

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE-OPELOUSAS DIVISION

UNITED STATES OF AMERICA. and  
THE STATE OF LOUISIANA through  
THE DEPARTMENT OF ENVIRONMENTAL  
QUALITY.

Plaintiffs.

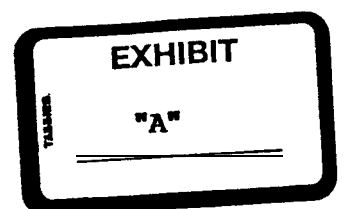
v.

ACADIA WOODS ADD. #2 SEWER CO.  
ACADIANA

Civil Action No. 6:98-0687

The Honorable-Tucker L. Melancon

CONSENT DECREE WITH RESPECT TO TESI



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## I. Backmound

A. On January 16, 1998, the United States of America (United States), at the request of the Administrator of the U.S. Environmental Protection Agency (EPA), filed a Complaint in the Middle District of Louisiana against Johnson Properties, Inc. (Johnson Properties), Darren K. Johnson and Acadiana Treatment Systems, Inc., arising out of their ownership and operation of 116 sewage treatment plants (STPs) in Louisiana. Johnson Properties has approximately 60 subsidiaries, which were primarily engaged in the water and sewage treatment industry and own approximately 230 STPs in Louisiana, North Carolina, South Carolina, Tennessee, Pennsylvania, and Mississippi.

B. On April 16, 1998, the district court in the Middle District of Louisiana transferred the action sua sponte to the Western District of Louisiana. On May 15, 1998, the United States filed an Amended Complaint that added seventeen additional subsidiaries and affiliates of Johnson Properties as defendants. On May 27, 1998, the State of Louisiana, through the Department of Environmental Quality (LDEQ) filed a motion for intervention as plaintiff, and the Court granted the motion on May 29, 1998. On July 27, 1998, the United States filed a Second Amended Complaint that added Glenn Johnson as a Defendant. The defendants named in the Complaint and Amended Complaints shall be referred to herein as the "Original Defendants." The Original Defendants owned and operated approximately 179 STPs in Louisiana.

C. The United States' Second Amended Complaint was filed pursuant to Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b), for injunctive relief and civil penalties for discharge of pollutants into the navigable waters of the United States in violation of Section 301 of the Clean Water Act, 33 U.S.C. § 1311, and for violations of certain terms, conditions and

limitations of National Pollutant Discharge Elimination System (NPDES) permits issued to Johnson Properties and its subsidiaries pursuant to Section 402 of the Clean Water Act. 33 U.S.C. § 1342. LDEQ's motion for intervention was based on 33 U.S.C. §1365(b) and Rule 24 of the Federal Rules of Civil Procedure. LDEQ sought in its Complaint in Intervention the same relief as to the Clean Water Act as was sought by the United States. LDEQ also sought enforcement of the Louisiana Water Control Law. La. R.S. 30:2071 et seq., and particularly La. R.S. 30:2076, pursuant to the Court's supplemental jurisdiction under 28 U.S.C. § 1367(a).

D. Pursuant to the authority of Section 309(d). of the Clean Water Act. 33 U.S.C. § 1319(d). and La. R.S. 30:2025 and 2076. the United States' Amended Complaint and LDEQ's Complaint in Intervention sought the imposition of civil penalties and compliance with NPDES permits issued to Johnson Properties and its subsidiaries at the STPs owned by Johnson Properties in Louisiana.

E. The parties entered into settlement negotiations. and a Consent Decree was entered by the Court on July 31, 1998 ( 1998 Consent Decree). The civil penalties were deferred at the time

STPs in Louisiana

STPs into the environment. None of the

the Court requesting the appointment of a receiver for the STPs.

F. On March 12, 1999, Johnson Properties filed a petition for Chapter 11 bankruptcy protection in the Middle District of Louisiana. Johnson Properties also filed a motion for a stay in the enforcement action in this Court on March 15, 1999. This Court denied the motion, and Johnson Properties petitioned the United States Court of Appeals for the Fifth Circuit for a writ of mandamus. The Fifth Circuit denied Johnson Properties' petition on March 18, 1999.

G. This Court conducted a hearing on the motion to appoint a receiver from March 15, 1999 to March 19, 1999, and found that the Louisiana STPs were in noncompliance due to a nearly complete failure of the Original Defendants to perform routine operation and maintenance, make needed repairs, and commit sufficient capital. The Court further found that the finances and records of Johnson Properties and its numerous subsidiaries were intermingled to such a degree as to make it impossible to separate them. On March 22, 1999, this Court appointed Martin A. Schott as receiver of Johnson Properties, its assets, and all its subsidiary corporations. This Court granted the receiver broad powers to perform all acts necessary to achieve compliance with the Consent Decree, including the authority to sell corporate property and to manage, control, and deal with all items, assets, properties, contracts, and other matters incident to the receiver's responsibilities. Martin A. Schott was concurrently appointed trustee of Johnson Properties, its assets, and all its subsidiary corporations by the bankruptcy court in the Middle District of Louisiana.

