) of this Consent Decree under the standard of review set forth in Subparagraph 64.a. (Disputes Concerning Matters Accorded Record Review). For purposes of this Consent Decree, EPA approval of a proposed revised and/or alternative Control Measure(s) consistent with the criteria identified in subparagraphs (a) through (c) above shall not be considered a Modification pursuant to Section XIX of the Decree.

13. Post-Construction Monitoring. Elyria shall conduct post-construction monitoring and submit all required post-construction monitoring-related plans, reports, and notices in accordance with provisions set forth in Appendix D and to meet the following objectives: (a) evaluate the performance of the Control Measures required by Appendix C; and (b) assess the effect of discharges from Elyria's Sewer System on the water quality of the Black River. To meet these objectives, Elyria shall complete all post-construction monitoring activities, which includes monitoring, modeling, and the submission of all required plans, reports, and notices, for

all Control Measures. Elyria shall complete all post-construction monitoring activities for Control Measure 4 pursuant to the requirements and deadlines set forth in Section 2 of Appendix D. Elyria shall conduct all post-construction monitoring activities for Control Measure 5 pursuant to the requirements and deadlines set forth in Section 3 of Appendix D. Elyria shall complete all post-construction monitoring activities for Control Measures 1-3 and 6-21 (“Sewer System Overflow Control Measures”) pursuant to the requirements and deadlines set forth in Section 4 of Appendix D. Unless otherwise stated in Appendix D, Elyria shall submit all required submissions to EPA and Ohio EPA for review and approval by EPA in consultation with Ohio EPA.

14. Monitoring at CSO Outfalls and SSO Locations.

a. Within one year after the Date of Lodging, Elyria shall install, operate, and maintain flow metering, measuring, and recording equipment capable of continuously, reliably, and accurately measuring and recording the flow rate, flow duration (including start and end times), and flow volume of CSOs and SSOs at a subset of locations as denoted in Appendices A and B.

b. Two years after Achieving Full Operation of all Control Measures required by Appendix C for which a given CSO or SSO is listed as an Affected Overflow, Elyria may submit a request to EPA to cease the monitoring required by Paragraph 14(a) at that CSO or SSO. The CSOs to which this paragraph applies are denoted in Appendix A. Elyria’s request shall include two years of monitoring data for that CSO or SSO and the rainfall records for each storm during which an overflow from that CSO or SSO occurred in that two year period.

15. Public Notification of CSOs and SSOs. To inform the public of CSOs and SSOs, Elyria shall comply with the notification requirements set forth in its NPDES Permit or as otherwise required by applicable state laws and regulations. Additionally, for SSOs that reach Receiving Waters, Elyria shall follow the public notification procedures in Paragraph 14(e) of Appendix E.

16. Sanitary Sewer Lateral Rehabilitation Loan Program. For the duration of this Consent Decree, Elyria shall continue implementing a Sanitary Sewer Lateral Rehabilitation Loan Program (“Lateral Loan Program”) in a manner substantially similar to the program currently codified in Section 932.31 of the Codified Ordinances of the City of Elyria, Ohio, attached hereto as Exhibit 1. Within 30 Days of the Effective Date, Elyria shall promote and publicize the Lateral Loan Program by creating an active hyperlink on Elyria’s public website that directs residents to the Lateral Loan Program. By one year following the Effective Date and, once per year thereafter for the duration of this Consent Decree, Elyria shall include informational material on the Lateral Loan Program in all residents’ water and sewer bills.

17. Backup Log. Elyria shall maintain a log of the release of municipal sewage (that may or may not also include stormwater) into a building or onto private property reported to or otherwise known to Elyria (the “Backup Log”). On March 2 and August 30 after the Effective Date and continuing on March 2 and August 30 of each year until termination of this Consent Decree, Elyria shall provide a copy of the Backup Log covering the time periods July-December and January-June, respectively, to EPA and the State. The Backup Log shall include an

approximate location, date, time, and volume of the release, if known. For all such releases that are determined to be Building/Private Property Backups, Elyria shall include the following information if known:

- a. estimated date and time when the Building/Private Property Backup started and stopped;
- b. location of property where Building/Private Property Backup occurred (address, distance from nearest cross streets, and/or coordinates);
- c. CSO or SSO tributary area, corrective action area, or neighborhood in which the property is located;
- d. estimated volume of the Building/Private Property Backup;
- e. cause(s) or suspected cause(s) of the Building/Private Property Backup (e.g. grease blockage, pipe defect, etc.);
- f. disposal location of the Building/Private Property Backup (e.g. drained back to sanitary sewer, pumped out to street, etc.); and
- g. steps taken or planned by Elyria to minimize recurrence of and mitigate the impact of the backup, including future Appendix C Control Measures.

18. Capacity, Management, Operations and Maintenance (CMOM) Program. No later than 12 months after the Effective Date, Elyria shall submit to EPA for review and approval, after consultation with the Ohio EPA, a Capacity, Management, Operations and Maintenance (“CMOM”) Program that is consistent with the CSO Policy; EPA’s Guide for Evaluating Capacity, Management, Operation, and Maintenance (CMOM) Programs at Sanitary Sewer Collection Systems, EPA Doc. 305-B-05-002, January 2005 (“CMOM Guidance”); Elyria’s NPDES Permit; and that includes all of the elements described in the attached Appendix E (“CMOM Program Requirements”). The CMOM Program need not include sewers that collect and convey only stormwater.

19. At least once every two years, Elyria shall review its CMOM Program and revise the Program as necessary to ensure that the CMOM Program reflects current procedures for and conditions in Elyria’s Sewer System (excluding sewers that collect and convey only stormwater) and is achieving the goals contained therein. Elyria shall submit to EPA for review and approval, after consultation with the Ohio EPA, any substantive updates, changes, or revisions to the CMOM Program during the pendency of this Consent Decree prior to any implementation of the revised CMOM Program.

20. Elyria shall implement the CMOM Program as approved by EPA, after consultation with the Ohio EPA.

VII. REVIEW, APPROVAL, AND IMPLEMENTATION OF DELIVERABLES

21. Approval of Deliverables. After review of any Deliverable that is required to be submitted pursuant to this Consent Decree, EPA, after consultation with the Ohio EPA, shall in writing: (a) approve the submission; (b) approve part of the submission and disapprove the remainder; or (c) disapprove the submission.

22. Approved Deliverables. If the Deliverable is approved pursuant to Subparagraph 21(a), Elyria shall take all actions required by the Deliverable in accordance with the schedules and requirements of the Deliverable as approved. If the Deliverable is approved only in part pursuant to Paragraph 21(b), Elyria shall, upon written direction from EPA, take all actions required by the approved portions of the Deliverable that EPA, after consultation with the Ohio EPA, determines are technically severable from any disapproved portions. Following EPA approval of any submission or portion thereof, such Deliverable or portion thereof so approved shall be incorporated into and become enforceable under this Consent Decree. Implementation of any approved portion of a Deliverable shall not relieve Elyria of any liability for stipulated penalties for any deficient portion of the Deliverable.

23. Disapproved Deliverables. If the submission is disapproved in whole or in part pursuant to Subparagraph 21(b) or (c), Elyria shall, within 45 Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit to EPA the Deliverable, or disapproved portion thereof, for approval. If the resubmission is approved in whole or in part, Elyria shall proceed in accordance with Paragraph 22.

24. Resubmitted Deliverables. If a resubmitted Deliverable, or portion thereof, is disapproved in whole or in part, EPA, after consultation with the Ohio EPA, may again require Elyria to correct any deficiencies, in accordance with Paragraph 23. EPA also retains the right to modify any disapproved portion of the resubmitted Deliverable. Upon EPA's correction of any such deficiencies, the resubmitted Deliverable, or portion thereof, shall be incorporated into and become enforceable under this Consent Decree and Elyria shall take all actions to immediately implement the EPA-corrected Deliverable in accordance with the schedules and/or terms of the Deliverable as approved, subject to Elyria's right to invoke Dispute Resolution under Section XII (Dispute Resolution) of this Consent Decree and the right of EPA and the State to seek stipulated penalties as set forth in Section X (Stipulated Penalties).

25. Any stipulated penalties applicable to the original submission, as provided in Section X, shall accrue during the 45-day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Elyria's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

26. Permits. Where any compliance obligation under this Section requires Elyria to obtain a federal, state, or local permit or approval, Elyria shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Elyria may seek relief under the provisions of Section XI (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any

permit or approval required to fulfill such obligation, if Elyria has submitted timely and complete applications and has taken all other actions necessary to obtain any such permits or approvals.

VIII. REPORTING REQUIREMENTS

27. Semi-Annual Progress Reports. On January 31 and July 31 after the Effective Date and continuing on January 31 and July 31 of each year until termination of this Consent Decree, Elyria shall submit to EPA and the State a progress report regarding the implementation of the requirements of this Decree in the preceding six months ("Semi-Annual Progress Report"). The Semi-Annual Progress Report shall include at a minimum:

a. a statement setting forth the deadlines and other terms that Elyria is or was required to meet by this Consent Decree since the date of the last Semi-Annual Progress Report, whether and to what extent Elyria has met these requirements, and the reasons for any noncompliance;

b. for each Control Measure listed in Appendix C: (i) a general description of the work completed during the reporting period to comply with the requirements of this Decree; (ii) a projection of work to be performed pursuant to this Decree during the next reporting period; (iii) a statement about whether or not each Control Measure is on schedule and expected to meet the AFO critical milestone date; (iv) the status of any post-construction monitoring activities done pursuant to Appendix D; and (v) for any Control Measure for which the AFO is expected to be delayed, a description of the reasons for the delay and the anticipated final AFO critical milestone date. For any Control Measure, if there was no work done during a reporting period or there is no work projected to be done in the next reporting period, Elyria shall include the listing of the specific Control Measure in each Semi-Annual Progress Report and specify that no work was done or no work is projected to be done. The identification of any known or anticipated schedule delay or missed AFO critical milestone date in any Semi-Annual Progress Report does not excuse the delay or any missed AFO critical milestone date.

c. all required Semi-Annual Progress Report requirements set forth in Section 3.10 of Appendix D;

d. a summary of all material problems or potential problems encountered during the reporting period, and the actions taken to rectify the problems;

e. a summary of material contacts with EPA and Ohio EPA during the reporting period, including but not limited to the date deliverables under this Decree were sent to EPA and Ohio EPA;

f. a statement of any exceedance of NPDES Permit limitations;

g. a summary of all CSOs, SSOs, Dry Weather Overflows, Unauthorized Releases (except for the Backup Log required by Paragraph 17), and Bypasses occurring within the reporting period, including the actual or estimated frequency, location, duration, and volume of each CSO, SSO, Dry Weather Overflow, Unauthorized Release, and Bypass; and

h. a copy of all Discharge Monitoring Reports for all CSOs and Bypasses that occurred in the reporting period.

28. In addition to the reports required pursuant to this Section, if Elyria violates any provision of this Consent Decree or its NPDES Permit, or believes there is a high likelihood that Elyria will not meet any of the AFO critical milestone dates set forth in Appendix C, Elyria shall notify EPA and the State of such violation or anticipated delay in writing within 10 business days after Elyria knew or should have known of the violation or the anticipated delay. Elyria shall explain the likely cause of the violation or anticipated delay and the remedial steps taken, or to be taken, to prevent or minimize such violation or anticipated delay. If the cause of a violation or anticipated delay cannot be fully explained at the time the report is due, Elyria shall so state in the report. Elyria shall investigate the cause of the violation or anticipated delay and shall then submit an amendment to the report, including a full explanation of the cause of the violation or anticipated delay, within 30 Days of the day Elyria becomes aware of the cause of the violation or anticipated delay. Nothing in this Paragraph or the following Paragraph relieves Elyria of its obligation to provide the notice required by Section XI (Force Majeure).

29. Whenever any violation of this Consent Decree or any other event affecting Elyria's performance under this Decree may pose an immediate threat to the public health or welfare or the environment, Elyria shall notify EPA and the State orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after Elyria first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

30. All reports shall be submitted to the persons designated in Section XVI (Notices).

31. Each report submitted by Elyria under this Section shall be signed by an Elyria official and include 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 inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

32. This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

33. The reporting requirements of this Consent Decree do not relieve Elyria of any reporting obligations required by its NPDES Permit, the CWA and the rules promulgated thereunder, Ohio Rev. Code Ann. § 6111 and the rules promulgated thereunder, and any other federal, state, or local law, regulation, permit, or other requirement.

34. Any information provided pursuant to this Consent Decree may be used by the United States or the State in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

IX. CIVIL PENALTY

35. By no later than 30 Days after the Effective Date of this Consent Decree, Elyria shall pay to the United States a civil penalty in the amount of \$100,000.

36. Elyria shall pay the civil penalty by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account in accordance with written instructions to be provided to Elyria by the Financial Litigation Unit (“FLU”) of the U.S. Attorney’s Office for the Northern District of Ohio after the Effective Date. The costs of such EFT shall be Elyria’s responsibility. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which Elyria shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Wendlene M. Lavey, Esq.
McMahon DeGulis LLP
812 Huron Road, Suite 650
Cleveland, Ohio 44115

on behalf of Elyria. Elyria may change the individual to receive payment instructions on its behalf by providing written notice of such change to the United States and EPA in accordance with Section XVI (Notices).

At the time of payment, Elyria shall send notice that the payment has been made, in the form of a copy of the EFT authorization form, the EFT transaction record, and a transmittal letter: (i) to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; and (ii) to the United States, EPA, and the State via email or regular mail in accordance with Section XVI (Notices). The transmittal letter shall state that the payment is for the civil penalty owed pursuant to this Consent Decree in United States and the State of Ohio v. The City of Elyria, Ohio, and shall reference the civil action number, CDCS number, and DOJ case number 90-5-1-1-2155/1.

37. By no later than 30 Days after the Effective Date of this Consent Decree, Elyria shall remit \$100,000.00 as a supplemental environmental project to improve water quality to Ohio EPA’s Surface Water Improvement Fund created in Ohio Revised Code Section 6111.0382 to Ohio EPA by a check made payable to “Treasurer, State of Ohio.” The check shall be submitted to Carol Butler, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

At the time of payment, Elyria shall simultaneously send written notice of the check and a copy of any transmittal documentation (which should reference the above-captioned case name and

civil action number, CDCS number, and DOJ case number 90-5-1-1-2155/1) to Plaintiffs in accordance with Section XVI (Notices) of this Consent Decree.

38. Elyria shall pay interest on any unpaid balance of the civil penalty owed to the State, which shall begin to accrue at the end of the 30 day period described above, utilizing the calculation method set forth in Ohio Rev. Code Ann. § 5703.47.

39. Upon entry of this Decree, this Decree shall constitute an enforceable judgment for purposes of post-judgment collection in accordance with Rule 69 of the Federal Rules of Civil Procedure, the Federal Debt Collection Procedure Act, 28 U.S.C. §§ 3001-3308, and other applicable federal authority. The United States and the State will be deemed judgment creditors for purposes of collection of any unpaid amounts of the civil and stipulated penalties and interest.

X. STIPULATED PENALTIES

40. Elyria shall be liable for stipulated penalties to the United States and the State for violations of this Consent Decree as specified below, unless excused under Section XI (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

41. Late Payment of Civil Penalty. Elyria shall accrue the following stipulated penalty if Elyria fails to pay the civil penalty required to be paid under Section IX (Civil Penalty) when due: \$500.00 per Day for each Day that the payment is late, in addition to interest on the outstanding civil penalty, as provided in 28 U.S.C. § 1961, accruing from the Date of Entry.

42. Reporting Requirements. Elyria shall accrue the following stipulated penalties for each violation of the reporting requirements of Section VIII (Reporting Requirements) or each failure to submit a timely and adequate plan, report, schedule, written notice, or other deliverable required by this Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250	1st through 30th Day
\$500	31st through 60th Day
\$750	61st Day and beyond

43. Dry Weather Overflows. Elyria shall accrue a stipulated penalty of \$1,500 for each Dry Weather Overflow.

44. SSOs. The following stipulated penalties shall accrue per violation per Day for SSO:

<u>Penalty Per Violation Per Day</u>	<u>Occurrence of Noncompliance</u>
\$250	Prior to or on December 31, 2031
\$750	After December 31, 2031

45. Unauthorized Releases. The following stipulated penalties shall accrue per violation per Day for each Unauthorized Release other than SSOs:

<u>Penalty Per Violation Per Day</u>	<u>Occurrence of Noncompliance</u>
\$250	Prior to or on December 31, 2031
\$500	January 1, 2032 through December 31, 2034
\$750	After December 31, 2034

46. Compliance Milestones. Elyria shall accrue the following stipulated penalties for each failure to comply with a requirement or meet a deadline specified in Section VI, Paragraphs 9-20, of this Consent Decree, or to Achieve Full Operation by the date of any Critical Milestone set forth in Appendix C:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 30th Day
\$750	31st through 60th Day
\$1,500	61st Day and beyond

47. Stipulated penalties under this Section shall 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 satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

48. Elyria shall pay any stipulated penalties to the United States and the State within 30 Days of receiving a written demand by either Plaintiff. Elyria shall pay 50% of the total stipulated penalty amount due to the United States and 50% to the State in the manner set forth and with the confirmation notices required by Paragraphs 36 and 37, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff.

49. Either Plaintiff may in the unreviewable exercise of their discretion, reduce or waive its respective portion of stipulated penalties otherwise due it under this Consent Decree.

50. Stipulated penalties shall continue to accrue as provided in Paragraph 47, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA or the State that is not appealed to the Court, Elyria shall pay accrued penalties determined to be owing, together with interest, to the United States and the State within 30 Days of the effective date of the agreement or the receipt of EPA's or the State's decision or order.

b. If the dispute is appealed to the Court and the United States or the State prevails in whole or in part, Elyria shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in Subparagraph c, below.

c. If any Party appeals the District Court's decision, Elyria shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

51. If Elyria fails to pay stipulated penalties according to the terms of this Consent Decree, Elyria shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States or the State from seeking any remedy otherwise provided by law for Elyria's failure to pay any stipulated penalties.

52. The payment of penalties and interest, if any, shall not alter in any way Elyria's obligation to complete the performance of the requirements of this Consent Decree.

53. Subject to the provisions of Section XIV (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Elyria's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the Clean Water Act or the NPDES Permit, Elyria shall be allowed a credit for any stipulated penalties paid against any statutory penalties imposed for such violation.

XI. FORCE MAJEURE

54. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Elyria, of any entity controlled by Elyria, or of Elyria's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Elyria's best efforts to fulfill the obligation. The requirement that Elyria exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure, such that the delay and any adverse effects of the delay are minimized. "Force Majeure" does not include Elyria's financial inability to perform any obligation under this Consent Decree.

55. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure, Elyria shall notify EPA and the State within 72 hours of when Elyria first knew that the event might cause a delay. Within 14 Days thereafter, Elyria shall provide in writing to EPA and the State: (a) an explanation and description of the reasons for the delay; (b) the anticipated duration of the delay; (c) all actions taken or to be taken to prevent or minimize the delay; (d) a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; (e) Elyria's rationale for attributing such delay to a force majeure if it intends to assert such a claim; and (f) a statement as to whether, in the opinion of Elyria, such event may cause or contribute to an endangerment to public health, welfare or the environment. Elyria shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Elyria from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Elyria shall be deemed to know of

any circumstance of which Elyria, any entity controlled by Elyria, or Elyria's contractors undertaking the obligation in question knew or reasonably should have known.

56. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Consent Decree that are affected by the force majeure will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. EPA will notify Elyria in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

57. If EPA, after a reasonable opportunity for review and comment by the State, does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify Elyria in writing of its decision.

58. If Elyria elects to invoke the dispute resolution procedures set forth in Section XII (Dispute Resolution), it shall do so no later than 15 Days after receipt of EPA's notice. In any such proceeding, Elyria shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Elyria complied with the requirements of Paragraphs 54 and 55. If Elyria carries this burden, the delay at issue shall be deemed not to be a violation by Elyria of the affected obligation of this Consent Decree identified to EPA and the Court.

XII. DISPUTE RESOLUTION

59. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Elyria's failure to seek resolution of a dispute under this Section shall preclude Elyria from raising any such issue as a defense to an action by the United States or the State to enforce any obligation of Elyria arising under this Decree.

60. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Elyria sends the United States and the State a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 30 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 30 Days after the conclusion of the informal negotiation period, Elyria invokes formal dispute resolution procedures as set forth below.

61. Formal Dispute Resolution.

a. Elyria shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States and the State a

written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Elyria's position and any supporting documentation relied upon by Elyria.

b. The United States shall serve its Statement of Position (after consultation with the State) within 45 Days of receipt of Elyria's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Elyria, unless Elyria files a motion for judicial review of the dispute in accordance with the following Paragraph.

62. Elyria may seek judicial review of the dispute by filing with the Court and serving on the United States and the State, in accordance with Section XVI (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 30 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Elyria's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of this Consent Decree.

63. The United States shall respond to Elyria's motion within the time period allowed by the Local Rules of this Court. Elyria may file a reply memorandum, to the extent permitted by the Local Rules.

64. Standard of Review.

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under this Section pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree, including, but not limited to, the performance of the compliance measures under Section VI (Compliance Requirements) or any appendices; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Elyria shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under this Section, Elyria shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the Objectives of this Consent Decree.

65. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Elyria under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 50. If Elyria does not

prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section X (Stipulated Penalties).

XIII. RIGHT OF ENTRY AND INFORMATION COLLECTION AND RETENTION

66. The United States, the State, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into and upon Elyria's WWTP and Sewer System, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States or the State in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Elyria or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data regarding Elyria's compliance with this Consent Decree; and
- e. assess Elyria's compliance with this Consent Decree.

67. Upon request, Elyria shall provide EPA and the State or its authorized representatives splits of any samples taken by Elyria. Upon request, EPA and the State shall provide Elyria splits of any samples taken by EPA or the State.

68. Until five years after the termination of this Consent Decree, Elyria shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Elyria's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or the State, Elyria shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

69. At the conclusion of the information-retention period provided in the preceding Paragraph, Elyria shall notify the United States and the State at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or the State, Elyria shall deliver any such documents, records, or other information to EPA or the State. Elyria may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Elyria asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Elyria.

However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

70. Elyria may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Elyria seeks to protect as CBI, Elyria shall follow the procedures set forth in 40 C.F.R. Part 2.

71. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or the State pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Elyria to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XIV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

72. Upon approval and entry of this Consent Decree by the Court, the Consent Judgment in *United States v. City of Elyria and State of Ohio*, Civil Action No. C84-3729 (N.D. Ohio May 19, 1986) shall be terminated.

73. This Consent Decree resolves the civil claims of the United States and the State for the violations alleged in the Complaint filed in this action through the Date of Lodging.

74. The United States and the State reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States or the State to obtain penalties or injunctive relief under the CWA and the rules promulgated thereunder, Ohio Rev. Code Ann. § 6111 and the rules promulgated thereunder, or under other federal or state laws, regulations, or permit conditions, except as expressly stated in Paragraph 73. The United States and the State further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Elyria’s WWTP and Sewer System, whether related to the violations addressed in this Consent Decree or otherwise.

75. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, civil penalties, or other appropriate relief relating to Elyria’s WWTP or Sewer System, Elyria shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 73.

76. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. Elyria is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits; and Elyria’s compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and the State do not, by their consent to the entry of this Consent Decree, warrant or aver in any

manner that Elyria's compliance with any aspect of this Consent Decree will result in compliance with provisions of Elyria's NPDES Permit, the CWA and the rules promulgated thereunder, Ohio Rev. Code Ann. § 6111 and the rules promulgated thereunder, or any other federal, state, or local law, regulation, permit, or other requirement.

77. Ohio will have no financial liability under this Consent Decree, except as required by Section 309(e) of the CWA in the event that the laws of Ohio prevent Elyria from raising revenues needed to comply with this Consent Decree. The Attorney General of the State of Ohio hereby certifies that the present laws of Ohio do not prevent Elyria from raising revenues needed to comply with this Consent Decree.

78. This Consent Decree does not limit or affect the rights of Elyria or of the United States or the State against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Elyria, except as otherwise provided by law.

79. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XV. COSTS

80. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and the State shall be entitled to collect the costs (including attorneys' fees) against Elyria incurred in any action necessary to enforce this Consent Decree or to collect any portion of the civil penalty or any stipulated penalties due but not paid by Elyria.

XVI. NOTICES

81. Unless otherwise specified in this Consent Decree, whenever notifications, submissions, or communications are required by this Decree, they shall be made in writing and addressed as described below. All notifications, submissions, or communications to EPA Region 5 shall be submitted, to the extent possible, via e-mail. The subject line of all e-mail correspondence must include the facility name, NPDES ID # (OH0025003), subject of the deliverable, and the docket number (22-cv-XXXX). If Defendant is unable to submit all notifications, submissions, or communications to EPA Region 5 via email, Defendant shall provide all submissions required by this Consent Decree to the mailing addresses listed below in electronic format on physical media such as compact disk, flash drive or other similar item. All electronic submissions should be in Portable Document Format ("PDF") or similar format, unless otherwise noted. If the PDFs are scanned images, Defendant shall perform Optical Character Recognition for "image over text" to allow the document to be searchable. If data are submitted in electronic spreadsheet form, the Defendant shall provide the data and corresponding information in editable Excel format, not in image format. If Excel format is not available, then the electronic format submitted should allow for data to be used in calculations by a standard spreadsheet program such as Excel.

As to the United States Department of Justice:

By email:

eescdcopy.enrd@usdoj.gov
Re: DJ # 90-5-1-1-2155/1

By mail:
EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044-7611
Re: DJ # 90-5-1-1-2155/1

As to the United States Attorney for the Northern District of Ohio:

U.S. Attorney for the
Northern District of Ohio
United States Courthouse
801 West Superior Avenue, Suite 400
Cleveland, OH 44113

As to EPA:

Director, Water Enforcement Division
Office of Civil Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Mail Code: 2243-A
Washington, DC 20460

Chief, Water Enforcement and Compliance Assurance Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd. (ECW-15J)
Chicago, IL 60604
Re: MN0025003, City of Elyria Consent Decree

Christopher Grubb
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd. (C-14J)
Chicago, IL 60604

As to EPA by e-mail:

R5weca@epa.gov
and

grubb.christopher@epa.gov

As to the State:

Ohio Environmental Protection Agency
Division of Surface Water
Attn: Manager, Permits and Compliance
P.O. Box 1049
Columbus, OH 43216-1059

Ohio Environmental Protection Agency
Northeast District Office
Division of Surface Water
Attn: Enforcement Group Leader
2110 E. Aurora Rd.
Twinsburg, OH 44087

Chief
Environmental Enforcement Section
State of Ohio Office of Attorney General
30 East Broad Street, 25th Floor
Columbus, OH 43215-3400

As to the State by e-mail:

wetweather.npdes@epa.ohio.gov

As to Elyria:

Hon. Frank Whitfield
Mayor, City of Elyria
Elyria City Hall
131 Court Street – Suite 301
Elyria, OH 44035

Amanda R. Deery, Esq.
Elyria City Law Director
131 Court Street
Elyria, OH 44035

Wendlene M. Lavey
McMahon DeGulis LLP
812 Huron Road, Suite 650
Cleveland, OH 44115

82. Any notification, submission, or communication required to be made to the United States shall be made to both the United States Department of Justice and EPA.

83. Any notification, submission, or communication required to be made to EPA shall be made to EPA.

84. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

85. Notices submitted pursuant to this Section shall be deemed submitted on the date they are mailed or emailed unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XVII. EFFECTIVE DATE

86. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter this Consent Decree is granted, whichever occurs first, as recorded on the Court's docket; provided however, that Elyria hereby agrees that it shall be bound upon the Date of Lodging to comply with all of its obligations specified in this Consent Decree even if those obligations accrue prior to the Effective Date. In the event the United States withdraws or withholds consent to this Consent Decree before entry, or the Court declines to enter this Consent Decree, then the preceding requirement to comply with the requirements of this Consent Decree that accrue prior to the Effective Date shall terminate.

XVIII. RETENTION OF JURISDICTION

87. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree, pursuant to Section XII, entering orders modifying this Decree, pursuant to Section XIX, or effectuating or enforcing compliance with the terms of this Decree.

XIX. MODIFICATION

88. The terms of this Consent Decree, including any attached Appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

89. Defendant's request for modification may be based, among other things, on a current Financial Capability Assessment, which may include additional financial information (per U.S. EPA's Financial Capability Assessment Framework, issued on November 24, 2014). If the Financial Capability Assessment Framework is modified after the Effective Date, the Defendant's request for modification shall be based on the version of the Financial Capability Assessment Framework that is in effect on the day that the request for modification is submitted.

90. Elyria's request for modification must be based on a demonstration that the modification will result in equal or greater environmental benefit compared to the compliance requirements under this Consent Decree as of the Effective Date. Any modification of this Consent Decree, or any documents that are developed pursuant to the requirements of this Decree and that become a part of the Decree, that effect a material change to the terms of the

Decree shall become effective upon a subsequent written agreement signed by all Parties and approved by the Court.

91. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XII of this Decree (Dispute Resolution). However, instead of the burden of proof provided by Paragraph 64, above, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XX. TERMINATION

92. No sooner than twelve months after Elyria has completed the requirements of Section VI (Compliance Requirements), Elyria may submit to the United States and the State a Request for Termination of this Consent Decree, stating that Elyria has satisfied those requirements, together with all necessary supporting documentation. In the Request for Termination, Elyria must demonstrate: (a) that all requirements of Section VI (Compliance Requirements) are complete, including, but not limited to, completion of all construction required by the Integrated Wet Weather Control Plan (Appendix C), and that Elyria has achieved the Design Criteria and satisfied the Performance Criteria for each Control Measure therein; (b) that post-construction monitoring shows the effectiveness of Elyria's Control Measures over the timeframes required by Appendix D; (c) that all civil penalties due and all stipulated penalties demanded under this Decree (and any interest thereon) have been paid; and (d) that Elyria has demonstrated compliance with the requirements of this Consent Decree for a period of one year.

93. Following receipt by the United States and the State of Elyria's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Elyria satisfactorily has complied with the requirements for termination. If the United States, after consultation with the State, agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint motion seeking termination of the Decree.

94. If the United States, after consultation with the State, does not agree that the Decree may be terminated, Elyria may invoke dispute resolution under Section XII of this Decree. However, Elyria shall not invoke dispute resolution of any dispute regarding termination until 60 Days after service of its Request for Termination.

95. Regardless of whether Defendant has requested termination of this Consent Decree pursuant to Paragraph 92, the United States, after consultation with the State, may seek the Court's approval to terminate this Consent Decree based upon the United States determination, in consultation with the State, that Defendant has met the requirements for termination in accordance with this Section.

XXI. PUBLIC PARTICIPATION

96. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding this Consent

Decree disclose facts or considerations indicating that this Consent Decree is inappropriate, improper, or inadequate. Elyria consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of this Decree, unless the United States has notified Elyria in writing that it no longer supports entry of this Decree.

XXII. SIGNATORIES/SERVICE

97. The Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice and each undersigned representative of the State and Elyria certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

98. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Elyria agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXIII. INTEGRATION

99. 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 Decree and supersede all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to this Decree, the Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree and its Appendices.

100. The following documents are attached to and integrated into this Consent Decree:

- | | |
|--------------|---------------------------------------------------------------------------------------------------|
| “Appendix A” | List of CSOs |
| “Appendix B” | List of specified unpermitted SSO locations identified in the Integrated Wet Weather Control Plan |
| “Appendix C” | Integrated Wet Weather Control Plan |
| “Appendix D” | Post-Construction Monitoring |
| “Appendix E” | Capacity, Management, Operation and Maintenance (“CMOM”) Program |

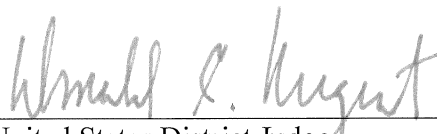
101. The following documents are attached as exhibits to this Consent Decree:

- | | |
|-------------|-----------------------------------------------------------------|
| “Exhibit 1” | Section 932.31 of the Codified Ordinances of the City of Elyria |
|-------------|-----------------------------------------------------------------|

XXIV. FINAL JUDGMENT

102. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, the State, and Elyria. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED this 10th day of JANUARY, 2023.



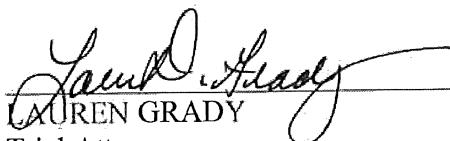
United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States and State of Ohio v. City of Elyria (N.D. Ohio).

For Plaintiff
UNITED STATES OF AMERICA

TODD KIM
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

10/25/2020
Date


LAUREN GRADY
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
Phone: (202) 514-2794
Fax: (202) 616-6584

MICHELLE M. BAEPLER
Acting United States Attorney
Northern District of Ohio

JACKSON FROLIKLONG
Assistant United States Attorney
U.S. Attorney's Office
United States Courthouse
801 West Superior Avenue, Suite 400
Cleveland, OH 44113
Phone: (216) 622-3818
Fax: (216) 522-2404
Jackson.froliklong@usdoj.gov

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States and State of Ohio v. City of Elyria (N.D. Ohio).

For the UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

Digitally signed by DIANA
SAENZ
Date: 2022.11.01 15:53:54
-04'00'

Date

DIANA J. SAENZ
Acting Director, Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance

MEGAN
KNIGHT
Digitally signed by
MEGAN KNIGHT
Date: 2022.11.01
14:34:19 -04'00'

Date

MEGAN KNIGHT
Attorney, Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States and State of Ohio v. City of Elyria (N.D. Ohio).

For the UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

10/24/22

Date

ROBERT
KAPLAN

Digitally signed by ROBERT KAPLAN
Date: 2022.10.24 20:11:22 -0500

ROBERT A. KAPLAN
Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590
kaplan.robert@epa.gov
Telephone: (312) 886-1499

10/24/22

Date

CHRISTOPH
ER GRUBB

Digitally signed by
CHRISTOPHER GRUBB
Date: 2022.10.24
08:35:22 -0500

CHRISTOPHER GRUBB
Associate Regional Counsel
U.S. Environmental Protection Agency
Region 5 (C-14J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590
grubb.christopher@epa.gov
Telephone: (312) 886-7187

10/24/22

Date

JEFFREY
CAHN

Digitally signed by
JEFFREY CAHN
Date: 2022.10.24
08:46:57 -0500

JEFFREY A. CAHN
Associate Regional Counsel
U.S. Environmental Protection Agency
Region 5 (C-14J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590
cahn.jeffrey@epa.gov
Telephone: (312) 886-6670

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States and State of Ohio v. City of Elyria (N.D. Ohio).

For the Plaintiff STATE OF OHIO

DAVE YOST
Ohio Attorney General

A handwritten signature in cursive script, reading "L. Scott Helkowski". The signature is written in dark ink and is positioned above the printed name.

L. SCOTT HELKOWSKI (C068622)
Assistant Attorney General
Environmental Enforcement Section
30 E. Broad Street, 25th Floor
Columbus, OH 43215

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States and State of Ohio v. City of Elyria (N.D. Ohio).

For the DEFENDANT CITY OF ELYRIA

10/21/2022
Date


HON. FRANK WHITFIELD

Mayor, City of Elyria
131 Court Street – Suite 301
Elyria, OH 44035
fwhitfield@cityofelyria.org
Telephone: (440) 326-1402
Facsimile: (440) 326-1426

10/21/2022
Date


AMANDA R. DEERY

Law Director, City of Elyria
131 Court Street – Suite 201
Elyria, OH 44035
adeery@cityofelyria.org
Telephone: (440) 326-1464
Facsimile: (440) 326-1466
Ohio Bar # 0077438

APPENDIX A TO CONSENT DECREE
List of CSO Outfalls

NPDES Station Number	Elyria CSO ID	Location	Receiving Waters	CSO Outfall Monitoring Locations¹
3PD00034045	100	Dilworth St. @ Gulf Rd.	Black River	*
3PD00034046	101	Washington Ave. @ Glenwood St.	Black River	*
3PD00034006	102	Columbus St. @ St. Clair St.	E. Br. of Black River	
3PD00034007	103	Washington Ave. north of the Washington Ave. bridge that crosses the E. Branch of the Black River	E. Br. of Black River	
3PD00034008	104	Washington Ave. @ Depot St.	E. Br. of Black River	
3PD00034047	114	W. Bridge St. @ Bridge	W. Br. of Black River	*, +
3PD00034011	120	Dewey Ave. @ Lorain Blvd	Black River	
3PD00034012	121	Bond St. @ alley between Jefferson St. and Adams St.	Black River	
3PD00034013	130	Furnace St. @ Florence Ct.	Black River	
3PD00034048	132	Lake Ave. @ Chestnut St.	W. Br. of Black River	
3PD00034015	133	Kerstetter Way @ Tremont St. (formerly Lake Ave. @ Tremont Street)	E. Br. of Black River	*, +
3PD00034016	142	Fourth (4th) St. @ West Ave.	W. Br. of Black River	
3PD00034018	145	West Ave. @ Elyria High School	W. Br. of Black River	
3PD00034019	146	West Ave. @ Ninth (9th) St.	W. Br. of Black River	*, +
3PD00034020	150	East Ave. @ Fourth (4th) St.	E. Br. of Black River	
3PD00034044	151	East Ave. @ Fourth (4th) St. Siphon	E. Br. of Black River	
3PD00034021	152	Fifth (5th) St. @ East Ave	E. Br. of Black River	
3PD00034022	153	Sixth (6th) St. @ East Ave.	E. Br. of Black River	
3PD00034025	158	Ninth (9th) St. @ East Ave	E. Br. of Black River	
3PD00034026	159	Gates Ave. @ East Ave.	E. Br. of Black River	
3PD00034027	160	Howe St. @ East Ave.	E. Br. of Black River	*, +
3PD00034028	161	George St. @ East Ave.	E. Br. of Black River	*, +
3PD00034029	162	Wooster St. (between Middle Ave. and East Ave.)	E. Br. of Black River	
3PD00034030	163	Wooster St. @ East Ave.	E. Br. of Black River	
3PD00034031	164	1241 East Ave.	E. Br. of Black River	*, +

NPDES Station Number	Elyria CSO ID	Location	Receiving Waters	CSO Outfall Monitoring Locations¹
3PD00034035	180	Third (3rd) St. @ Chestnut St.	W. Br. of Black River	
3PD00034037	182	Broad St. @ Water St.	Water Street Lift Station	
3PD00034050	189	Lincoln Ct. @ Blaine St.	E. Br. of Black River	*
3PD00034051	190	E. River St. @ Smith Ct.	E. Br. of Black River	*
3PD00034038	191	Buckeye St. @ E. River St.	Black River	*

1. Locations marked with an asterisk (*) denote those locations Elyria will monitor to meet the requirements of Paragraph 14.a. Locations marked with a plus sign (+) denote the locations Elyria may seek approval from EPA to cease monitoring pursuant to Paragraph 14.b.

APPENDIX B TO CONSENT DECREE
List of Specified Unpermitted SSO Locations

NPDES Station Number	Ohio EPA SSO ID	Elyria SSO ID	Location	Receiving Waters	Unpermitted SSO Monitoring Locations¹
3PD00034300	327	121A	Bond Street @ Jefferson Street	Black River	
3PD00034300	305	147	West Ave. between Oberlin Rd. and 18th St.	Storm Sewer (SS) to W. Br. of Black River	
3PD00034300	309	193	East River Street (north of Columbia Ave.)	SS to E. Br. of Black River	
3PD00034300	310	194	East River St. @ Columbia Ave.	SS to E. Br. of Black River	
3PD00034300	311	199	Columbia Ave. @ Sherman St.	SS to E. Br. of Black River	
3PD00034300	312	202	Park Ave. @ Kenyon Ave.	SS to E. Br. of Black River	*Direct
3PD00034300	313	203	Park Ave. @ Oxford Ave.	SS to E. Br. of Black River	*Estimated
3PD00034300	314	204	Park Ave. @ Cambridge Ave.	SS to E. Br. of Black River	*Estimated
3PD00034300	315	205	Park Ave. @ Princeton Ave.	SS to E. Br. of Black River	*Estimated
3PD00034300	316	206	Park Ave. @ Eastern Heights Blvd.	SS to E. Br. of Black River	*Estimated
3PD00034300	317	207	Park Ave. @ Harvard Ave.	SS to E. Br. of Black River	*Estimated
3PD00034300	318	208	Park Ave. @ Cornell Ave.	SS to E. Br. of Black River	*Direct
3PD00034300	319	209	Park Ave. @ Denison Ave.	SS to E. Br. of Black River	*Estimated
3PD00034300	320	211	Park Ave. @ Columbia Ave.	SS to E. Br. of Black River	*Direct
3PD00034300	321	213	328 Columbia Ave (Columbia Ave. between Park Ave. and Garford Ave.)	SS to E. Br. of Black River	
3PD00034300	322	214	Columbia Ave. @ Garford Ave.	SS to E. Br. of Black River	

NPDES Station Number	Ohio EPA SSO ID	Elyria SSO ID	Location	Receiving Waters	Unpermitted SSO Monitoring Locations¹
3PD00034300	323	217	Denison Ave. (between Park Ave. and Garford Ave.)	SS to E. Br. of Black River	
3PD00034300	324	219	Fairlawn Ave. @ Harvard Ave.	SS to E. Br. of Black River	
3PD00034300	325	220	Fairlawn Ave. @ Cornell Ave.	SS to E. Br. of Black River	*Direct
3PD00034300	326	221	Clark St. @ Winkles St.	SS to E. Br. of Black River	*Direct
3PD00034300	328	238	840 Livermore Ln.	SS to Black River	
3PD00034300	329	239	830 Salem Ave. (north of Fairwood Blvd.)	SS to Black River	
3PD00034300	330	240	Gulf Rd. @ Lafayette St.	SS to Black River	*Direct
3PD00034300	334	260A	Dead end of West 6th St. (north side of the road)	W. Br. of Black River	*Direct
3PD00034300	336	263	W. 13th St. @ Bank St.	SS to W. Br. of Black River	*Direct
3PD00034300	335	281	122 Winkles St. (north of Penn Central RR, south of Cleveland St.)	SS to E. Br. of Black River	*Direct
3PD00034300	338	310	Hemlock Dr. @ Gulf Rd.	SS to Black River	
3PD00034300	339	312	Gulf Rd. (east of entrance to WWTP)	Black River via Ridgeway Ditch	
3PD00034300	341	N2	Mendel Ct. @ Florence Ct.	SS to Black River	
3PD00034300	342	N6	Overbrook Road Lift Station	SS to Black River	*Direct
3PD00034300	343	WSI	Ford Rd. approximately 150 feet south of Regency Ct. (siphon head chamber)	Black River	
3PD00034300	344	344	Bank St., midway between 12th and	SS to W. Br. of Black River	*Direct

NPDES Station Number	Ohio EPA SSO ID	Elyria SSO ID	Location	Receiving Waters	Unpermitted SSO Monitoring Locations¹
			13th Streets (approximately 100 feet north of 263)		

1. Locations marked with an asterisk (*) denote those locations Elyria will monitor to meet the requirements of Paragraph 14.a. “Direct” denotes SSO locations where continuous monitoring will be done. “Estimated” denotes SSO locations where overflow frequency and volume will be estimated utilizing hydraulic grade line (HGL) data obtained from the level monitors at SSOs 202 and 208 to generate estimated 5-minute time step HGL data at the remaining “Estimated” SSO locations. Elyria may seek approval from EPA to cease monitoring at these locations pursuant to the requirements set forth in Paragraph 14.b.