H. Michael Johnson, the vice president, chairman of the board, and sole shareholder of Johnson Properties, filed an appeal of the Court's judgment and order appointing the receiver. The Fifth Circuit dismissed that appeal on May 3, 2000.

I. On April 4, 2000, the trustee/receiver filed an initial Disclosure Statement and a proposed Plan of Reorganization in the Bankruptcy Court for the Middle District of Louisiana. The trustee filed an Amended Plan of Reorganization on August 7, 2000 ("Amended Plan"). The Disclosure Statement and subsequent amendments thereto state that the Johnson Properties system of STPs could not obtain environmental compliance without extensive capital improvements, and that it would not be possible to obtain rate increases to a level that could adequately fund the necessary improvements. The Disclosure Statement concluded that it would be necessary to identify a purchaser willing and able to buy the entire Johnson Properties system as a whole; enter into an agreement with EPA and LDEQ for a compliance plan; and put in its own capital in order to achieve **compliance** within a time period and on terms found reasonable by the EPA and LDEQ. Accordingly, the Plan and Amended Plan provide for the sale of all of the assets of Johnson Properties, Inc., and its corporate subsidiaries. The trustee conducted an auction, after which the trustee announced that all of the assets of Johnson Properties would be sold to Total Environmental Solutions, Inc. (TESI) (the "Intervening Defendant"), a **wholly-** owned subsidiary of South Louisiana Electric Cooperative Association (SLECA). On or about September 8, 2000, EPA and LDEQ voted to confirm the Amended Plan. The Bankruptcy Court confirmed the Amended Plan on or about September 15, 2000. At the conclusion of the confirmation hearing, the Bankruptcy Court found that the sale of the STPs to TESI would be an appropriate and effective way to advance the objective of moving the STPs toward compliance with the federal and state environmental laws.

J. TESI has inspected the STPs in Louisiana and agrees and acknowledges that most of the STPs in Louisiana are not in compliance with the 1998 Consent Decree signed by the Original Defendants.

K. Paragraph 4 of the 1998 Consent Decree provides that it is binding upon the successors and assigns of the Original Defendants..

L. Most of the STPs in Louisiana and Mississippi are not currently in compliance with their NPDES permits or the Clean Water Act. and the STPs in South Carolina. North Carolina Tennessee. and Pennsylvania may not be in compliance.

M. TESI has committed to operate the STPs without service interruption and cause the STPs to achieve compliance. TESI represents that it has made the necessary arrangements to secure adequate capital to meet its commitments under this Consent Decree.

N. The Consenting Parties agree and this Court finds that achieving compliance by the STPs will require thorough ongoing changes in the operation and maintenance program for the STPs, as well as numerous repairs and capital improvements. The Consenting Parties agree and this Court finds that it is appropriate to set forth in this Consent Decree a schedule for achieving compliance.

O. The Intervening Defendant represents that. aside from the transfer of all of the assets of Johnson Propenies to TESI. the Intervening Defendant has no business dealings or any other relationship with any of the Original Defendants. or their shareholders or officers. The Intervening Defendant acknowledges and agrees that this representation is material to the Plaintiffs' decision to enter into this Consent Decree.

P. This Consent Decree will be lodged concurrently with the filing by TESI of a motion to add TESI as an Intervening Defendant. The United States and LDEQ will consent to and support the motion to intervene.

Q. The Consenting Parties agree and the Court finds that the plan for achieving compliance and settlement of these civil matters without further litigation is in the public interest and that the entry of this Consent Decree is the **most appropriate** means of resolving these matters.

NOW THEREFORE, upon the joinder of the Intervening Defendant, before the taking of testimony, without the necessity of trial, without adjudication of any issues of fact or law, without any admission of liability or of any issue of fact or law by the intervening Defendant, and upon the consent of the Consenting Parties hereto.

IT IS ADJUDGED, ORDERED AND DECREED THAT:

## **II. Definitions**

1. Terms used in the Consent Decree that are defined in Section 502 of the Clean Water Act, 33 U.S.C. § 1362, shall have the meaning set forth in such definitions, unless specific definitions are contained herein.