APPENDIX C TO CONSENT DECREE
Integrated Wet Weather Control Plan

Control Measures		Description of Control Measures	Affected Overflows/ Outfalls ¹	Design Criteria ^{4, 5, 8}	Performance Criteria ²	Stage ⁶	Critical Milestone for Achievement of Full Operation
1	East Side Relief Sewer (ESRS)	Finish construction of the ESRS, which is the sewer system that will provide flow relief to the East Side Interceptor.	<i>193, 194, 199, 202, 203, 204, 205, 206, 207, 208, 209, 211, 213, 214, 217, 219, 220, 221, 240, 281, 100, 101, 189, 190</i>	<p>Finish constructing the ESRS system such that all relief sewer pipes will be no more than 70% full during the 10-year, 2-hour design storm and according to the following minimum diameter and approximate length specifications for each ESRS phase and location:</p> <ol style="list-style-type: none"> 1. ESRS Phase 1: <ol style="list-style-type: none"> a. Phase 1d: minimum diameter of 66 inches and approximate length of 5,300 feet. 2. ESRS Phase 2: <ol style="list-style-type: none"> a. Gulf Road, between Poplar Street and Ohio Street: minimum diameter of 66 inches and approximate length of 2,300 feet; and b. Gulf Road, between Ohio Street and East Bridge Street, East Bridge Street between Gulf Road and East River Street, and East River Street between East Bridge Street and Clark Street: minimum diameter of 60 inches and approximate length of 2,700 feet. 3. ESRS Phase 3: <ol style="list-style-type: none"> a. Phase 3a: <ol style="list-style-type: none"> i. Park Place, Broad Street and Park Avenue between Clark Street and Cambridge Avenue: minimum diameter of 48 inches 	<ol style="list-style-type: none"> 1. For each Overflow that the Agencies consider to be an SSO: demonstration of SSO elimination using a 10-year, 2-hour storm; and 2. For each Overflow that the Agencies consider to be an CSO: <ol style="list-style-type: none"> a. ≤ 4 CSOs in a typical year⁷; and b. Footnote 3. 	I	<p>Phase 1: December 31, 2024</p> <p>Phase 2: December 31, 2028</p> <p>Phases 3 and 4: December 31, 2031</p>

Control Measures		Description of Control Measures	Affected Overflows/ Outfalls ¹	Design Criteria ^{4,5,8}	Performance Criteria ²	Stage ⁶	Critical Milestone for Achievement of Full Operation
				<p>and approximate length of 1,600 feet; and</p> <p>ii. Park Avenue between Cambridge Avenue and Columbia Avenue: minimum diameter of 36 inches and approximate length of 2,300 feet.</p> <p>b. Phase 3b:</p> <p>i. Clark Street between East River Street and Winkles Street: minimum diameter of 42 inches and approximate length of 2,500 feet; and</p> <p>ii. Winkles Street between Clark Street and overflow 281 near Cleveland Street: minimum diameter of 24 inches and approximate length of 2,100 feet.</p> <p>c. Phase 3c: minimum diameter of 18 inches and approximate length of 3,000 feet.</p> <p>4. Phase 4:</p> <p>a. Phase 4a: minimum diameter of 30 inches and approximate length of 1,300 feet;</p> <p>b. Phase 4b:</p> <p>i. Columbia Avenue between East River Street and Sherman Street: minimum diameter of 18 inches and approximate length of 700 feet; and</p> <p>ii. Columbia Avenue between Sherman Street and Park Avenue: minimum diameter of</p>			

Control Measures		Description of Control Measures	Affected Overflows/ Outfalls ¹	Design Criteria ^{4,5,8}	Performance Criteria ²	Stage ⁶	Critical Milestone for Achievement of Full Operation
				<p>30 inches and approximate length of 900 feet.</p> <p>c. Phase 4c: minimum diameter of 18 inches and approximate length of 820 feet.</p> <p>Locations of the segments identified in 1.a through 1.d, above, are shown in the ESRS Proposed Alignment Diagram, dated March 25, 2022, contained in Attachment 1 of this Appendix.</p>			
2	Overflow 132 Storm Sewer Construction and Rainfall Derived Inflow and Infiltration (RDI/I) Control	Within the Overflow 132 Corrective Action Area, disconnection of stormwater catch basins from the combined sewer and connection of the stormwater catch basins to the storm sewer.	132	<p>Complete the following work within the Overflow 132 Corrective Action Area as described below:</p> <p>1. Disconnect five stormwater catch basins that are connected to the combined sewer. Connect the stormwater catch basins to the existing storm sewer.</p> <p>Overflow 132 Corrective Action Area is shown in Attachment 2 to this Appendix</p>	<p>1. ≤ 4 CSOs in a typical year; and</p> <p>2. Footnote 3.</p>	I	Complete
3	Overflow N6 RDI/I Control, Construction of a New Lift Station, and Sewer System Improvements	<p>1. Implementation of RDI/I work</p> <p>2. Installation of a second lift station to increase wet weather pumping capacity of the Overbrook Road Lift Station.</p>	N6	<p>Complete the following work within the Overflow N6 Corrective Action Area as described below:</p> <p>1. Implement RDI/I control work as described below:</p> <p>a. disconnect all stormwater catch basins that are connected to the sanitary sewer, the number of which is estimated to be 4.</p>	Demonstration of SSO elimination using a 10-year, 2-hour storm.	I	December 31, 2024

Control Measures		Description of Control Measures	Affected Overflows/ Outfalls ¹	Design Criteria ^{4,5,8}	Performance Criteria ²	Stage ⁶	Critical Milestone for Achievement of Full Operation
		3. Increase size of gravity sewer at force main discharge		<p>b. disconnect all property roof drains, the number of which is estimated to be 31.</p> <p>2. Construct a second lift station with minimum firm capacity (i.e., minimum pumping capacity with the largest pump out of service) of 220 gallons per minute (GPM).</p> <p>3. Replace 800 linear feet of 8-inch sanitary sewer with 10-inch sanitary sewer along Overbrook Road at the location of the discharge from force main to increase capacity.</p> <p>Overflow N6 Corrective Action Area is shown in Attachment 3 to this Appendix</p>			
4	Elyria wastewater treatment plant (WWTP) improvements	<p>Implementation of the following improvements at the Elyria WWTP:</p> <p>1. Increase wet weather flow conveyance capacity to the WWTP Intermediate Storage Tanks.</p> <p>2. Upgrade the WWTP to provide a peak treatment</p>	WWTP Outfall 001	<p>Implement the following improvements at the Elyria WWTP as described below:</p> <p>1. Install the necessary additional piping and structures to allow the conveyance of a peak flow of at least 10 MGD from the East Screening Building (a.k.a., East Headworks Building) to the Intermediate Storage Tanks, which are the tanks that formerly were intermediate clarifiers.</p> <p>2. Upgrade the WWTP treatment capacity to provide sustained full treatment (i.e., continuous treatment</p>	Provide full treatment for all flows up to 40 MGD through the WWTP. Whenever flow to the WWTP exceeds 40 MGD, provide sustained full treatment for flow rate of 40 MGD through the WWTP to meet Elyria's NPDES permit effluent limits.	I	December 31, 2026

Control Measures		Description of Control Measures	Affected Overflows/ Outfalls ¹	Design Criteria ^{4,5,8}	Performance Criteria ²	Stage ⁶	Critical Milestone for Achievement of Full Operation
		capacity of 40 million gallons per day (MGD).		<p>of flows through preliminary, primary, and secondary treatment followed by disinfection for a minimum of 24 hours) of 40 MGD by making all necessary improvements and changes to the following WWTP processes, operations, infrastructure, and equipment:</p> <ul style="list-style-type: none"> a. Primary settling tanks; and b. Activated sludge aeration tanks 			
5	Chemically Enhanced Primary Treatment (CEPT) and High Rate Disinfection (HRD) (“CEPT/HRD”)	Provide CEPT in the 1.6 MG wet weather storage tank (WWST) followed by HRD to treat flows that exceed the Elyria WWTP wet weather storage and WWTP treatment capacity.	WWTP Bypass Outfall 003	<p>1. Install all necessary additional headworks and screening structures and equipment to accommodate flows up to 124 MGD peak wet weather flow to the CEPT/HRD system.</p> <p>2. Provide CEPT followed by HRD to treat wet weather flows that exceed the WWTP treatment capacity. The CEPT/HRD shall have a treatment capacity of 124 MGD and a surface overflow rate (SOR) of 7,000 gallons per day per square foot (gpd/ft²).</p> <p>3. Design, install, and implement all necessary hydraulic and structural modifications to the existing 1.6 million-gallon (MG) WWST; and install and construct all necessary new infrastructure to implement CEPT for flows up to 124 MGD and to meet the Performance Criteria.</p>	<p>1. <u>Numeric Performance Criteria</u></p> <p>a. Except as provided in 1.b below, the following Numeric Performance Criteria apply for the duration of the Consent Decree:</p> <p>i. The 7-day arithmetic mean of Qualifying Samples collected and analyzed on a continuous, rolling basis in accordance with Section 3 of Appendix D shall not exceed 40 mg/l total suspended solids (TSS);</p> <p>ii. The 7-day geomean of Qualifying Samples collected and analyzed on a continuous rolling basis in accordance with Section 3 of Appendix D shall not exceed 284/100 ml E. coli when chlorinating; and</p> <p>iii. Total residual chlorine (TRC) shall not exceed 0.038 mg/l in any sample collected and analyzed in accordance with Section 3 of Appendix D, when chlorinating. If Elyria has received approval from EPA and Ohio</p>	I	December 31, 2034

Control Measures		Description of Control Measures	Affected Overflows/ Outfalls ¹	Design Criteria ^{4,5,8}	Performance Criteria ²	Stage ⁶	Critical Milestone for Achievement of Full Operation
				<p>4. Design, install, and implement the HRD system, which shall be comprised of a chlorine contact basin(s) to chlorinate, and a dechlorination feed system to subsequently dechlorinate, the CEPT effluent for flows up to 124 MGD and to meet the Performance Criteria. If Elyria has identified an alternative disinfection technology that Elyria would like to use instead of chlorination (and dechlorination) in the HRD system, Elyria shall seek approval from EPA and Ohio EPA to use the selected alternative disinfection technology. Elyria shall seek approval from the Agencies as soon as possible and prior to designing the HRD system.</p> <p>5. Install all necessary chemical (e.g., coagulant, flocculant, chlorination, dechlorination, etc.) feed and mixing equipment and tankage to implement CEPT/HRD for flows up to 124 MGD and to meet the Performance Criteria.</p>	<p>EPA to use an alternative disinfection technology that is not a chlorine-based disinfectant, Elyria shall be responsible for meeting the Numeric Performance Criteria of the appropriate alternative disinfection residual parameter at the concentration necessary to meet the appropriate Water Quality Criteria established by the State of Ohio for the Lake Erie Basin.</p> <p>b. Following the CM 5 Phase 1 Post-Construction Monitoring Period described in Section 3 of Appendix D and for the duration of the Consent Decree thereafter, any NPDES permit effluent limitations for TSS, E. coli, and/or TRC (or the appropriate alternative disinfection residual parameter) apply instead of the Numeric Performance Criteria set forth above, if both:</p> <p>i. There is an NPDES permit with numeric effluent limitations and monitoring requirements for discharges from the CEPT/HRD for the specific parameter – TSS, E. coli and/or TRC (or the appropriate alternative disinfection residual parameter) – that are legally in effect (i.e., the limitations and requirements are not stayed) and those effluent limitations and monitoring requirements do not include, incorporate or otherwise account for flows that do not go through the CEPT/HRD; and</p> <p>ii. Elyria provides written notification to the U.S. EPA and Ohio EPA in accordance</p>		

Control Measures		Description of Control Measures	Affected Overflows/ Outfalls ¹	Design Criteria ^{4,5,8}	Performance Criteria ²	Stage ⁶	Critical Milestone for Achievement of Full Operation
					<p>with Section XVI (Notices) of the Consent Decree of these facts. The date on which the NPDES permit effluent limits begin to apply in lieu of the Numeric Performance Criteria set forth above for TSS, E. coli and/or TRC (or the appropriate alternative disinfection residual parameter) shall be the date of the written notification, provided that both of these conditions are met.</p> <p>c. Nothing in these Numeric Performance Criteria relieves Elyria of any permit obligations.</p> <p>2. Operational Performance Criteria</p> <p>a. Elyria shall not discharge from the CEPT/HRD until treatment at the WWTP has been maximized up to the WWTP capacity of 40 MGD.</p> <p>b. Elyria shall not discharge from any bypass that conveys flow around the CEPT/HRD or any portion of the WWTP until: (i) treatment at the WWTP has been maximized up to the WWTP treatment capacity of 40 MGD; and (ii) treatment CEPT/HRD has been maximized up to the CEPT/HRD treatment capacity of 124 MGD.</p>		
6	West Side Interceptor Relief Point Regulator Modification	Raising of the weir located at the West Side Interceptor (WSI) overflow relief point (a.k.a., Overflow WSI).	<i>WSI</i>	Raise the WSI weir elevation by a minimum of 0.76 feet.	Demonstration of SSO elimination using a 10-year, 2-hour storm.	I	December 31, 2027

Control Measures		Description of Control Measures	Affected Overflows/ Outfalls ¹	Design Criteria ^{4,5,8}	Performance Criteria ²	Stage ⁶	Critical Milestone for Achievement of Full Operation
7-1	Mussey Conveyance and Storage for Overflows 147 and 263	<p>1. Construction of a relief sewer system, which is called the Mussey Conveyance, to reduce discharges from Overflows 147 and 263.</p> <p>2. Construction of storage to reduce discharges from Overflow 147.</p> <p>3. Construction of storage to reduce discharges from Overflow 263.</p>	147, 263	<p>1. Construct all necessary components of the Mussey Conveyance relief sewer system that shall include, at a minimum, the following:</p> <p>a. approximately 4,700 feet of new 24-inch diameter relief sewer in the Overflow 147 Corrective Action Area; and</p> <p>b. approximately 400 feet of new 15-inch diameter relief sewer in the Overflow 263 Corrective Action Area.</p> <p>2. Construct storage that has a minimum usable capacity of 100,000 gallons to collect and store overflows that would otherwise discharge from Overflow 147.</p> <p>3. Construct storage that has a minimum usable capacity of 50,000 gallons to collect and store overflows that would otherwise discharge from Overflow 263.</p> <p>Overflows 147 and 263 Corrective Action Areas are shown in Attachments 4 and 5 to this Appendix.</p>	For each Overflow, together with Control Measures 7-2 and 7-3, respectively: demonstration of SSO elimination using a 10-year, 2-hour storm.	I	December 31, 2033
7-2	Overflow 147 Storm Sewer Construction and RDI/I Control	Within the Overflow 147 Corrective Action Area:	147	<p>Complete the following work within the Overflow 147 Corrective Action Area as described below:</p> <p>1. Construct a new 12-inch diameter</p>	Together with Control Measure 7-1, demonstration of SSO elimination using a 10-year, 2-hour storm.	II	December 31, 2037

Control Measures		Description of Control Measures	Affected Overflows/ Outfalls ¹	Design Criteria ^{4,5,8}	Performance Criteria ²	Stage ⁶	Critical Milestone for Achievement of Full Operation
		1. Construction of new storm sewer. 2. Implementation of RDI/I control work.		storm sewer on Homesite Court and portions of West Avenue and Oberlin Road. The length of new storm sewer required is estimated to be 1,400 feet. 2. Implement RDI/I control work as described below: a. Line the existing mainline sanitary sewer system; which is estimated to be 4,400 feet. b. Disconnect all property roof drains, the number of which is estimated to be 10. c. Disconnect all property footer drains, the number of which is estimated to be 48. d. Line all existing sanitary sewer laterals, the number of which is estimated to be 48. Overflow 147 Corrective Action Area is shown in Attachment 4 to this Appendix.			
7-3	Overflow 263 Storm Sewer Construction and RDI/I Control	Within the Overflow 263 Corrective Action Area: 1. Construction of new storm sewer.	263 and 344	Complete the following work within the Overflow 263 Corrective Action Area as described below: 1. Construct a new 12-inch diameter storm sewer on 13th Street, 14th Street, and Bank Street where there are connections to the sanitary sewer,	Together with Control Measure 7-1, demonstration of SSO elimination using a 10-year, 2-hour storm.	II	December 31, 2037

Control Measures		Description of Control Measures	Affected Overflows/ Outfalls ¹	Design Criteria ^{4,5,8}	Performance Criteria ²	Stage ⁶	Critical Milestone for Achievement of Full Operation
		2. Implementation of RDI/I control work.		<p>but no storm sewer. The length of new storm sewer necessary is estimated to be approximately 1,900 feet.</p> <p>2. Implement RDI/I control work as described below:</p> <p>a. Line the existing mainline sanitary sewer system, the length of which is estimated to be 2,000 feet.</p> <p>b. Disconnect all property roof drains, the number of which is estimated to be 5.</p> <p>c. Disconnect all property footer drains, the number of which is estimated to be 14.</p> <p>d. Line all existing sanitary sewer laterals, the number of which is estimated to be 14.</p> <p>Overflow 263 Corrective Action Area is shown in Attachment 5 to this Appendix.</p>			
8	St. Jude and Eastern Heights Neighborhoods RDI/I Control	Implementation of RDI/I control work in the St. Jude and Eastern Heights neighborhoods.	193, 194, 199, 202, 203, 204, 205, 206, 207, 208, 209, 211, 213, 214, 217, 219, 220, 221,	<p>1. Implement RDI/I control work in the St. Jude and Eastern Heights neighborhoods as described below:</p> <p>a. Line the existing mainline sanitary sewer system in the St. Jude and Eastern Heights neighborhoods.</p>	<p>Together with Control Measure 1, meet the following Performance Criteria:</p> <p>1. For each Overflow that the Agencies consider to be an SSO: demonstration of SSO elimination using a 10-year, 2-hour storm; and</p>	I	St. Jude I/I and Eastern Heights I/I December 31, 2034

Control Measures		Description of Control Measures	Affected Overflows/ Outfalls ¹	Design Criteria ^{4,5,8}	Performance Criteria ²	Stage ⁶	Critical Milestone for Achievement of Full Operation
			240, 281, 100, 101, 189, 190	<p>b. Disconnect all property roof drains, the number of which is estimated to be 1,235.</p> <p>The St. Jude and Eastern Heights neighborhoods are shown in Attachment 6 to this Appendix.</p>	<p>2. For each Overflow that the Agencies consider to be a CSO:</p> <p>a. ≤ 4 CSOs in a typical year upon completion of all phases of the ESRS; and</p> <p>b. Footnote 3.</p>		
9	Overflow 102 Storage	Construction of storage to reduce discharges from Overflow 102.	102	Construct storage to collect and store a minimum overflow volume of 50,000 gallons that would otherwise discharge from Overflow 102.	<p>1. ≤ 4 CSOs in a typical year; and</p> <p>2. Footnote 3.</p>	II	December 31, 2037
10	West River Road Sanitary Sewer Bottleneck Removal	Replacement of existing sanitary sewer along West River Road to increase conveyance capacity.	114	Replace approximately 1,000 feet of existing 12-inch diameter sanitary sewer along West River Road with 15-inch diameter sanitary sewer to increase sanitary sewer conveyance capacity along West River Road.	<p>1. ≤ 4 CSOs in a typical year; and</p> <p>2. Footnote 3.</p>	II	December 31, 2037
11	Overflow 120 Storage	Construction of storage to reduce discharges from Overflow 120.	120	Construct storage that has a minimum usable capacity of 10,000 gallons to collect and store overflows that would otherwise discharge through Overflow 120.	<p>1. ≤ 4 CSOs in a typical year; and</p> <p>2. Footnote 3.</p>	II	December 31, 2037
12-1	Overflow 133 Storage	Construction of storage to reduce discharges from Overflow 133.	133	Construct storage that has a minimum usable capacity of 110,000 gallons to collect and store overflows that would otherwise discharge through Overflow 133.	<p>Together with Control Measure 12-2, meet the following Performance Criteria:</p> <p>1. ≤ 4 CSOs in a typical year; and</p> <p>2. Footnote 3.</p>	II	December 31, 2040
12-2	Overflow 133 RDI/I Control	Within the Overflow 133 Corrective Action Area, implementation of RDI/I control	133	<p>Complete the following work within the Overflow 133 Corrective Action Area:</p> <p>1. Implement RDI/I control work as described below:</p>	<p>Together with Control Measure 12-1, meet the following Performance Criteria:</p> <p>1. ≤ 4 CSOs in a typical year; and</p> <p>2. Footnote 3.</p>	II	December 31, 2040

Control Measures		Description of Control Measures	Affected Overflows/ Outfalls ¹	Design Criteria ^{4,5,8}	Performance Criteria ²	Stage ⁶	Critical Milestone for Achievement of Full Operation
		work.		<p>a. Line the existing mainline sanitary sewer system; the length of which estimated to be 2,700 feet.</p> <p>b. Line all existing sanitary sewer laterals, the number of which is estimated to be 24.</p> <p>c. Perform localized the necessary spot sewer repair on Tremont Street prior to lining the sanitary sewer system per item 1.a, above.</p> <p>Overflow 133 Corrective Action Area is shown in Attachment 7 to this Appendix.</p>			
13	Overflow 146 Storage	Construction of storage to reduce discharges from Overflow 146.	146	Construct storage that has a minimum usable capacity of 80,000 gallons to collect and store overflows that would otherwise discharge from Overflow 146.	1. ≤ 4 CSOs in a typical year; and 2. Footnote 3.	II	December 31, 2037
14	Overflow 182 Storage	Construction of storage to reduce discharges from Overflow 182.	182	Construct storage to collect and store a minimum overflow volume of 10,000 gallons that would otherwise discharge from Overflow 182.	1. ≤ 4 CSOs in a typical year; and 2. Footnote 3.	II	December 31, 2037
15	Overflow 121A Storm Sewer Construction and RDI/I Control	<p>Within the Overflow 121A Corrective Action Area:</p> <p>1. Construction of new storm sewer.</p>	<i>121A</i>	<p>Complete the following work within the Overflow 121A Corrective Action Area as described below:</p> <p>1. Construct a new 12-inch diameter storm sewer on Bond Street from Adams Street to the alley between</p>	Demonstration of SSO elimination using a 10-year, 2-hour storm.	II	December 31, 2044

Control Measures		Description of Control Measures	Affected Overflows/ Outfalls ¹	Design Criteria ^{4,5,8}	Performance Criteria ²	Stage ⁶	Critical Milestone for Achievement of Full Operation
		2. Implementation of RDI/I controls work.		<p>Adams Street and Jefferson Street. The length of new storm sewer required is estimated to be approximately 100 feet.</p> <p>2. Implement RDI/I control work as described below:</p> <p>a. Line the existing mainline sanitary sewer system, the length of which is estimated to be 1,900 feet.</p> <p>b. Disconnect all property roof drains, the number of which is estimated to be 1.</p> <p>c. Disconnect all property footer drains, the number of which is estimated to be 15.</p> <p>d. Line all existing sanitary sewer laterals, the number of which is estimated to be 15.</p> <p>Overflow 121A Corrective Action Area is shown in Attachment 8 to this Appendix.</p>			
16	Overflow 238 Storm Sewer Construction and RDI/I Control	Within the Overflow 238 Corrective Action Area, implementation of RDI/I control work.	238	<p>Complete the following work within the Overflow 238 Corrective Action Area as described below:</p> <p>1. Implement RDI/I control work as described below:</p>	Demonstration of SSO elimination using a 10-year, 2-hour storm.	II	December 31, 2044

Control Measures		Description of Control Measures	Affected Overflows/ Outfalls ¹	Design Criteria ^{4,5,8}	Performance Criteria ²	Stage ⁶	Critical Milestone for Achievement of Full Operation
				<p>a. Line the existing mainline sanitary sewer system, the length of which is estimated to be 4,700 feet.</p> <p>b. Disconnect all property roof drains, the number of which is estimated to be 41.</p> <p>c. Disconnect all property footer drains, the number of which is estimated to be 165.</p> <p>d. Line all existing sanitary sewer laterals, the number of which is estimated to be 165.</p> <p>Overflow 238 Corrective Action Area is shown in Attachment 9 to this Appendix.</p>			
17	Overflow 239 Storm Sewer Construction and RDI/I Control	<p>Within the Overflow 239 Corrective Action Area:</p> <p>1. Construction of new storm sewer.</p> <p>2. Implementation of RDI/I control work.</p>	239	<p>Complete the following work within the Overflow 239 Corrective Action Area:</p> <p>1. Construct a new 15-inch diameter storm sewer on Arlington Court and parts of Salem, Georgetown, and Jamestown Avenues. The length of the new storm sewer necessary is estimated to be approximately 3,300 feet.</p> <p>2. Implement RDI/I control work as described below:</p>	Demonstration of SSO elimination using a 5-year, 2-hour storm.	II	December 31, 2044

Control Measures		Description of Control Measures	Affected Overflows/ Outfalls ¹	Design Criteria ^{4,5,8}	Performance Criteria ²	Stage ⁶	Critical Milestone for Achievement of Full Operation
				<p>a. Line the existing mainline sanitary sewer system, the length of which is estimated to be 7,400 feet.</p> <p>b. Disconnect all property roof drains, the number of which is estimated to be 126.</p> <p>c. Disconnect all property footer drains, the number of which is estimated to be 238.</p> <p>d. Line all existing sanitary sewer laterals, the number of which is estimated to be 238.</p> <p>Overflow 239 Corrective Action Area is shown in Attachment 10 to this Appendix.</p>			
18	Overflow 260A Relocation, Sewer System Improvements, and RDI/I Control	<p>Within the Overflow 260A Corrective Action Area:</p> <ol style="list-style-type: none"> 1. Abandonment and sealing of current Overflow 260A location. 2. Relocation of Overflow 260A. 3. Construction of new storm sewer. 	260A	<p>Complete the following work within the Overflow 260A Corrective Action Area:</p> <ol style="list-style-type: none"> 1. Abandon and seal the current Overflow 260A location including sand fill approximately 800 feet of the existing 8-inch diameter combined sewer on Earl Court from West Avenue to the current existing Overflow 260A. 2. Relocate Overflow 260A to downstream end of West 6th Street near West Avenue where it connects to the combined sewer in West Avenue to exclude local neighborhood 	Demonstration of SSO elimination using a 10-year, 2-hour storm.	II	December 31, 2040

Control Measures		Description of Control Measures	Affected Overflows/ Outfalls ¹	Design Criteria ^{4, 5, 8}	Performance Criteria ²	Stage ⁶	Critical Milestone for Achievement of Full Operation
		<p>4. Disconnection of stormwater catch basins from the combined sewer and connection to storm sewer.</p> <p>5. Implementation of RDI/I control work.</p>		<p>flow.</p> <p>3. Construct approximately 900 feet of new 15-inch diameter storm sewer on 6th Street and Earl Court from West Avenue to the Black River.</p> <p>4. Disconnect all stormwater catch basins that are connected to the abandoned combined sewer and connect the stormwater catch basins to the newly constructed storm sewer.</p> <p>5. Implement RDI/I control work as described below:</p> <p>a. Line the existing mainline sanitary sewer system along West 6th Street, Earl Court and the easement between Earl Court and West 6th Street. The length of sewer required to be lined is estimated to be 1,300 feet.</p> <p>b. Disconnect all property roof drains, the number of which is estimated to be 1.</p> <p>c. Disconnect all property footer drains, the number of which is estimated to be 8.</p> <p>d. Line all existing sanitary sewer laterals, the number of which is estimated to be 8.</p>			

Control Measures		Description of Control Measures	Affected Overflows/ Outfalls ¹	Design Criteria ^{4,5,8}	Performance Criteria ²	Stage ⁶	Critical Milestone for Achievement of Full Operation
				Overflow 260A Corrective Action Area is shown in Attachment 11 to this Appendix.			
19	Overflow 312 RDI/I Control	Implementation of RDI/I control work in the Overflow 312 RDI/I Corrective Action Area.	312	<p>1. Implement the following RDI/I control work in the Overflow 312 Corrective Action Area as described below:</p> <p>a. Line the existing mainline sanitary sewer system, the length of which is estimated to be 1,400 feet.</p> <p>b. Disconnect all property roof drains, the number of which is estimated to be 21.</p> <p>c. Disconnect all property footer drains, the number of which is estimated to be 21.</p> <p>d. Line all existing sanitary sewer laterals, the number of which is estimated to be 21.</p> <p>Overflow 312 Corrective Action Area is shown in Attachment 12 to this Appendix.</p>	Demonstration of SSO elimination using a 10-year, 2-hour storm.	II	December 31, 2040
20-1	Hemlock Drive Pump Station Wet Well Expansion	Expansion of the Hemlock Drive Pump Station wet well capacity.	310	Expand the Hemlock Drive Pump Station wet well capacity to add an additional 80,000 gallons of usable wet well storage.	Together with Control Measure 20-2, demonstration of SSO elimination using a 10-year, 2-hour storm.	II	December 31, 2040
20-2	Overflow 310 RDI/I Control	Implementation of RDI/I control work in the Overflow 310	310	1. Implement RDI/I control work in the Overflow 310 Corrective Action Area as described below:	Together with Control Measure 20-1, demonstration of SSO elimination using a 10-year, 2-hour storm.	II	December 31, 2040

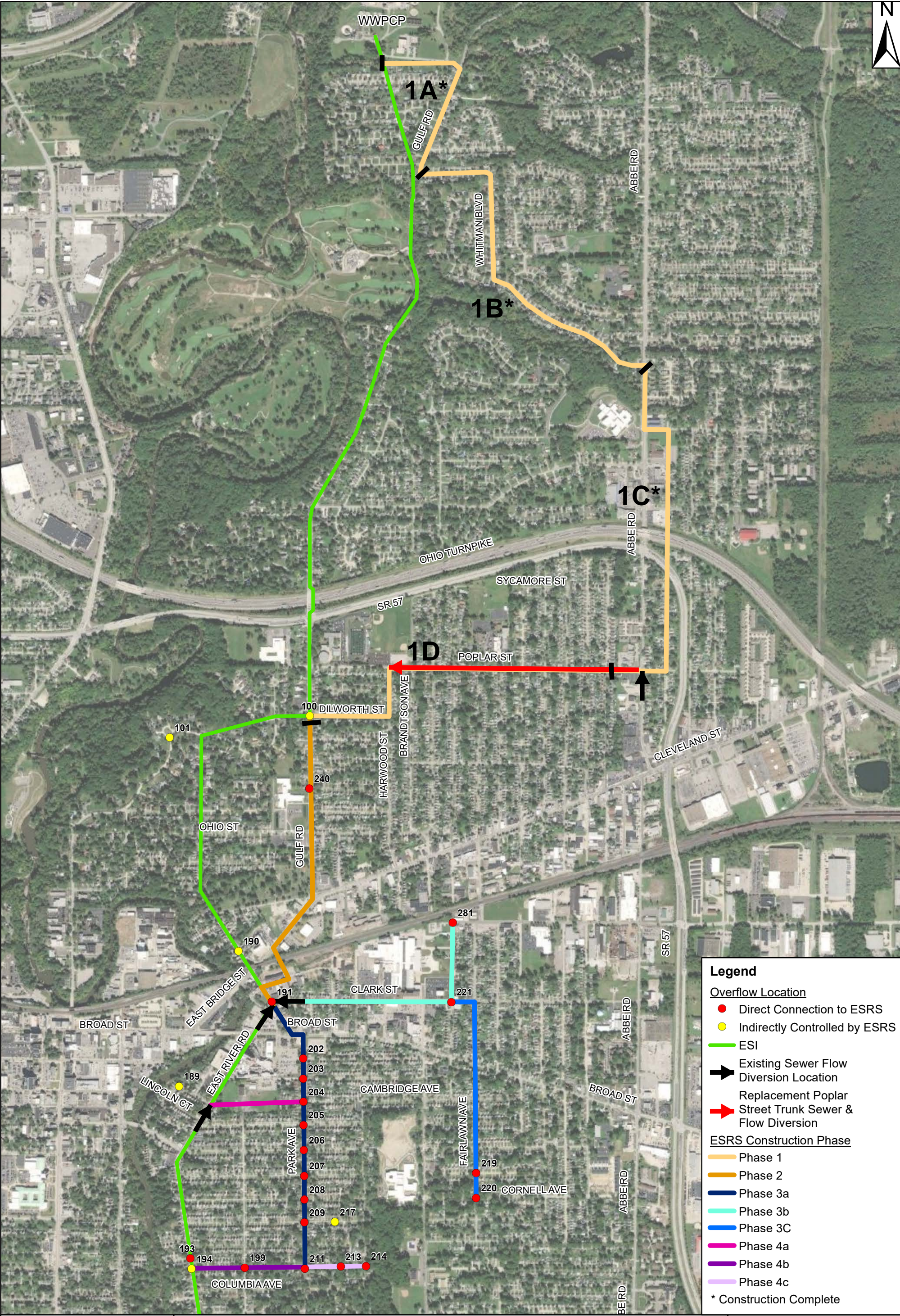
Control Measures		Description of Control Measures	Affected Overflows/ Outfalls ¹	Design Criteria ^{4,5,8}	Performance Criteria ²	Stage ⁶	Critical Milestone for Achievement of Full Operation
		Corrective Action Area.		<p>a. Line the existing mainline sanitary sewer system, the length of which is estimated to be 3,900 feet.</p> <p>b. Disconnect all property roof drains, the number of which is estimated to be 90.</p> <p>c. Disconnect all property footer drains, the number of which is estimated to be 90.</p> <p>d. Line all existing sanitary sewer laterals, the number of which is estimated to be 90.</p> <p>Overflow 310 Corrective Action Area is shown in Attachment 13 to this Appendix.</p>			
21-1	Mendel Court Pump Station Wet Well Expansion	Expansion of the Mendel Court Pump Station wet well capacity.	<i>N2</i>	Expand the Mendel Court Pump Station wet well capacity to add an additional 50,000 gallons of useable wet well storage.	Together with Control Measure 21-2, demonstration of SSO elimination using a 10-year, 2-hour storm.	II	December 31, 2040
21-2	Overflow N2 RDI/I Control	Implementation of RDI/I control work in the Overflow N2 Corrective Action Area.	<i>N2</i>	<p>1. Implement RDI/I control work in the Overflow N2 Corrective Action Area as described below:</p> <p>a. Line the existing mainline sanitary sewer system, the length of which is estimated to be 600 feet.</p> <p>b. Disconnect all property roof drains, the number of which is estimated to be 4.</p> <p>c. Disconnect all property footer</p>	Together with Control Measure 21-1, demonstration of SSO elimination using a 10-year, 2-hour storm.	II	December 31, 2040

Control Measures		Description of Control Measures	Affected Overflows/ Outfalls ¹	Design Criteria ^{4,5,8}	Performance Criteria ²	Stage ⁶	Critical Milestone for Achievement of Full Operation
				<p>drains, the number of which is estimated to be 13.</p> <p>d. Line all existing sanitary sewer laterals, the number of which is estimated to be 13.</p> <p>Overflow N2 Corrective Action Area is shown in Attachment 14 to this Appendix.</p>			

Footnotes:

1. Numeric outfalls considered to be SSOs by the agencies are displayed in red italics. Numeric outfalls considered to be CSOs by the agencies are displayed in black text.
2. All Sanitary Sewer Overflows are prohibited. The objective of the work is to eliminate each listed SSO. Demonstration of elimination of each listed SSO is required and shall be done using the design storm specified in the Performance Criteria and in accordance with the relevant post-construction monitoring provisions set forth in Appendix D.
3. The total volume of CSO discharges from all CSOs must not exceed a total of 6 million gallons (MG) in a typical year upon completion of all Appendix C Control Measures. Demonstration that this typical year volume is not exceeded shall be done using the typical year and in accordance with the relevant post-construction monitoring provisions set forth in Appendix D.
4. “Line” shall mean to rehabilitate a sewer such that its susceptibility to infiltration/exfiltration is reduced and its structural integrity is restored. Example methods include cured in place pipe (CIPP) or slip-lining. Complete replacement of pipe is an acceptable alternative to “lining.” If CCTV inspection shows that pipe segments (i.e., a section of pipe that is bound by a manhole at each end) are in good condition and not susceptible to infiltration/exfiltration, lining will not be necessary and pipe segments will be reviewed during next CMOM periodic inspection. For the Control Measures that require the disconnection of property footer drains and/or roof drains and the lining of sanitary sewer laterals as the RDI/I control work, the number of identified sanitary sewer laterals, property footer and roof drains to be addressed in the Design Criteria is estimated to be the total number in that Corrective Action Area. If fewer sanitary sewer laterals, property footer and roof drains are found to be connected to the sewer, the number required to be addressed will be those actually found in the Corrective Action Area that are connected.
5. Where new storm sewer construction results in a new stormwater discharge, Elyria shall ensure its new stormwater discharges comply with its Municipal Separate Storm Sewer (MS4) NPDES Permit.

6. “Stage I” refers to the Control Measures to Achieve Full Operation during the first 15 years of Control Measure work implementation. “Stage II” refers to the Control Measure to Achieve Full Operation during the last 10 years of Control Measure work implementation. See Paragraph 11 of the Consent Decree for the provisions applicable to each of these phases.
7. “Typical year” is defined in Section 4.1.4. of Appendix D.
8. The Corrective Action Area maps referenced herein include representations of portions of the Elyria collection system as “Combined,” Separate” or “Modified Combined.” These representations have been identified by Elyria and do not represent any EPA or Ohio EPA agreement on the representations.



Legend

- Overflow Location
- Direct Connection to ESRS
 - Indirectly Controlled by ESRS
 - ESI
 - ➔ Existing Sewer Flow Diversion Location
 - ➔ Replacement Poplar Street Trunk Sewer & Flow Diversion
- ESRS Construction Phase
- Phase 1
 - Phase 2
 - Phase 3a
 - Phase 3b
 - Phase 3C
 - Phase 4a
 - Phase 4b
 - Phase 4c
 - * Construction Complete



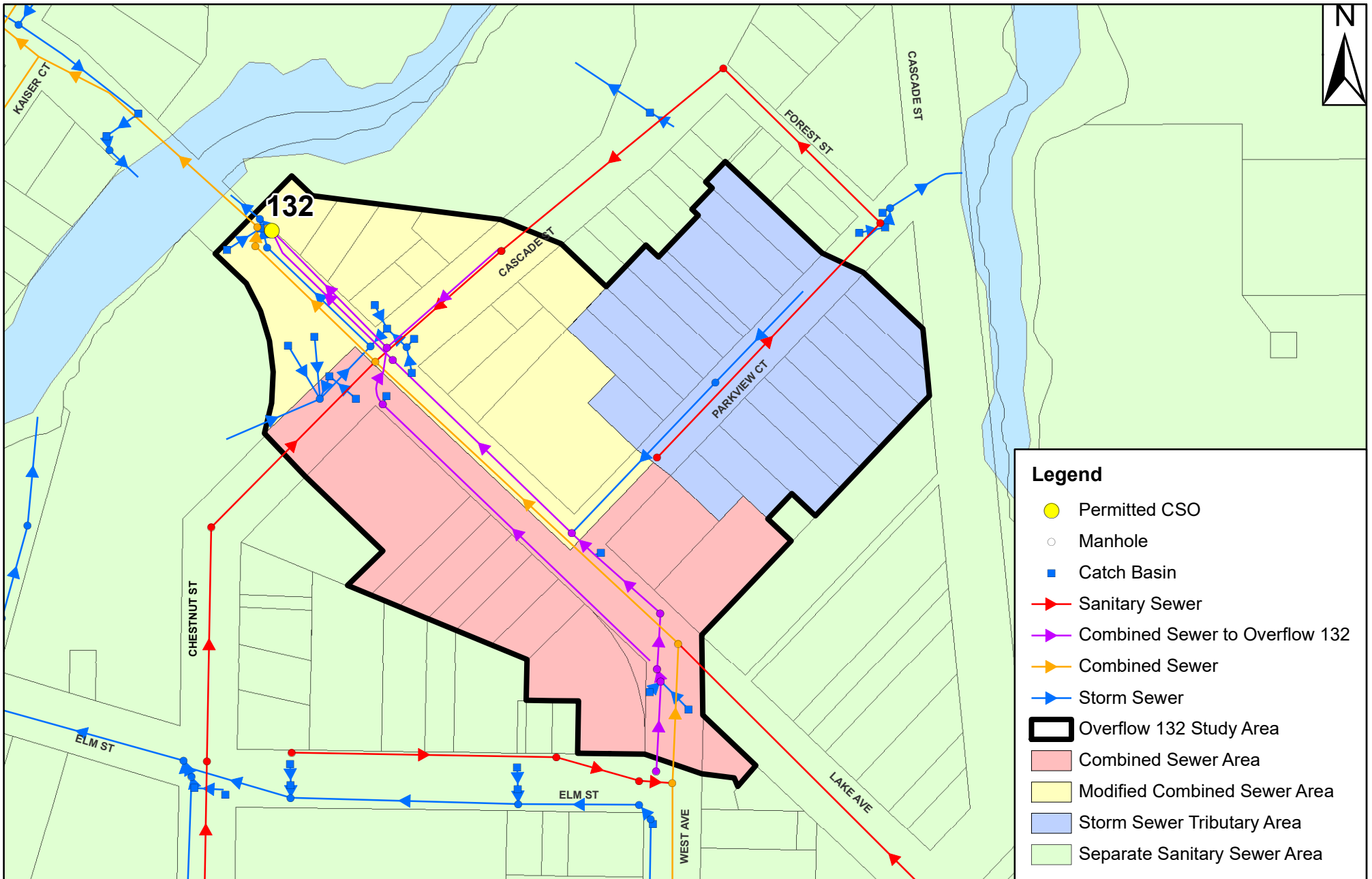
**East Side Relief Sewer
Proposed Alignment**

1 in = 1,200 feet



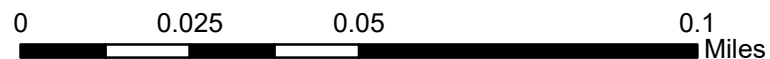
March 25, 2022

**Appendix C
Attachment 1**



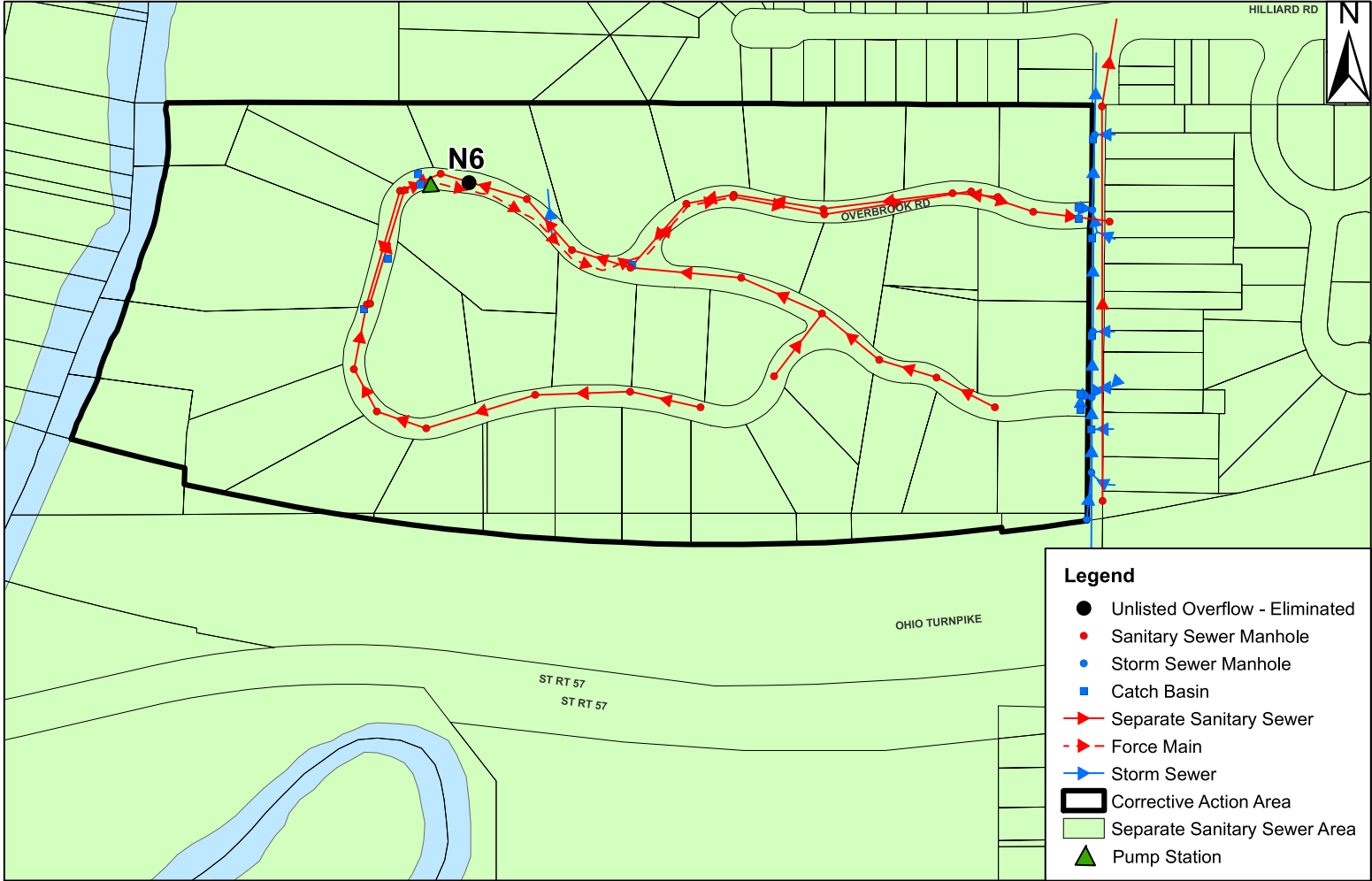
Elyria Wet Weather Plan Overflow 132 Corrective Action Area

1 in = 150 feet



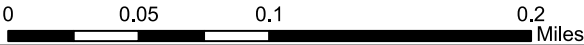
April 2022

**Appendix C
Attachment 2**



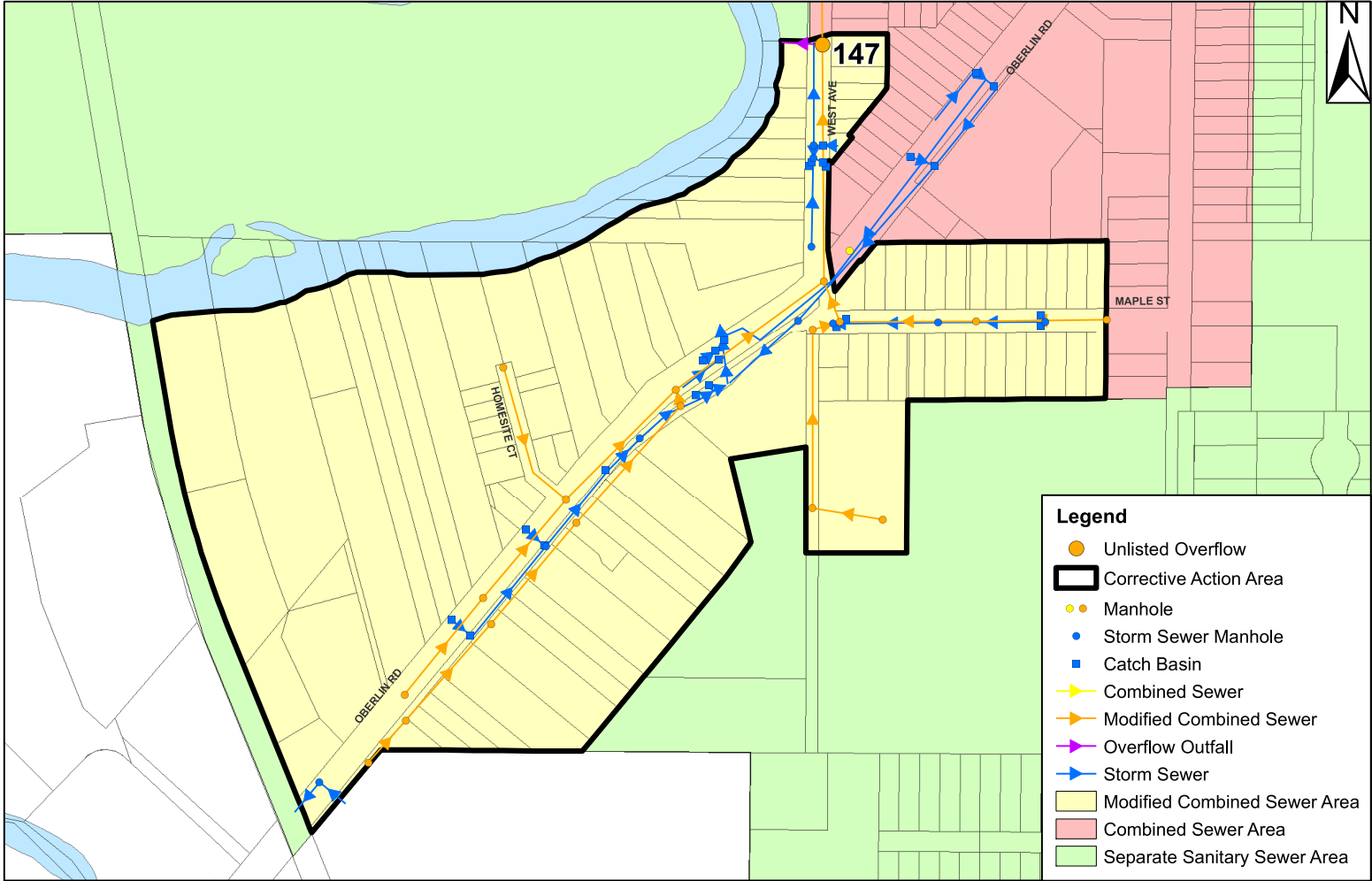
**Elyria Wet Weather Plan
Overflow N6 Corrective Action Area**

1 in = 300 feet



January 2022

**Appendix C
Attachment 3**

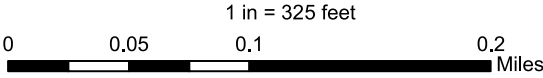


Legend

- Unlisted Overflow
- ▭ Corrective Action Area
- Manhole
- Storm Sewer Manhole
- Catch Basin
- Combined Sewer
- Modified Combined Sewer
- Overflow Outfall
- Storm Sewer
- Modified Combined Sewer Area
- Combined Sewer Area
- Separate Sanitary Sewer Area

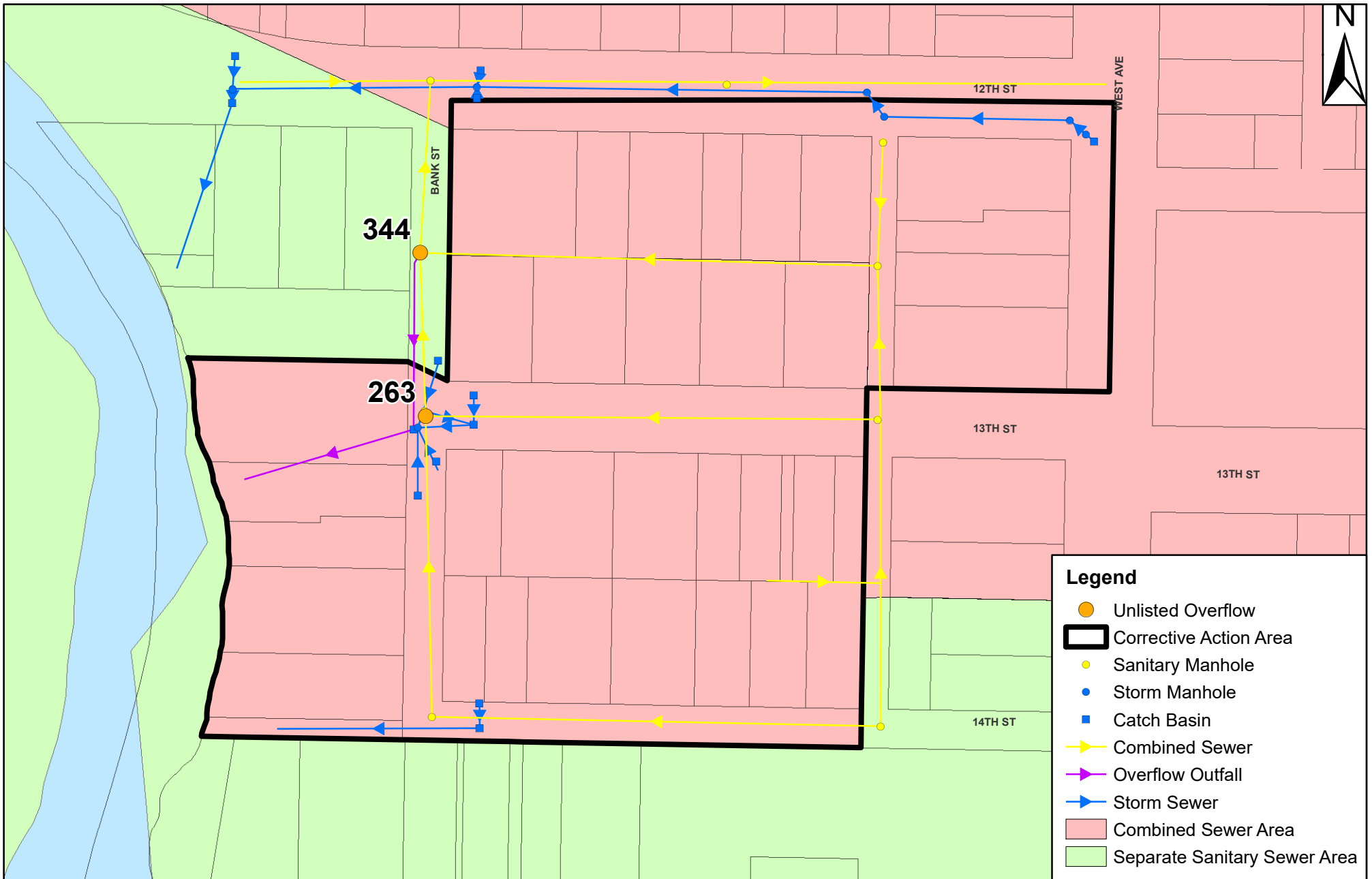


**Elyria Wet Weather Plan
Overflow 147 Corrective Action Area**

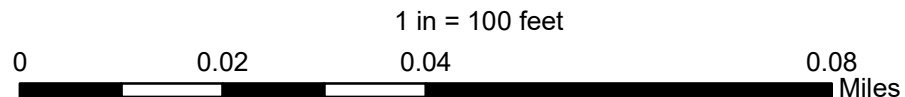


May 2021

**Appendix C
Attachment 4**

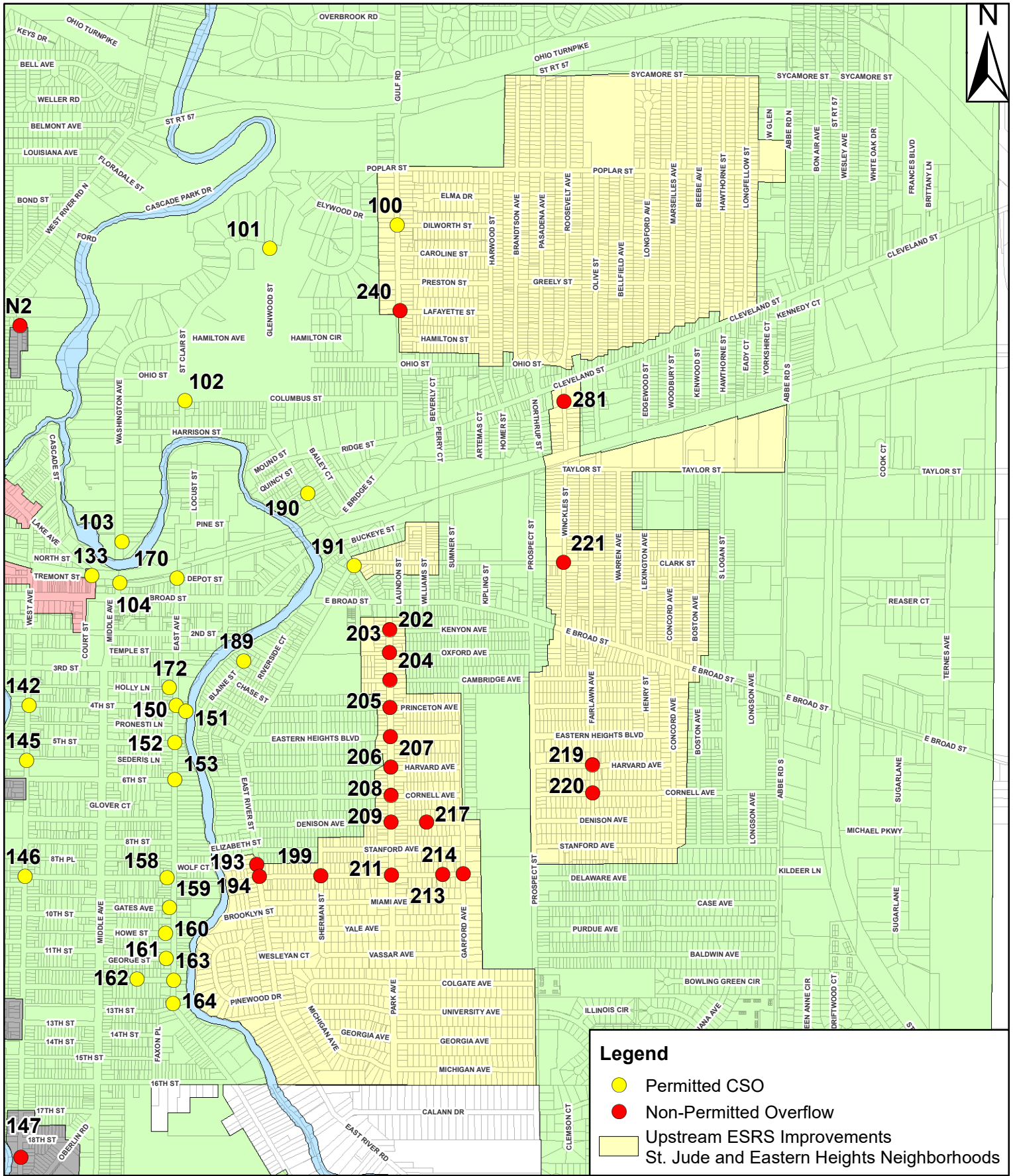


Elyria Wet Weather Plan **Overflow 263 & 344 Corrective Action Area**



October 2022

Appendix C
Attachment 5

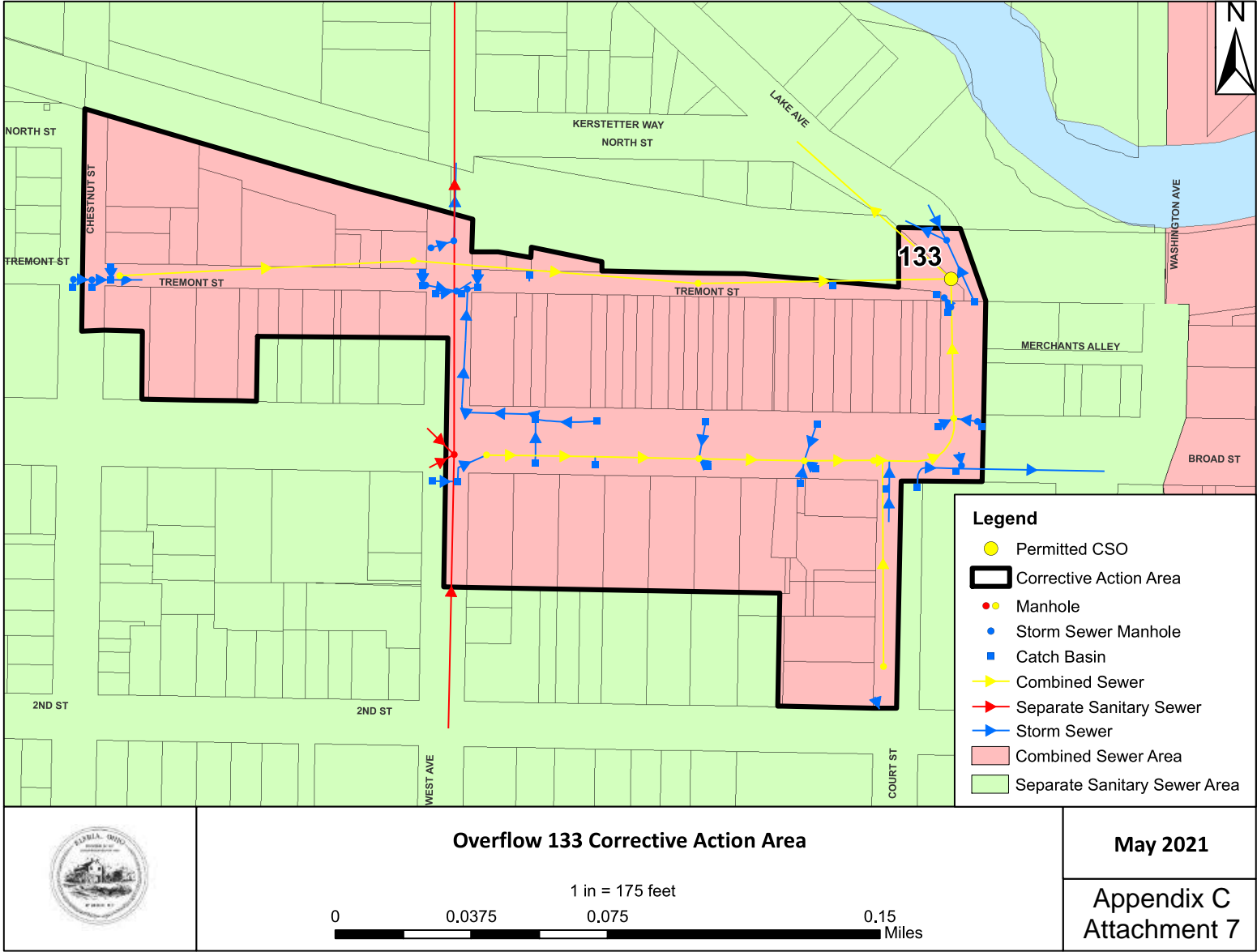


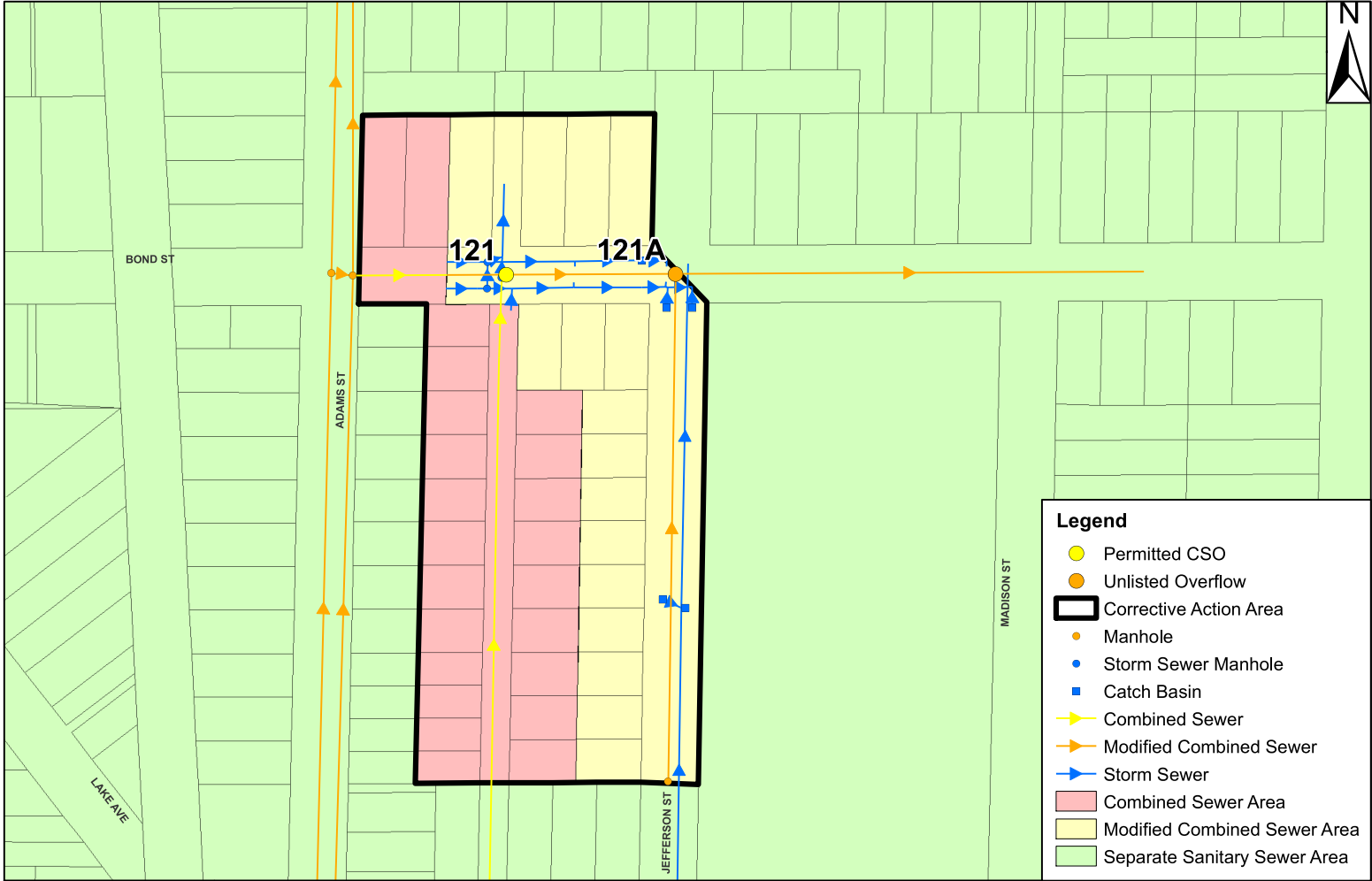
St. Jude and Eastern Heights Neighborhood

September 2022

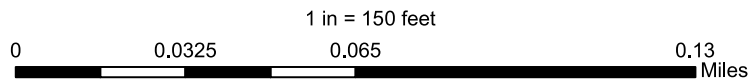
Appendix C

Attachment 6



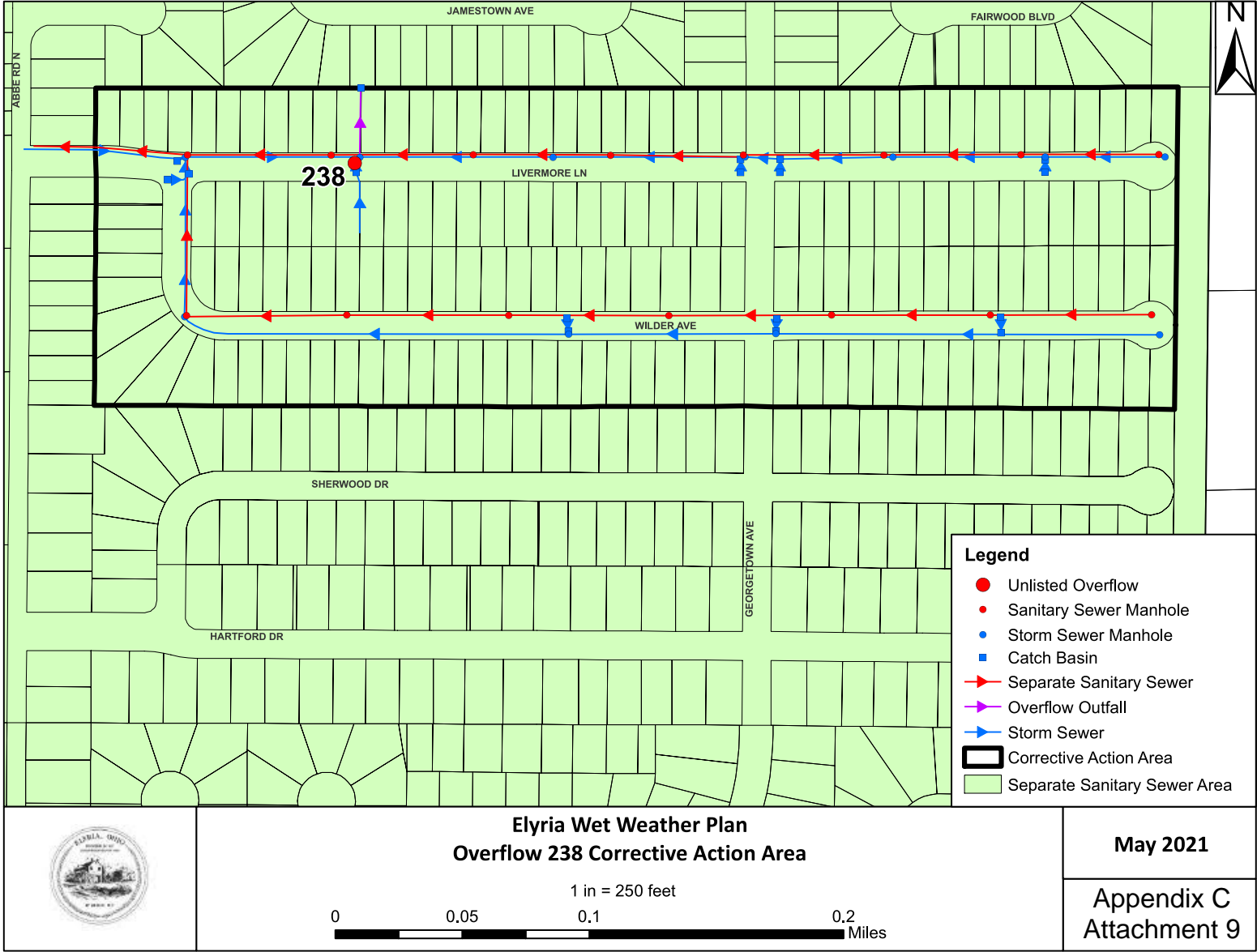


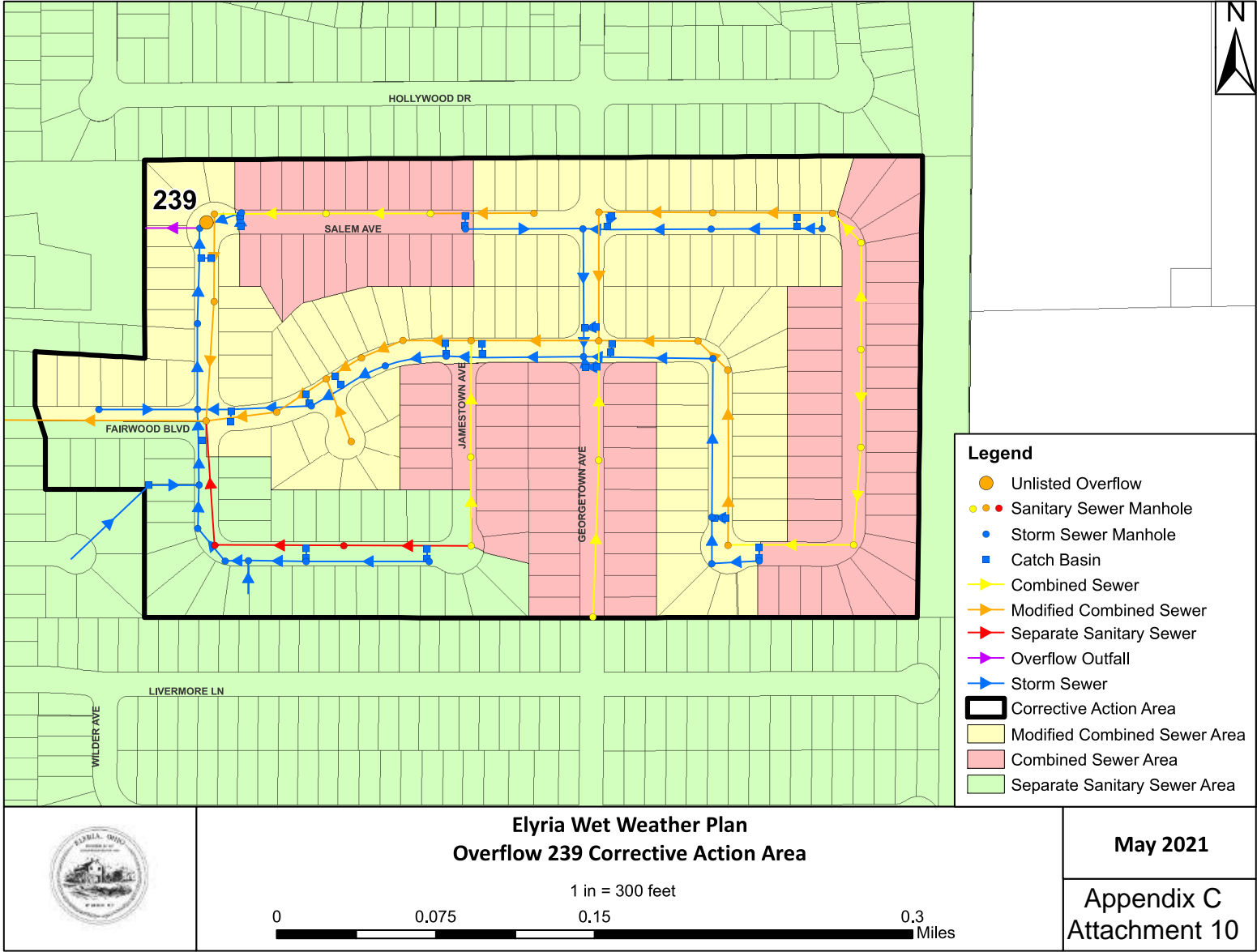
**Elyria Wet Weather Plan
Overflow 121A Corrective Action Area**

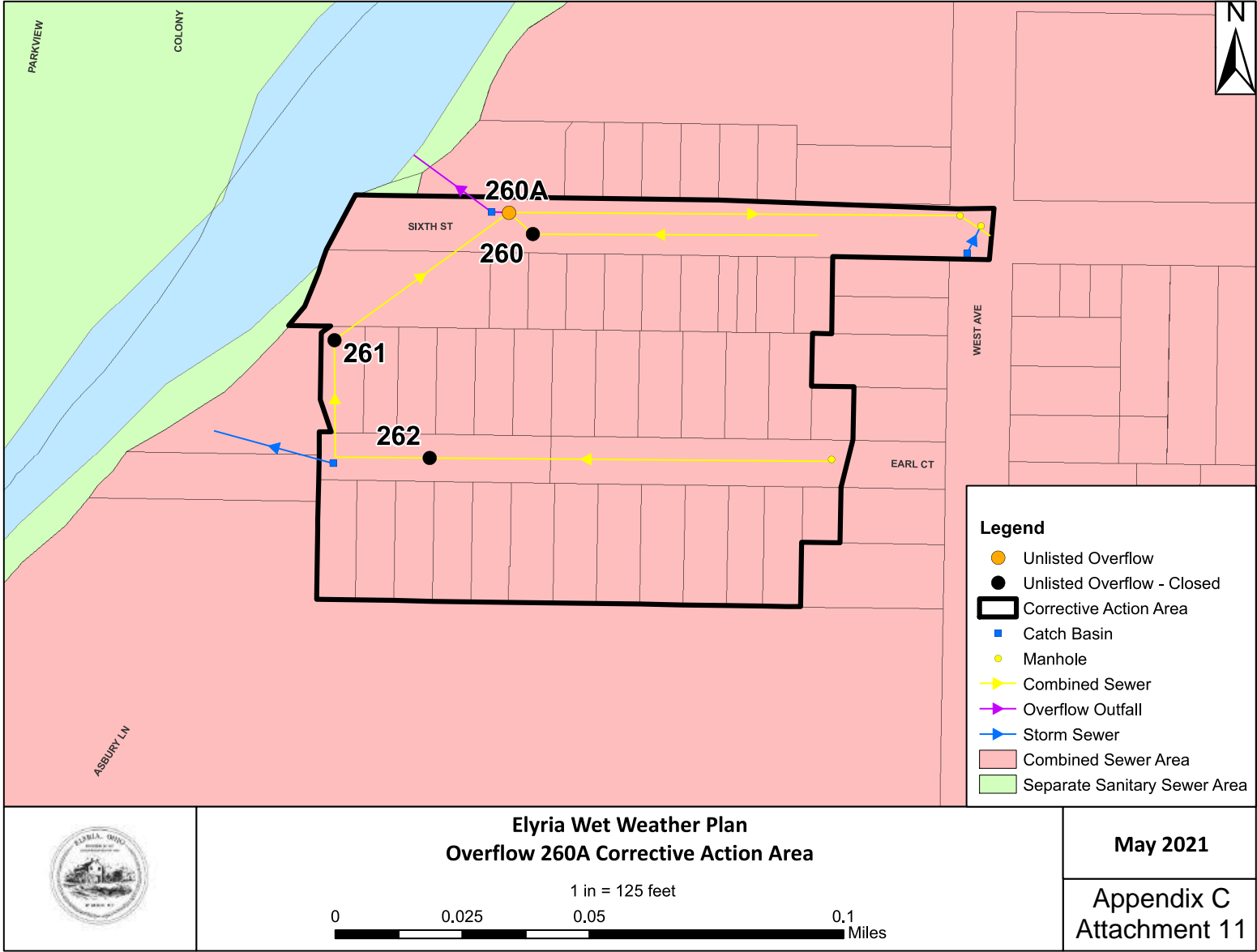


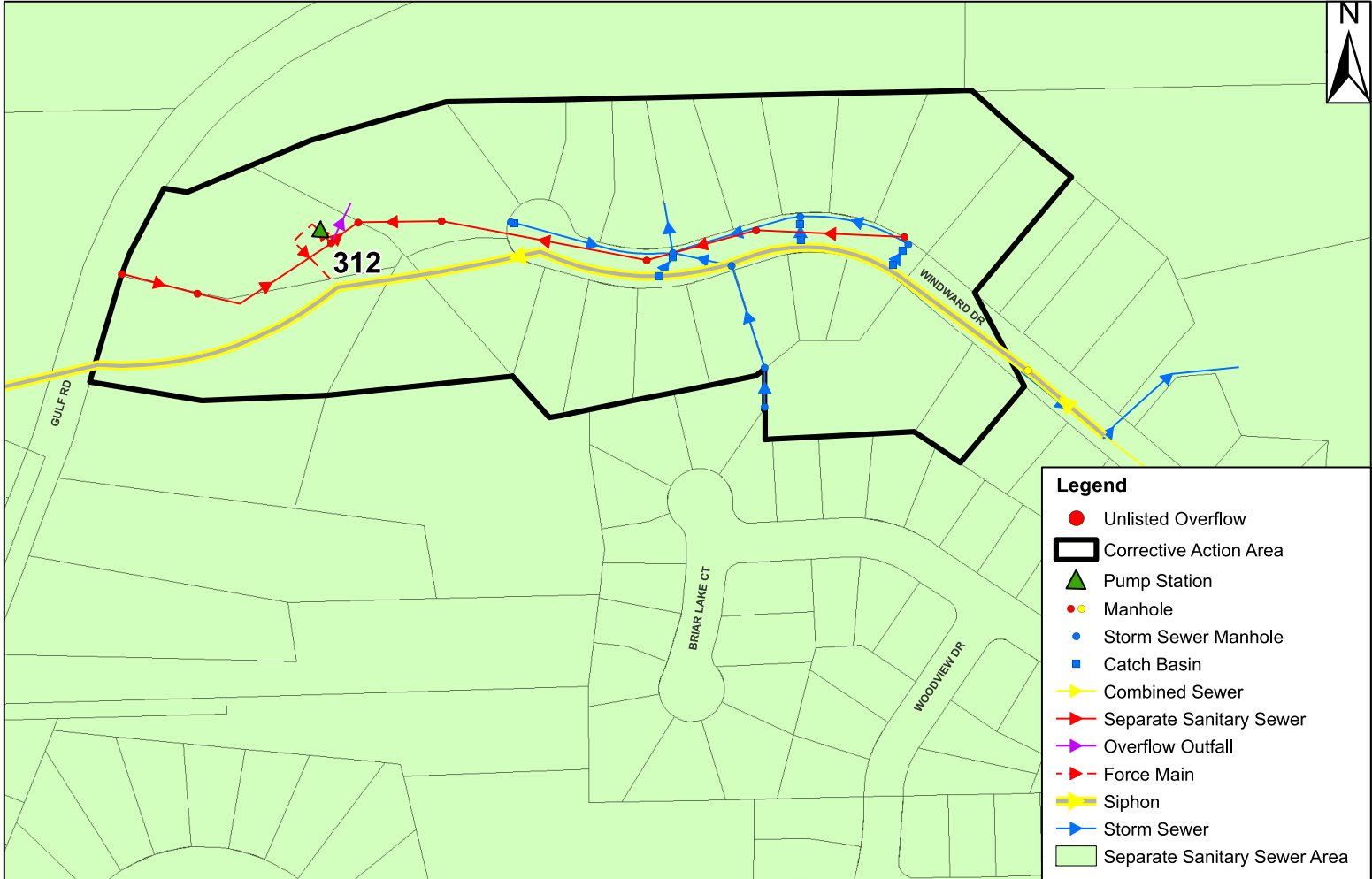
May 2021

**Appendix C
Attachment 8**

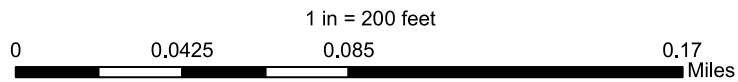






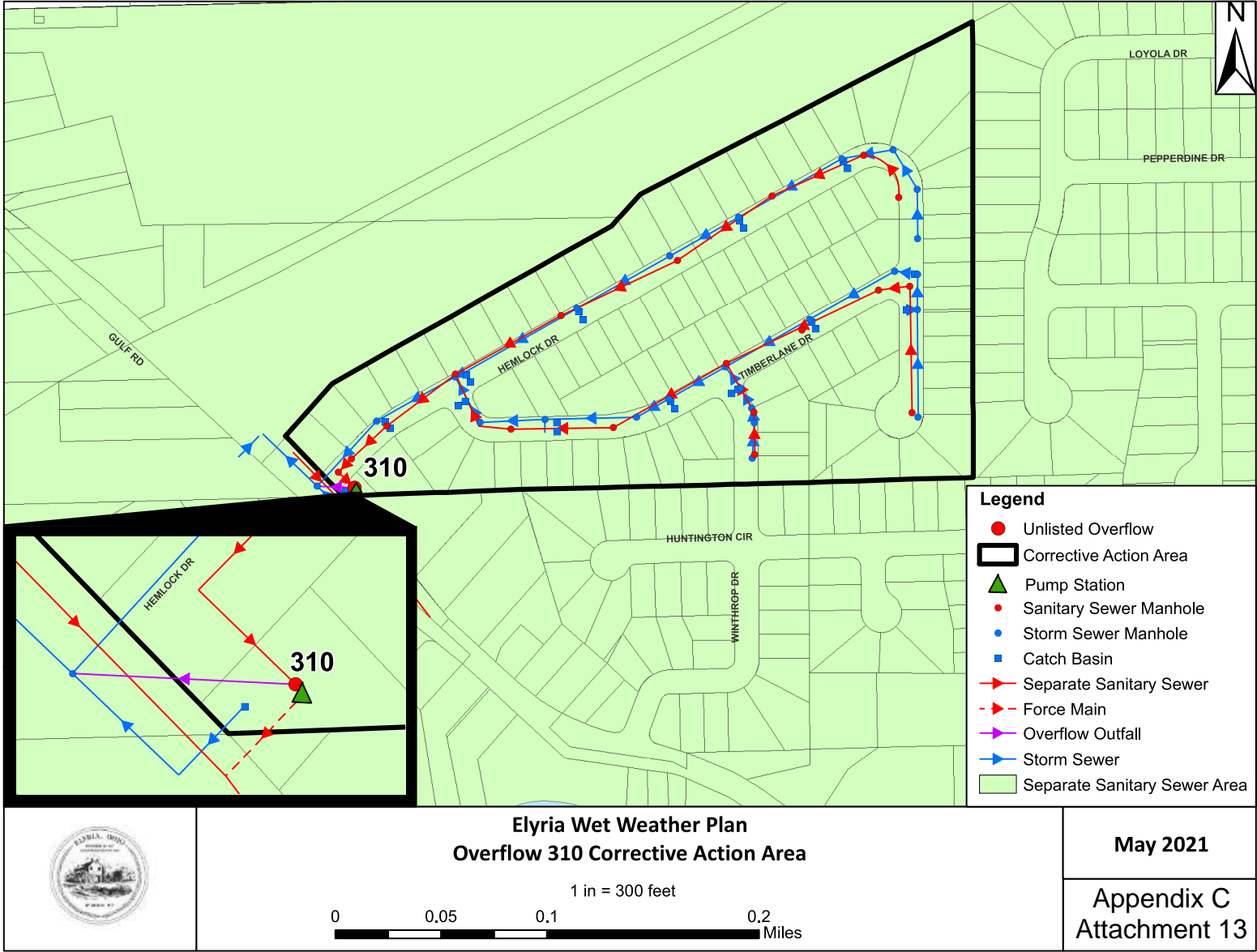


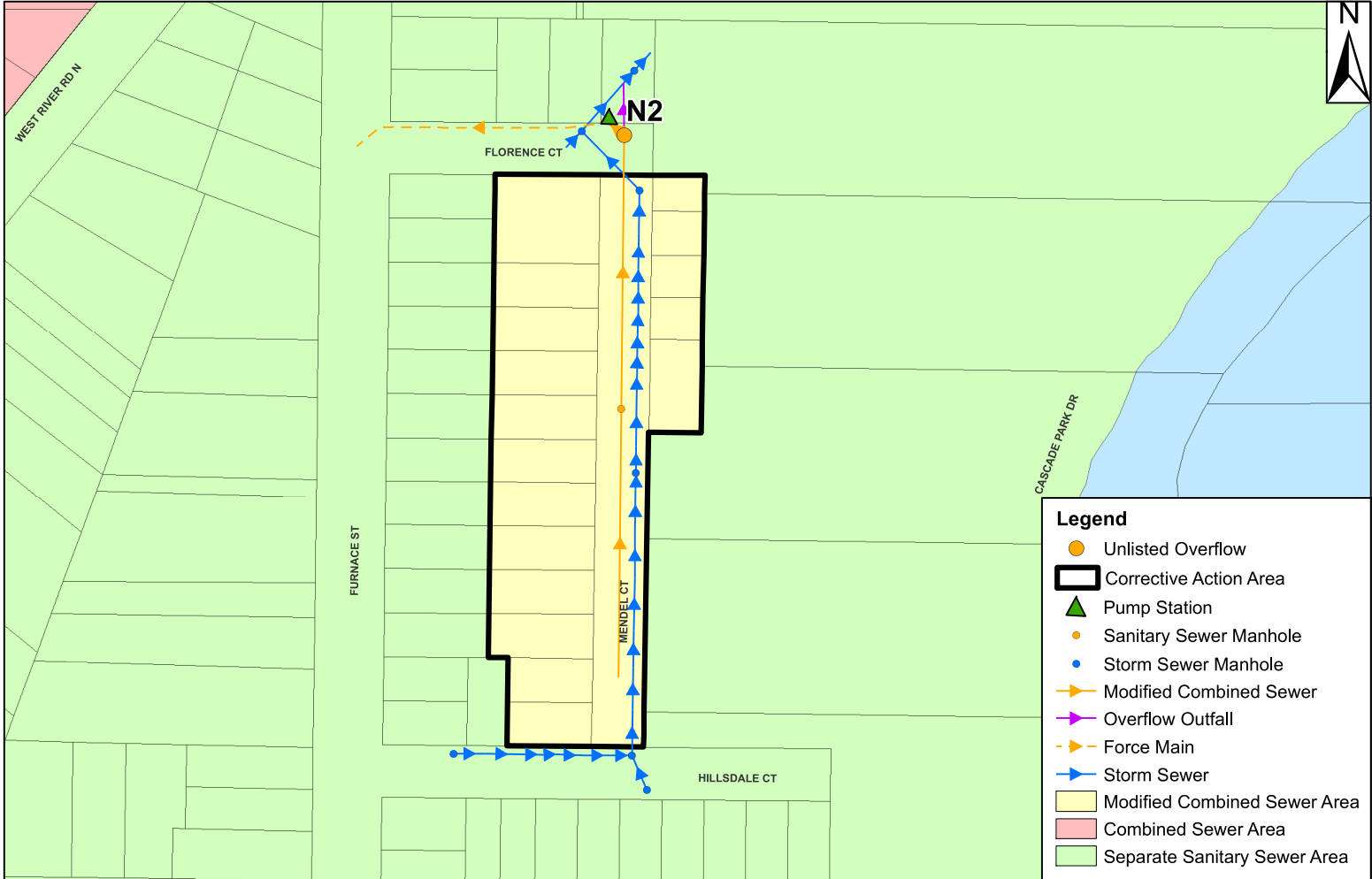
**Elyria Wet Weather Plan
Overflow 312 Corrective Action Area**



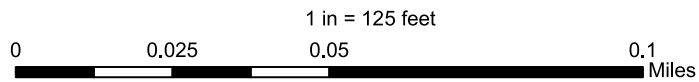
May 2021

**Appendix C
Attachment 12**





**Elyria Wet Weather Plan
Overflow N2 Corrective Action Area**



May 2021

**Appendix C
Attachment 14**

APPENDIX D TO CONSENT DECREE

Post-Construction Monitoring

1. Overview

Elyria shall submit all required post-construction monitoring deliverables and conduct all required post-construction monitoring activities pursuant to the provisions set forth in this Appendix D. The objectives of post-construction monitoring are to: (a) evaluate the performance of the Control Measures implemented pursuant to Appendix C (a.k.a., Wet Weather Integrated Plan) and compare that performance to the required Appendix C Performance Criteria; and (b) assess the effect of discharges from Elyria's Sewer System on the water quality of the Black River. To meet these objectives, Elyria shall complete three categories of post-construction monitoring activities described below:

1. Wastewater Treatment Plant Upgrades Control Measure: Elyria shall execute and complete Control Measure 4 post-construction monitoring activities, and all required submission, reporting, and notice requirements, pursuant to Section 2 of this Appendix.
2. CEPT/HRD Control Measure: Elyria shall submit a plan to execute and complete and shall execute and complete Control Measure 5 post-construction monitoring activities, and all required submission, reporting and notice requirements, pursuant to Section 3 of this Appendix.
3. Sewer System Overflow Control Measures and Water Quality: Elyria shall submit a plan to execute and complete and shall execute and complete post-construction monitoring activities for Control Measures 1 through 3 and 6 through 21 ("Sewer System Overflow Control Measures") that shall include water quality monitoring and modeling, and all required submission, reporting, and notice requirements, pursuant to Section 4 of this Appendix.

2. Post-Construction Monitoring: Wastewater Treatment Plant Upgrades

2.1. Implementation of Post-Construction Monitoring

For a period of one year upon Achievement of Full Operation of Control Measure 4, Elyria shall demonstrate that: 1) all WWTP improvements were designed and constructed and are operational and functioning pursuant to Control Measure (CM) 4 in Appendix C; and 2) Elyria has consistently treated all flows up to a flow rate of 40 MGD through full treatment (i.e., all flow receiving preliminary, primary, and secondary followed by disinfection). To demonstrate the above during that one-year period Elyria shall do the following:

1. Monitor flow at the WWTP at the following locations:
 - a. East Side Interceptor influent;
 - b. West Side Interceptor influent;
 - c. East and west primary treatment flumes;

- d. Influent to the wet weather storage tank (WWST) (from all WWST influent locations)
 - e. Effluent from the WWST that is discharged to the Black River through any outfall at the WWTP, including all bypass outfalls, other than through WWTP outfall 001;
 - f. Influent to the Intermediate Storage Tanks; and
 - g. Effluent discharged from the WWTP after full treatment through outfall 001.
2. Conduct all sample collection, measurements, and pollutant/parameter analyses at the WWTP as required by Elyria's NPDES Permit.
3. Document plant operations so as to allow the evaluation of any noncompliance with NPDES permit limits or any bypassing at WWTP influent flows less than 40 MGD. At a minimum, document aeration basin dissolved oxygen concentrations, aeration mixed liquor suspended solids (MLSS) concentrations, return activated sludge (RAS) rates and secondary clarifier sludge blanket depths.

2.2. CM 4 Post-Construction Monitoring Report

Two years following Achievement of Full Operation of CM 4, Elyria shall submit a report that documents CM 4 post-construction monitoring activities ("CM 4 Post-Construction Monitoring Final Report") that include, at a minimum: a description of all post-construction monitoring activities conducted during the one-year post-construction monitoring period for CM 4; all flow and pollutant/parameter monitoring results; and a demonstration that all WWTP improvements are operational and functioning as designed and constructed pursuant to Appendix C. The following information, at a minimum, shall be included in the CM 4 Post-Construction Monitoring Final Report:

1. Description of all flow monitoring and pollutant/parameters monitoring activities.
2. Summary of WWTP operations, including atypical conditions.
3. Detailed discussion of all deviations from Consent Decree and NPDES Permit requirements.
4. Flow and sampling data summaries, with detailed data provided as appendices to the CM 4 Post-Construction Monitoring Report.
5. Evaluation of Elyria's compliance with CM 4 Performance Criteria and Elyria's NPDES Permit.
6. Identification of all remedies and corrective actions measures to address any noncompliance with the Consent Decree or Elyria's NPDES Permit during the CM 4 post-construction monitoring period.
7. A then-current WWTP flow schematic that includes: a) an identification of all process steps and operations at the WWTP; b) an identification of all flow bypasses and diversions; and c) an identification of all flow monitoring locations.

3. Post-Construction Monitoring: CEPT/HRD

3.1. Overview

By 24 months prior to Achievement of Full Operation of Control Measure 5, Elyria shall submit to EPA and Ohio EPA for review and approval, a plan to conduct post-construction monitoring for the CEPT/HRD (“CEPT/HRD Post-Construction Monitoring Plan”) that will detail Elyria’s proposed plan to collect all information and data necessary to evaluate compliance with the Control Measure 5 Performance Criteria, as set forth in Appendix C, which consists of Numeric Performance Criteria (“CM 5 Numeric Performance Criteria”) for total suspended solids (TSS), *E. coli*, and total residual chlorine (TRC)¹, and Operational Performance Criteria (“CM 5 Operational Performance Criteria”). The CEPT/HRD Post-Construction Monitoring Plan shall include all required elements set forth in Sections 3.2 through 3.9, below. Elyria shall implement the CEPT/HRD Post-Construction Monitoring Plan, as approved by EPA (in consultation with Ohio EPA), upon Achievement of Full Operation of Control Measure 5 and shall submit all required notices and reports pursuant to Sections 3.2 through 3.10, below.

3.2. CEPT/HRD Post-Construction Monitoring Phases and Duration

There are two phases of monitoring and reporting requirements: (a) Phase 1 applies following Achievement of Full Operation of CM 5 (“CM 5 Phase 1 Post-Construction Monitoring Period”) until Phase 1 ends as described in the remainder of this paragraph; and (b) Phase 2 applies for the duration of the Consent Decree after the CM 5 Phase 1 Post-Construction Monitoring Period has ended (“CM 5 Phase 2 Post-Construction Monitoring Period”). The duration of the CM 5 Phase 1 Post-Construction Monitoring Period and the start of the Phase 2 Post-Construction Monitoring Period may be different for TSS, *E. coli*, and TRC, and shall be based on the length of time it takes to collect 14 Qualifying Samples as defined in Section 3.4 for each parameter or for one year, whichever period of time is longer. During CM 5 Phase 1 Post-Construction Monitoring Period, Elyria shall also collect flow-weighted composite samples to analyze for carbonaceous biochemical oxygen demand (CBOD), which shall be collected for information purposes. For all CEPT/HRD requirements under Sections 3.2 through 3.10 that pertain to CM 5 Phase 1 Post-Construction Monitoring Period, “day” shall mean calendar day. For all CEPT/HRD requirements under Sections 3.2 through 3.10 that pertain to CM 5 Phase 2 Post-Construction Monitoring Period, “day” shall mean business day that may exclude weekends, Federal, Ohio State, and City holidays.

¹ If Elyria has received approval from EPA and Ohio EPA to use an alternative disinfection technology that results in or produces a disinfection residual, but that is not a chlorine-based disinfectant, Elyria shall not be required to monitor for TRC but instead shall be required to monitor for the appropriate alternative disinfection residual parameter based on Elyria’s chosen disinfection technology as approved by EPA and Ohio EPA. All provisions in Appendix D related to TRC shall be applicable to and required for the appropriate alternative disinfection residual parameter. See Appendix C, CM 5 Design Criteria and Performance Criteria for alternative disinfection technology approval provisions and required Numeric Performance Criteria.

3.2.1. Total Suspended Solids and Carbonaceous Biochemical Oxygen Demand

The CM 5 Phase 1 Post-Construction Monitoring Period for TSS and CBOD, shall last until both: (a) Elyria has been in continuous compliance with the CM 5 Numeric Performance Criterion for TSS for either a one-year length of time after Achievement of Full Operation of CM 5 or for the length of time it takes Elyria to collect 14 Qualifying Samples of discharges from the CEPT/HRD on 14 days for TSS, whichever length of time is longer; and (b) Elyria provides written notification to EPA and Ohio EPA in accordance with Section XVI (Notices) of the Consent Decree that it has collected the required number of Qualifying Samples for TSS and has been in continuous compliance with the CM 5 Numeric Performance Criterion for TSS for the required period of time. The CM 5 Phase 1 Post-Construction Monitoring Period for TSS and CBOD shall end on the date of the written notification, provided that both of these conditions are met. The CM 5 Phase 2 Monitoring Period for TSS shall begin on the day after the date of the written notification and last for the duration of the Consent Decree. Elyria is not required to monitor for CBOD during the CM 5 Phase 2 Post-Construction Monitoring Period.

3.2.2 *E. coli*

The CM 5 Phase 1 Post-Construction Monitoring Period for *E. coli* shall last until both: (a) Elyria has been in continuous compliance with the CM 5 Numeric Performance Criterion for *E. coli* for either a one-year length of time after Achievement of Full Operation of CM 5 or for the length of time it takes Elyria to collect 14 Qualifying Samples of discharges from the CEPT/HRD on 14 days for *E. coli*, whichever length of time is longer; and (b) Elyria provides written notification to EPA and Ohio EPA in accordance with Section XVI (Notices) of the Consent Decree that it has collected the required number of Qualifying Samples for *E. coli* and has been in continuous compliance with the CM 5 Numeric Performance Criterion for *E. coli* for the required period of time. The CM 5 Phase 1 Post-Construction Monitoring Period for *E. coli* shall end on the date of the written notification, provided that both of these conditions are met. The CM 5 Phase 2 Post-Construction Monitoring Period for *E. coli* shall begin on the day after the date of the written notification and last for the duration of the Consent Decree.

3.2.3. Total Residual Chlorine

The CM 5 Phase 1 Post-Construction Monitoring Period for TRC shall last until both: (a) Elyria has been in continuous compliance with the CM 5 Numeric Performance Criterion for TRC for either a one-year length of time after Achievement of Full Operation of CM 5 or for the length of time it takes Elyria to collect 14 Qualifying Samples of discharges from the CEPT/HRD on 14 days for TRC, whichever length of time is longer; and (b) Elyria provides written notification to EPA and Ohio EPA in accordance with Section XVI (Notices) of the Consent Decree that it has collected the required amount of Qualifying Samples for TRC and has been in continuous compliance with the CM 5 Numeric Performance Criteria for TRC for the required period of time. The CM 5 Phase 1 Post-Construction Monitoring Period for TRC shall end on the date of the written notification, provided that both of these conditions are met. The CM 5 Phase 2 Monitoring Period for TRC shall begin on the day after the date of the written notification and last for the duration of the Consent Decree.

3.3. CEPT/HRD Influent, Effluent, and Diversion Flow Monitoring

Upon Achievement of Full Operation of CM 5 and for the duration of the Consent Decree thereafter (i.e., during both the CM 5 Phase 1 and Phase 2 Post-Construction Monitoring Periods), Elyria shall continuously monitor influent flow to, effluent flow from, and any diversions around the CEPT/HRD. The CEPT/HRD influent flow shall be monitored using a flow meter(s) installed upstream of the CEPT/HRD at a location upstream of the CEPT basin(s) that does not include any flow being diverted around the CEPT/HRD. The CEPT/HRD effluent flow shall be monitored using a flow meter(s) installed downstream of the CEPT/HRD at a location that is downstream from the HRD basin(s) that does not include any flow other than the CEPT/HRD treated flow. All flows that are diverted around the CEPT/HRD shall be monitored at a location that includes all flow diverted around the CEPT/HRD and that excludes all flows receiving CEPT/HRD treatment. During the CM 5 Phase 1 Post-Construction Monitoring Period, Elyria shall also continuously monitor flow at the WWTP at the locations identified in Section 2.1, above.

3.4. Qualifying Samples

During the CM 5 Phase 1 and Phase 2 Post-Construction Monitoring Periods, a “Qualifying Sample” shall be defined as:

1. Any TSS or CBOD composite sample of the CEPT/HRD discharge during a CEPT/HRD Discharge Event, which is defined in Section 3.5, below, that is collected at a location downstream of the CEPT/HRD that captures the flow following CEPT, in a manner consistent with Section 3.6.1, and that excludes flow that does not go through CEPT followed by HRD. If a CEPT/HRD Discharge Event occurs and the discharge continues intermittently during the day, starting and stopping several times, Elyria shall use best efforts to collect as many samples as needed to characterize the CEPT/HRD discharge during that day to obtain a single Qualifying Sample result for each parameter for that day. To accomplish this, Elyria may do one of the following: a) collect a single composite across the entire duration of all discharges on that day and use the analytical results of that sample; b) collect multiple composite samples and manually composite all of the composite samples for that day; or c) collect and analyze the separate composite samples and arithmetically average the analytical results.

2. Any *E. coli* grab sample of the CEPT/HRD discharge during a CEPT/HRD Discharge Event that is collected at a location downstream of CEPT/HRD that captures the flow following disinfection in a manner consistent with Section 3.6.1, and that excludes flow that does not go through CEPT followed by HRD. Elyria shall collect at least one grab sample per day during which a CEPT/HRD Discharge Event occurs. If Elyria chooses to collect multiple grab samples on a given day, Elyria shall calculate the geomean using the results of all individual sample results collected on that day and use that calculated geomean as the day’s Qualifying Sample value.

3. Any TRC grab sample of the CEPT/HRD discharge during a CEPT/HRD Discharge Event that is collected at a location downstream of CEPT/HRD that captures the flow following disinfection, in a manner consistent with Section 3.6.1, and excludes flow that

does not go through CEPT followed by HRD. Elyria shall collect at least one grab sample per day during which a CEPT/HRD Discharge Event occurs. If Elyria chooses to collect multiple grab samples on a given day, Elyria shall use the highest sample result as the day's Qualifying Sample value.

3.5. CEPT/HRD Discharge Event

A CEPT/HRD Discharge Event is defined as a continuous CEPT/HRD treated effluent discharge from the CEPT/HRD system following treatment through CEPT/HRD for more than 30 minutes and if discharge subsequently occurs intermittently during a day, it shall be considered the same Discharge Event.

3.6. CEPT/HRD Discharge Parameter Monitoring

3.6.1. CM 5 Phase 1 Post-Construction Monitoring

During the CM 5 Phase 1 Post-Construction Monitoring Periods, Elyria shall collect Qualifying Samples of the CEPT/HRD treated effluent and conduct analysis for TSS, *E. coli*, and TRC (to evaluate compliance with the CM 5 Numeric Performance Criteria) and for CBOD (for informational purposes only). Elyria shall follow its established protocols, which Elyria shall include in the submitted CEPT/HRD Post-Construction Monitoring Plan, for collecting, handling, preserving, holding and analyzing samples at the WWTP, and 40 CFR Part 136 when collecting and analyzing samples of discharges from the CEPT/HRD. In addition:

1. Grab or composite sample collection in accordance with Section 3.2 shall not be required to begin until 30 minutes after the start of CEPT/HRD discharge.
2. Samples for analyzing TSS and CBOD shall be collected as flow-proportioned composite samples to characterize the CEPT/HRD discharges on each day. Elyria shall make every effort to collect representative samples of sufficient volume to allow for analysis for all required parameters. If insufficient sample volume is collected by the composite samplers to allow for the analysis for all required parameters, Elyria shall prioritize the analysis of TSS before CBOD.
3. Samples for analyzing *E. coli* and TRC shall be collected as one or more discrete grab samples per day of discharge from the CEPT/HRD to characterize CEPT/HRD performance. If a discharge from the CEPT/HRD occurs over the course of two or more days, a minimum of one sample per day shall be collected except:
 - a. if the discharge begins within the last one hour of any day (i.e., after 11 p.m., but before midnight) no samples shall be collected that day and that discharge shall be considered to have begun on the following day; and
 - b. if the discharge begins on one day and ends on the following day within the first one hour of the second day (i.e., after midnight, but before 1 a.m.) and no grab sample has been collected during the second day, the discharge is

considered to have ended on the first day, for the purpose of collecting *E. coli* and TRC grab samples.

3.6.2. CM 5 Phase 2 Post-Construction Monitoring

During the CM 5 Phase 2 Post-Construction Monitoring Periods, Elyria only needs to comply with the monitoring and analysis requirements described above for TSS, *E. coli* and TRC for CEPT/HRD Discharge Events and is not required to comply with monitoring and analysis requirements for CBOD.

3.7. NPDES Permit Monitoring in Lieu of CM 5 Phase 2 Post-Construction Monitoring

CM 5 Phase 2 Post-Construction Monitoring requirements for TSS, *E. coli*, and/or TRC apply until both:

1. There is an NPDES permit with numeric effluent limitations and monitoring requirements for discharges from the CEPT/HRD for the parameter at issue (TSS, *E. coli*, and/or TRC) that are legally in effect (i.e., the limitations and requirements are not stayed) and those limitations and monitoring requirements do not include, incorporate or otherwise account for flows that do not go through the CEPT/HRD; and
2. Elyria provides written notification to EPA and Ohio EPA in accordance with Section XVI (Notices) of the Consent Decree of these facts. The date on which the NPDES monitoring requirements begin to apply in lieu of those described above shall be the date of the written notification, provided both of these conditions are met.

3.8. Rolling 7-day Arithmetic Mean and Geomean Calculations

Elyria shall calculate the rolling 7-day TSS arithmetic means and rolling 7-day *E. coli* geomeans based on Qualifying Samples after there have been at least 7 days of discharge in which Qualifying Samples were collected on each day of discharge for the specific parameter at issue for purposes of evaluating compliance with the CM 5 Numeric Performance Criteria as follows:

1. The first 7-day arithmetic mean and 7-day geomean will be calculated by taking the arithmetic mean and geomean, respectively, of the Qualifying Samples from each of the 7 days of discharge.
2. With each additional day of discharge that has a Qualifying Sample, the rolling 7-day arithmetic means and rolling 7-day geomeans will be recalculated using the most recent 7 Qualifying Samples from the most recent 7 days of discharge.

3.9. Additional CEPT/HRD Post-Construction Monitoring Plan Requirements

The CEPT/HRD Post-Construction Monitoring Plan shall also include the following:

1. A detailed schematic of the CEPT/HRD system that shows all CEPT/HRD basins including any screening facilities, chemical feed locations, all flow monitoring locations, all sampling locations, influent and effluent locations, all pipes and flow conveyances connected to the CEPT/HRD system, and the CEPT/HRD discharge outfall.
2. A map that shows a scaled plan view of the CEPT/HRD system that shows all CEPT/HRD basins including any screening facilities, chemical feed locations, all flow monitoring locations, all sampling locations, influent and effluent locations, all pipes and flow conveyances connected to the CEPT/HRD system, and the CEPT/HRD discharge outfall.
3. Description of all CEPT/HRD component specifications (e.g., basin capacities and configurations, all chemical feed equipment ratings and capacities, all mixing equipment ratings and capacities, all screens sizes, etc.)
4. All chemicals and chemical feed rates for each chemical to be used in each step of the CEPT/HRD system.
5. Description of how flow will be handled if it does not go through the CEPT/HRD for treatment.

3.10. Semi-Annual Reporting

Following Achievement of Full Operation of CM 5 and for the duration of the Consent Decree, Elyria shall include the following information pertaining to discharges from the CEPT/HRD in the Semi-Annual Progress Reports that it submits in accordance with Section VIII (Reporting Requirements) of the Consent Decree for the relevant six-month period:

1. Tabular Summaries of Monitoring Information:

Except as provided below with respect to NPDES Permit Report Information, the Semi-Annual Reports shall include a tabular summary of:

- a. all 7-day arithmetic means for TSS and 7-day geomeans for *E. coli* that were calculated in accordance with Section 3.8 for samples that met the definition of Qualifying Sample;
- b. all TRC analytical results; and
- c. identification of whether each 7-day arithmetic mean, 7-day geomean and TRC analytical result complied with the CM 5 Numeric Performance Criteria.

2. NPDES Permit Report Information In lieu of Tabular Summaries:

If NPDES permit monitoring requirements apply in lieu of Phase 2 Post-Construction Monitoring Requirements in accordance with Section 3.7 above, then Elyria shall provide in the Semi-Annual Progress Reports all monitoring reports and all other notifications and reports required by the NPDES permit for the pollutant(s) at issue to be submitted to Ohio EPA for the CEPT/HRD discharges rather than the tabular summaries described above.

3. CM 5 Phase 1 Post-Construction Monitoring Information:

Section 3.6.1 includes monitoring requirements that only apply during the Phase 1 Post-Construction Monitoring Periods. In addition to the tabular summaries and NPDES permit reports described above, the Semi-Annual Progress Reports shall also include tabular summaries of all of the analytical results that have been obtained in accordance with the sampling and monitoring requirements set forth for the CM 5 Phase 1 Post-Construction Monitoring Periods in Section 3.6.1, including:

- a. the date and time each sample was collected;
- b. the concentration of each pollutant parameter;
- c. all applicable analytical results data qualifiers;
- d. CEPT/HRD discharge flow rate at the time each sample was collected;
- e. the maximum CEPT/HRD discharge flow rate for the 60 minutes prior to the time each sample was collected; and
- f. date and time of the maximum CEPT/HRD discharge flow rate identified in e, above.

3.11. CEPT/HRD Post-Construction Monitoring Final Report

Elyria shall submit a “CM 5 Post-Construction Monitoring Final Report” to EPA and Ohio EPA for review and within 12 months of the date that the last Phase 1 Post Construction Monitoring Period for TSS; *E. coli*; or TRC has concluded. The CM 5 Post-Construction Monitoring Final Report shall include the following information collected during all the CM 5 Phase 1 Post-Construction Monitoring Periods:

1. A tabular summary of all of the analytical results that have been obtained in accordance with the sampling and monitoring requirements set forth for the CM 5 Phase 1 Post-Construction Monitoring Periods in this Section 3.6.1, including:
 - a. the date and time each sample was collected;
 - b. the concentration of each pollutant parameter;
 - c. any applicable analytical results data qualifiers;
 - d. CEPT/HRD discharge flow rates at the time each sample was collected;
 - e. maximum CEPT/HRD discharge flow rate for the 60 minutes prior to the time each sample was collected; and
 - f. the date and time of the maximum CEPT/HRD discharge flow rate identified in e, above.
2. A tabular summary of:
 - a. all 7-day arithmetic means for TSS and 7-day geomeans for *E. coli* that were calculated in accordance with Section 3.8 for samples that met the definition of Qualifying Sample since the date of Achievement of Full Operation for CM 5;
 - b. all TRC analytical results; and

- c. identification of whether each 7-day arithmetic mean, 7-day geomean and TRC analytical result complied with the CM 5 Numeric Performance Criteria.
3. For each day that there were discharges from the CEPT/HRD, provide a 24-hour hydrograph that presents the CEPT/HRD discharge flow rate during that 24-hour period and that identifies when each grab and composite sample was collected. Include the following additional elements on each day hydrograph:
 - a. total WWTP influent flow;
 - b. influent flow into the CEPT/HRD;
 - c. CEPT/HRD discharge flow rate excluding flow that does not go through the CEPT/HRD; and
 - d. flow bypassed or diverted around the CEPT/HRD.
4. Analytical and field measurement methods used to test each sample for the specific parameter analyzed or measured; copies of all field logs and bench sheets; copies of all chain of custody forms; copies of all final analytical laboratory reports; and copies of all records that contain any manual flow-weighted (a.k.a., flow-proportioned) compositing calculations, if any.
5. For each CEPT/HRD Discharge Event, a description of all operational problems encountered during the Event, all remedies taken to address those operational problems, and a summary of all CEPT/HRD chemical dosages used throughout the CEPT/HRD Discharge Event.
6. For any CM 5 Phase 2 Post-Construction Monitoring conducted prior to the date of the end of the last CM 5 Phase 1 Post-Construction Monitoring Period shall be included in the CM 5 Post-Construction Monitoring Final Report, include all information listed in Section 3.2 and an assessment of whether those CM 5 Phase 2 analytical results are consistent with the CM 5 Phase 1 analytical results for the same parameter.

4. Post-Construction Monitoring: Sewer System Overflow Control Measures

By December 31, 2042 (i.e., by 24 months prior to the last Achievement of Full Operation date of CMs 1 through 3 and 6 through 21), Elyria shall submit to EPA for review and approval, in consultation with Ohio EPA, a plan: (a) to conduct post-construction monitoring to evaluate the performance of all Sewer System Overflow Control Measures (CMs 1 through 3 and 6 through 21); and (b) to conduct water quality monitoring and modeling. This plan, "Overflow and Water Quality Post-Construction Monitoring Plan," shall include all required elements set forth in Sections 4.1 and 4.2, below. Elyria shall implement the Overflow and Water Quality Post-Construction Monitoring Plan as approved by EPA upon Achievement of Full Operation of the last Sewer System Overflow Control Measure and shall submit a final report pursuant to the requirements set forth in Section 4.3, below.

4.1 Sewer System Overflow Control Measures

4.1.1 Post-Construction Data Collection

Elyria shall collect the necessary rainfall, sewer system, and overflow data for a one-year period following Achievement of Full Operation of the last of the Sewer System Overflow Control Measures. Elyria shall monitor rainfall (i.e., collect rainfall data) at a minimum of three locations using automatic rain gauges that: record rainfall at least every 15 minutes, or at more frequent intervals; have a rainfall collection sensitivity of 0.01 inches, or a higher sensitivity; and are consistent with industry practice current at the time of rainfall data collection. Elyria shall monitor the level and flow within its Sewer System. Specifically, Elyria shall collect hydraulic grade line data, using level sensors, and flow data, using area/velocity flow meters, in Elyria's Sewer System at sufficient locations to allow validation and, if necessary, recalibration of its hydrologic and hydraulic collection system model(s) ("H&H model(s)"). Elyria shall install the level sensors and area/velocity flow meters at key locations on all interceptors and significant trunk sewers such that validation and, if necessary, recalibration of its H&H model(s) can be completed successfully. Elyria shall maintain, evaluate, and use the collected data from the level sensors and area/velocity flow meters consistent with industry practice current during the time period of level and flow data collection. Elyria shall also monitor the discharges through CSO Outfalls and SSOs, in frequency and volume, at the appropriate locations such that validation and, if necessary, recalibration of its H&H model(s) can be completed successfully. Elyria shall carry out all rainfall, level, flow, CSO and SSO monitoring in accordance with industry practice, including meter maintenance and data review and quality assurance procedures.

4.1.2 Validation of System Model(s)

Elyria shall use the data collected during the one-year period as described in Section 4.1.1, above, to validate the most current up-to-date version of the Elyria's H&H model(s) that includes representations of all the Sewer System Overflow Control Measures in Appendix C as constructed and the hydraulic location of Control Measure 5. The model shall be considered validated based upon application of the Chartered Institution of Water and Environmental Management (CIWEM) Urban Drainage Group's Wastewater Planning User Group Code of Practice for the Hydraulic Modelling of Urban Drainage Systems, 2017 (CIWEM 2017 Code of Practice), or any update to 2017 Code of Practice. In addition to application of the numeric and qualitative criteria in Section 6.5 of the Code of Practice, Elyria shall specifically consider as a primary validation criterion the degree to which the number of CSO and SSO events simulated for the monitoring period match those detected during that same period by Elyria's overflow monitoring. If the number of overflow events simulated for the monitoring period fail to closely match those detected during that same period by Elyria's overflow monitoring, considering inherent model error, the model shall be deemed to not be validated.

4.1.3 Recalibration and Validation of System Model(s) (if necessary)

If the model is not successfully validated as described above, Elyria shall select three or more time periods, each containing suitable wet weather events to recalibrate the model, such that the model can be determined to be validated as described above. Elyria may also

choose to use a continuous recalibration approach using all appropriate storms within the post-construction monitoring period.

4.1.4 Evaluation of Typical Year CSO Continuous Simulation Results

Elyria shall evaluate the performance of the CSO Control Measures (i.e., all Appendix C Control Measures that are addressing or controlling at least one CSO Outfall) and determine if the Control Measures have met the Appendix C Performance Criteria by modeling a year of rainfall in Elyria's most up-to-date H&H model(s) that includes a representation of all of the completed Appendix C Control Measures. Elyria's model simulation shall be a continuous simulation using Elyria's "typical year," which is a synthetic year of rainfall that is a combination of 1991 and 1993 rainfall recorded at the Cleveland Hopkins Airport that was created based on the analysis of 45 years of rainfall (1949-1993). Table D-1, below, lists all the typical year storms, the dates, the hour, duration, depth and intensity of precipitation event. Elyria will use the validated, and/or recalibrated, hydraulic model to run the "typical year" to determine whether the CSO control measures have achieved the Performance Criteria identified in the Consent Decree.

If the modeled overflow frequency using the validated, and/or recalibrated, hydraulic model exceeds the level required for a given CSO, Elyria shall evaluate both modified operating practices as well as further infrastructure improvements. Alternate operating procedures and any additional infrastructure improvements needed to achieve the CSO Performance Criteria will be documented in the Overflow and Water Quality Post-Construction Monitoring Final Report (see Section 4.3, below). This report will include details on any additional work needed to achieve the Performance Criteria as well as a proposed implementation schedule for that work.

4.1.5 SSO Elimination Results Evaluation

Elyria will use the validated and/or recalibrated hydraulic model to run the "5-year, 2-hour" and "10-year, 2-hour" storm events, and any other storms necessary to demonstrate the required compliance with SSO elimination as set forth in Appendix C. If SSOs have been reported as part of Elyria's monitoring of CSOs and SSOs during the one-year period following Achievement of Full Operation of all Control Measures in Appendix C, Elyria shall characterize the return interval and duration of the rain events that triggered SSOs using Bulletin 71, Rainfall Frequency Atlas of the Midwest, Huff & Angel, 1992; etc.). If the triggering rain events are inconsistent with the required SSO elimination criteria as set forth in Appendix C, Elyria will recalibrate its model, if necessary, considering inherent model error and spatial variability of rainfall.

4.2 Water Quality Monitoring

Elyria shall include in its Overflow and Water Quality Post-Construction Monitoring Plan detailed description and methodology for monitoring the water quality of the Black River and the methodology Elyria will use to assess the effect of discharges from Elyria's Sewer System on the water quality of the Black River. Elyria shall include a quality assurance project plan(s) (QAPP), a field sampling plan(s), and all relevant standard operating procedures with the description and methodology for water quality monitoring. Elyria shall develop and implement the QAPP, and all other field sampling plans and documentation, that conforms to EPA

Requirements for Quality Assurance Project Plans, EPA QA/R-2, EPA/240/B-01/002 (March 2001) or any superseding document; and EPA Guidance for Quality Assurance Project Plans, EPA/QA/G-5, EPA 240-R-02-009 (December 2002) or any superseding document.

Elyria's assessment of the effect of discharges from Elyria's Sewer System on the water quality of the Black River shall focus on the effect of the discharges in terms of *E. coli*, the identified pollutant of concern, or other comparable pollutant that has replaced *E. coli* in the State of Ohio's recreational water quality standards. This data shall be compared to other available historical water quality data collected prior to implementation of the Control Measures.

As part of Elyria's water quality monitoring of the Black River, Elyria shall collect in-stream samples at a minimum six locations in the Black River under varying weather and flow conditions during the recreation season (currently defined as May 1 through October 31):

1. Upstream on the West Branch of the Black River at the bridge on Oberlin Elyria Road between Russia Road and Hall Road)
2. Downstream on the West Branch of the Black River at a location that is downstream of all of the CSOs and SSOs that discharge to the West Branch of the Black River.
3. Upstream on the East Branch of the Black River at the bridge on Fuller Road between Sandy Lane and East River Road)
4. Downstream on the East Branch of the Black River at a location that is downstream of the Eastern Falls of Cascade Park and upstream of the confluence of the East and West Branches of the Black River Cascade Falls Park
5. Downstream of the confluence of the East and West Branches of the Black River at Cascade Park
6. Downstream of the WWTP discharge outfall 001 into the Black River at the bridge at Ford Road east of I-90/Ohio State Route 2 at the bridge at Detroit Road west of East River Road/Gulf Road

Elyria shall take sufficient samples under varying weather and flow conditions to provide sufficient data to allow an assessment of decreases in the counts (i.e., concentration) of *E. coli* in the Black River following implementation of the Control Measures and to provide data to compare to Ohio's water quality standards. Elyria shall collect all in-stream samples in the Black River under different conditions to fully evaluate the effect of Elyria's CSO and SSO discharges on the Black River and to differentiate between *E. coli* concentrations in the Black River that are due to Elyria's CSOs and SSOs and those that are not. To that end, Elyria shall conduct in-stream sampling under the following conditions, at a minimum:

1. during dry weather when *E. coli* levels in the Black River are expected to have been minimally impacted, if at all, by *E. coli* from Elyria's CSOs and SSOs;
2. during wet weather events that occur on days when Elyria's CSOs and SSOs are not discharging; and
3. during wet weather events that occur on days when Elyria's CSOs and SSOs are discharging.

When sampling during wet weather events that occur on days when Elyria's CSOs and SSOs are discharging, Elyria shall collect in-stream samples at a time when discharge from any of Elyria's CSOs or SSOs upstream of the sampling location would be expected to have reached the sample location.

Sampling shall be done at a correspondingly appropriate time relative to the other sampling events to enable for an assessment of how *E. coli* levels in the Black River are impacted by Elyria's CSOs and SSOs. If the State of Ohio's water quality standards have been revised to replace *E. coli* with another parameter as a recreational use criterion, then Elyria shall sample for such parameter, in lieu of sampling for *E. coli*.

4.3 Overflow and Water Quality Post-Construction Monitoring Final Report

On or before December 31, 2046, Elyria shall submit to the EPA and Ohio EPA a report on the completed Overflow and Water Quality Post-Construction Monitoring Plan activities that shall include an overflow performance and water quality evaluation. This report, "Overflow and Water Quality Post-Construction Monitoring Final Report," shall:

1. Demonstrate that Elyria completed all of the requirements of the approved Overflow and Water Quality Post-Construction Monitoring Plan;
2. Evaluate whether the Sewer System Overflow Control Measures implemented pursuant to Appendix C meet the Performance Criteria set forth in Appendix C;
3. Evaluate how well Elyria's Sewer System is performing as a whole, following completion of all Control Measures, and shall include an assessment of whether the Control Measures implemented pursuant to Appendix C, as constructed, operated, or otherwise implemented, have achieved the Performance Criteria;
4. Summarize the data collected during the entirety of the Sewer System Overflow post-construction monitoring period and include any new data relevant to the evaluation that Elyria did not previously submit to EPA or Ohio EPA;
5. If model or monitoring results show that Elyria's Sewer System Overflow Control Measures did not meet the Performance Criteria, Elyria shall identify and describe in detail deficiencies or performance-limiting factors in system design, process, operations, and maintenance that may have limited the ability of the Sewer System Overflow Control Measures to achieve their intended performance; and
6. Identify and describe in detail all necessary and feasible corrective measures, alternative operating strategies and additional facilities and processes necessary to meet the Performance Criteria.

Table D-1: Typical Year Rainfall Characteristics

Storm Number	Date	Hour	Duration (hour)	Depth (inches)	Average Intensity (in/hr)	Maximum Intensity (in/hr)	Storm Number	Date	Hour	Duration (hour)	Depth (inches)	Average Intensity (in/hr)	Maximum Intensity (in/hr)
1	1/3/1991	12	1	0.01	0.01	0.01	62	7/3/1993	2	1	0.01	0.01	0.01
2	1/5/1991	13	10	0.18	0.02	0.03	63	7/4/1993	16	1	0.44	0.44	0.44
3	1/9/1991	13	2	0.03	0.02	0.02	64	7/6/1993	16	1	0.47	0.47	0.47
4	1/11/1991	4	19	0.39	0.02	0.09	65	7/11/1993	20	3	0.35	0.12	0.24
5	1/12/1991	12	21	0.04	0	0.01	66	7/19/1993	14	2	0.14	0.07	0.13
6	1/15/1991	24	8	0.33	0.04	0.08	67	7/26/1993	6	2	0.04	0.02	0.02
7	1/16/1991	19	10	0.17	0.02	0.03	68	7/28/1993	17	9	1.08	0.12	0.72
8	1/20/1991	13	30	0.53	0.02	0.05	69	7/29/1993	20	3	0.67	0.22	0.31
9	1/26/1991	7	10	0.03	0	0.01	70	8/2/1993	5	2	0.42	0.21	0.41
10	1/27/1991	19	4	0.08	0.02	0.03	71	8/3/1993	21	10	0.42	0.04	0.2
11	1/29/1991	20	11	0.37	0.03	0.1	72	8/6/1993	19	4	0.1	0.03	0.06
12	1/30/1991	18	1	0.01	0.01	0.01	73	8/7/1993	13	1	0.13	0.13	0.13
13	1/31/1991	14	1	0.01	0.01	0.01	74	8/10/1993	16	2	0.02	0.01	0.01
14	2/5/1991	7	1	0.01	0.01	0.01	75	8/11/1993	4	4	0.24	0.06	0.23
15	2/6/1991	15	9	0.1	0.01	0.02	76	8/12/1993	17	1	0.02	0.02	0.02
16	2/10/1991	15	20	0.73	0.04	0.09	77	8/16/1993	4	1	0.07	0.07	0.07
17	2/13/1991	14	59	1.53	0.03	0.16	78	8/20/1993	9	1	0.01	0.01	0.01
18	2/16/1991	24	14	0.18	0.01	0.04	79	8/28/1993	2	1	0.06	0.06	0.06
19	2/18/1991	15	13	0.08	0.01	0.04	80	8/31/1993	13	6	0.03	0.01	0.02
20	2/19/1991	17	7	0.29	0.04	0.1	81	9/2/1993	8	21	1.02	0.05	0.67
21	2/26/1991	4	40	0.08	0	0.01	82	9/6/1993	13	1	0.35	0.35	0.35
22	2/28/1991	9	4	0.04	0.01	0.02	83	9/7/1993	9	1	0.01	0.01	0.01
23	3/2/1991	1	14	0.06	0	0.02	84	9/10/1993	1	1	0.01	0.01	0.01
24	3/3/1991	13	24	0.7	0.03	0.1	85	9/10/1993	13	1	0.01	0.01	0.01
25	3/6/1991	6	14	0.83	0.06	0.13	86	9/15/1993	20	16	2.38	0.15	0.4
26	3/9/1991	18	2	0.07	0.04	0.05	87	9/22/1993	24	16	0.12	0.01	0.05
27	3/10/1991	12	4	0.08	0.02	0.03	88	9/25/1993	16	20	1.63	0.08	0.29
28	3/17/1991	21	31	0.5	0.02	0.07	89	9/27/1993	13	9	0.15	0.02	0.06
29	3/22/1991	6	4	0.32	0.08	0.18	90	9/28/1993	10	3	0.23	0.08	0.12
30	3/22/1991	24	3	0.14	0.05	0.08	91	9/29/1993	10	17	0.97	0.06	0.24
31	3/23/1991	24	10	0.23	0.02	0.06	92	10/1/1993	10	1	0.01	0.01	0.01
32	3/26/1991	13	1	0.02	0.02	0.02	93	10/1/1993	23	6	0.58	0.1	0.22
33	3/27/1991	24	1	0.62	0.62	0.62	94	10/9/1993	6	13	0.43	0.03	0.13
34	3/31/1991	19	6	0.07	0.01	0.03	95	10/16/1993	22	16	0.6	0.04	0.18
35	4/1/1993	23	5	0.16	0.03	0.07	96	10/19/1993	15	1	0.04	0.04	0.04
36	4/2/1993	17	12	0.06	0.01	0.02	97	10/20/1993	15	6	0.04	0.01	0.02
37	4/9/1993	14	16	0.77	0.05	0.09	98	10/27/1993	22	4	0.15	0.04	0.1
38	4/11/1993	16	1	0.09	0.09	0.09	99	10/30/1993	10	39	1.67	0.04	0.12
39	4/14/1993	19	2	0.03	0.02	0.02	100	11/1/1991	17	1	0.01	0.01	0.01
40	4/15/1993	23	3	0.34	0.11	0.16	101	11/7/1991	9	12	0.12	0.01	0.02
41	4/19/1993	17	13	0.27	0.02	0.11	102	11/11/1991	2	7	0.69	0.1	0.14
42	4/20/1993	16	18	0.61	0.03	0.13	103	11/12/1991	11	12	0.21	0.02	0.06
43	4/24/1993	12	2	0.03	0.02	0.02	104	11/15/1991	1	31	0.62	0.02	0.1
44	4/25/1993	8	15	0.46	0.03	0.16	105	11/18/1991	17	21	0.3	0.01	0.1
45	4/30/1993	1	6	0.1	0.02	0.03	106	11/20/1991	17	19	0.46	0.02	0.14
46	5/4/1993	13	25	0.63	0.03	0.22	107	11/23/1991	20	3	0.24	0.08	0.12
47	5/19/1993	4	6	0.15	0.03	0.07	108	11/24/1991	17	8	0.03	0	0.01
48	5/23/1993	16	1	0.01	0.01	0.01	109	11/25/1991	14	1	0.01	0.01	0.01
49	5/24/1993	6	6	0.08	0.01	0.04	110	11/28/1991	6	8	0.19	0.02	0.05
50	5/28/1993	24	2	0.03	0.02	0.02	111	11/30/1991	6	1	0.04	0.04	0.04
51	5/31/1993	23	2	0.16	0.08	0.08	112	12/2/1991	16	17	1.19	0.07	0.29
52	6/3/1993	23	2	0.07	0.04	0.04	113	12/3/1991	21	11	0.06	0.01	0.02
53	6/5/1993	5	6	0.37	0.06	0.25	114	12/12/1991	15	17	0.16	0.01	0.06
54	6/7/1993	16	9	1.56	0.17	0.67	115	12/14/1991	7	6	0.15	0.03	0.12
55	6/9/1993	10	1	0.21	0.21	0.21	116	12/15/1991	16	16	0.07	0	0.01
56	6/9/1993	24	1	0.24	0.24	0.24	117	12/18/1991	3	2	0.02	0.01	0.01
57	6/19/1993	6	2	0.31	0.16	0.22	118	12/18/1991	16	16	0.03	0	0.01
58	6/20/1993	13	26	0.54	0.02	0.15	119	12/20/1991	22	8	0.22	0.03	0.07
59	6/25/1993	20	1	0.08	0.08	0.08	120	12/23/1991	7	6	0.1	0.02	0.03
60	6/27/1993	18	1	0.94	0.94	0.94	121	12/28/1991	22	35	0.26	0.01	0.03
61	7/1/1993	21	4	0.05	0.01	0.02	Total				37.51		

APPENDIX E TO CONSENT DECREE
Capacity, Management, Operation and Maintenance (“CMOM”) Program

NOTE: The CMOM Program requirements set forth in this Appendix E apply to Elyria’s Sewer System excluding the sewers that collect and convey only stormwater.

In addition to any CMOM Program requirements set forth in Paragraphs 18-20 of the Consent Decree, Elyria’s CMOM Program shall comply with the nine minimum controls as required by the section II.B of CSO Policy, Part II.F of its current NPDES Permit, and EPA’s May 1995 “Combined Sewer Overflows; Guidance for Nine Minimum Controls”; shall comply with the operational plan requirements of section II.C.6 of the CSO Policy; and shall incorporate and update Elyria’s Combined Sewer System Operational Plan that was approved by Ohio EPA May 2, 1997. Additionally, Elyria’s CMOM Program (“CMOM Program”) shall include, at a minimum, the following:

1. An updated Combined Sewer System Operational Plan.
2. An inventory of Sewer System components and equipment.
3. Detailed procedures for identifying all occurrences of CSOs and SSOs from the Sewer System.
4. A Sewer System condition assessment program consisting of:
 - a. Routine proactive inspection of the Sewer System, with closed-circuit television (“CCTV”) inspection of all gravity sewer pipes in the Sewer System. Elyria shall complete one inspection of each gravity sewer pipe in the Sewer System within five years of the Effective Date. This initial inspection shall include CCTViing performed by Elyria during calendar years **2019, 2020, and 2021** through the date of EPA approval of the CMOM Program. Elyria shall then re-inspect its entire Sewer System every five years for the duration of the Consent Decree. Elyria may implement a Sewer System inspection schedule that is less frequent than every 5 years if Elyria develops and submits to EPA for review and approval, in consultation with the State, a risk-based re-inspection schedule.
 - b. Inspection of all manholes in the Sewer System within five years of the Effective Date and every five years following, and preparation of condition assessment reports following CCTV inspections. The initial inspection shall include inspections performed by Elyria during calendar years **2019, 2020, and 2021** through the date of EPA approval of the CMOM Program. Elyria may develop a risk-based re-inspection schedule and submit it to EPA for review and approval, after consultation with the State.
 - c. All pipe and manhole inspections and all inspection reports shall be consistent with a nationally-recognized sewer inspection protocol, such as that of the National Association of Sewer Service Companies (“NASSCO”). Elyria shall ensure that at least one member of each CCTV crew maintains Pipeline Assessment Certification Program (“PACP”) and Manhole Assessment Certification Program (“MACP”) certifications or other equivalent certifications from another nationally recognized organization similar to NASSCO.

5. Cleaning of all gravity sewer lines: (i) once every five years: and (ii) as necessary to maintain a minimum of 90% of nominal sewer capacity, based upon the percent of cross-section reduction by accumulated material, in each sewer segment throughout the Sewer System. Elyria shall complete one cleaning of each gravity sewer pipe in the Sewer System within five years of the Effective Date, which shall include cleaning performed by Elyria during calendar years **2019, 2020, and 2021** as part of its CCTV activities described above. After the first five-year cleaning cycle is completed, Elyria may develop a need-based cleaning schedule to extend the cleaning interval for selected pipes and submit it to EPA for review and approval, after consultation with the State.

6. Routine daily, weekly, monthly, and annual preventative maintenance of pumping stations, and force mains preventative maintenance based on risk-based assessments.

7. Sealing (where appropriate) and maintenance of manholes.

8. Identification and remediation of structural deficiencies.

9. Procedures for ensuring that new sewers and connections are properly designed and constructed (including testing of new sewer installations) to limit infiltration, prevent overflows, and to ensure that new connections of inflow sources are prohibited.

10. Procedures for ensuring that repair, rehabilitation and replacement projects are properly designed and constructed (including testing of rehabilitated Sewer System components) to prevent overflows and eliminate excessive RDI/I.

11. Utilization of a computerized maintenance management system that shall be used to: (i) document complaints, work orders, and updates to equipment inventory; (ii) schedule and track Sewer System preventative and reactive maintenance activities including condition assessment activities; (iii) track Sewer System component condition data; and (iv) schedule component rehabilitation and replacement in accordance with the results of the Sewer System assessment activities required by Paragraphs 2-5.

12. A Fats, Oil and Grease (“FOG”) control program that, at a minimum, includes the following:

a. Procedures for identifying and mitigating FOG trouble spots throughout the Sewer System.

b. Procedures for categorizing and regulating Food Establishments. Food Establishments shall mean any nonresidential facility, including, but not limited to, restaurants, bakeries, hotel and cafeteria kitchens, commercial kitchens, kitchens serving schools, hospitals and other healthcare facilities, food processing plants or other nonresidential facilities that can introduce food waste or FOG into Elyria’s Sewer System. Elyria shall follow the procedures required by this Paragraph to ensure that Food Establishments install necessary FOG control devices and/or implement necessary procedures to prevent excess FOG discharges to the Sewer System.

c. Procedures for conducting inspections and taking follow-up actions for FOG trouble spots that are determined to be caused by Food Establishments. When trouble spots are identified to be caused by one or more Food Establishments, Elyria shall follow an established enforcement protocol to ensure that the Food Establishment(s) implement all necessary measures to prevent excess FOG discharges to the Sewer System.

d. Procedures for coordinating with the local health departments or other agencies that conduct regular inspection at Food Establishments to coordinate efforts and ensure Elyria is made aware of any FOG trouble spots identified by the local health departments or other agencies.

e. Elyria shall also ensure appropriate on-site record-keeping by each regulated Food Establishment, including, but not limited to records of the dates of grease removal, the amount of grease removed, the location where the Food Establishment disposed of the grease and the name, address, and phone number of the hauling or recycling service used to transport and/or dispose of the FOG.

f. Elyria shall maintain a list of all Food Establishments determined to be the cause of FOG trouble spots and the specific actions taken to ensure that those Food Establishments install proper FOG control devices.

g. Educational efforts aimed at FOG sources and, if appropriate, residential users, and recommendations for changes to public education, outreach and compliance efforts to inform commercial, institutional and residential property owners and tenants about the need to minimize the introduction of FOG into the Sewer System.

h. A hyperlink on the City of Elyria's website that provides residents and businesses with information about Elyria's FOG program including a contact phone number, electronic mailing address, or other contact information that residents and business can use to obtain more information or report any problems.

13. A root control program that addresses, at a minimum, scheduling and performing corrective measures including both short-term mitigation of root intrusion (i.e., routine maintenance) and rehabilitation of the areas in which root intrusion has caused recurring blockages (i.e., sewer replacement or relining), and a proposal that includes scheduled inspection of known problem areas.

14. An Overflow Response Plan ("ORP") to respond to and address SSOs, Unauthorized Releases, and Dry Weather Overflows ("Overflows") that includes:

a. Overflow response organization, staffing, and resources;

b. Citizen reporting mechanisms, information management, staff communications, and resource dispatch procedures, including target time-frames for each aspect of overflow response;

c. Specific Overflow response procedures, including investigative, corrective and mitigation/cleanup procedures;

- d.** Overflow rate/volume estimation procedures;
- e.** Public notification procedures for all SSOs and Dry Weather Overflows that reach the Receiving Waters;
- f.** Impact monitoring;
- g.** Regulatory Reporting and records retention; and
- h.** Staff training.

15. A “root cause analysis” process for situations in which the City’s Sewer System failed to perform as designed and resulted in an SSO, Unauthorized Release, or Dry Weather Overflow. This process shall include the documentation of all the known operational variables that lead to the failure in performance of the Sewer System and the occurrence of an SSO, Unauthorized Release, or Dry Weather Overflow.