2. Whenever the following **terms are used** in this Consent Decree, the definition specified hereinafter shall apply:

a. "Consenting Parties" means the United States of America on behalf of EPA (United States), LDEQ, and the Intervening Defendant:

b. "Original Defendants" means the Defendants named by the United States' Second Amended Complaint and LDEQ's Complaint in Intervention in this action.

namely Acadia Woods Add. #2 Sewer Co., Acadiana Treatment Systems, Inc., ATS Utilities, Inc., Beaujolais Sewerage Service Corp., Brandywine Sanitation Corp., Cedar Bend Villas Sewer Co., Inc., Community Sewerage Service, Inc., Green Briar Sewer Company, Inc., Hunstock Hills Sewer Company, Inc., Johnson Properties, Inc., Pointe Coupee Sewerage, Inc., Rigolets Utilities, Inc., Seashore Utilities of Louisiana, Inc., Tara Development Corp., Thoroughbred Park Service Corp., Timberly Terrace Sewerage, Inc., Tri-B Sanitation Corporation, Twelve Cedars Sanitation Corp., Williams & Ingram Sewerage Co., Inc., Glenn Johnson, and Darren K. Johnson:

c. "Effective Date" means the date on which the Court enters this Consent Decree as a judgment of this Court:

d. The "Intervening Defendant" is TESI;

e. "EPA" means the United States Environmental Protection Agency;

f. "LDEQ" means the Louisiana Department of Environmental Quality;

g. "Notify" and "submit" and other terms signifying an obligation to transmit or communicate documents and information mean to deliver in person, deposit in the United States mail, transmit by facsimile (if followed by delivery of the original), or dispatch by express courier not later than the day that such transmission or communication is required by this Consent Decree. Should such day be a weekend day or a federally or state recognized holiday, the delivery, deposit, or dispatch shall be due on the next business day:

h. "NPDES permits" means those National Pollution Discharge Elimination System permits which either have been or should have been issued by EPA or LDEQ for the operation of the STPs;

i. "Parties" means the United States, LDEQ, the Original Defendants, and the Intervening Defendant;

j. "Plaintiffs" means the United States and LDEQ; and

k. "STPs" means the sewage treatment plants located in Louisiana and listed on Appendix A, together with their associated collection systems.

l. "Closing Date" means the earlier of (i) the date on which title to the STPs is conveyed to TESI; or (ii) the date on which TESI actually takes over operation or possession of the STPs.

### **III. Jurisdiction**

3. The Consenting Parties agree and consent that this Court has jurisdiction over the subject matter of this Consent Decree and over the Consenting Parties pursuant to Section 309(b) of the Clean Water Act, 33 U.S.C. §§ 1319(b), and also pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367.

### **IV. Parties Bound and Notice of Transfer**

4. The provisions of this Consent Decree shall apply to and be binding upon the United States and LDEQ, and upon the Intervening Defendant and its officers, agents, successors, assigns and all persons acting on its behalf. Each Consenting Party certifies that at least one of its undersigned representatives is fully authorized by the party whom he or she represents to

enter into the terms and conditions of this Consent Decree. to execute it on behalf of that **party**. and to legally bind the party on whose behalf he or she executes this Consent Decree.

5. No change in ownership, corporate, or partnership status relating to the STPs will in any way alter the responsibilities of the intervening Defendant under this Consent Decree. In the event of any conveyance of easement, or other interest in any STP, or any portion of an STP, all of the Intervening Defendant's obligations under this Consent Decree shall continue to be met by the Intervening Defendant. Notwithstanding the previous two sentences, if one or more of the STPs is acquired (a) by a municipal or parish authority and the acquisition is approved by the appropriate utility regulatory authority in consultation with EPA and LDEQ, or (b) by a private party and the acquisition is approved by the appropriate utility regulatory authority, and by EPA and LDEQ, the Intervening Defendant shall have no further responsibility for the respective STP(s) subsequent to the acquisition.

6. The Intervening Defendant certifies that the facilities identified on Appendix A comprise a complete list of all STPs in Louisiana that, as of the date of TESI's execution of this Consent Decree, are believed by TESI to be owned by the Original Defendants and which will be sold to TESI. During the **pendency** of this Consent Decree, the Intervening Defendant shall notify EPA and LDEQ if the Intervening Defendant acquires any STP(s) in Louisiana not identified in Appendix A. The intervening Defendant shall also notify EPA and LDEQ if any STPs in Louisiana identified in Appendix **A** were not, in fact, **owned** by the Original Defendants. If any such acquired STP, prior to its acquisition by TESI, has not been owned, either actually or beneficially, by one of the Original Defendants or an affiliate thereof, such STP shall not be subject to this Consent Decree.

7. During the pendency of this Consent Decree, any deed, title, or other instrument of conveyance executed by the Intervening Defendant which transfers title to any part of the STPs shall contain a notice that the STP is the subject of this Consent Decree setting forth the title of the case, case caption and index number, and the Court having jurisdiction.

8. Upon retention of each contractor performing work contemplated by this Consent Decree, TESI shall notify each such contractor in writing, and provide a complete copy of this Consent Decree, so that each contractor is made aware of the work schedules and reporting deadlines set forth herein, which are applicable to the work to be performed by the contractor. TESI shall further require such contractor to notify in writing each subcontractor performing work contemplated herein of the requirements of this Consent Decree which are applicable to the work to be performed by such subcontractor.

#### **V. Purpose and Compliance Responsibility**

9. The purpose of this Consent Decree is to cause the STPs to achieve compliance with all federal and state rules and regulations governing generation, treatment, storage and disposal of pollutants, including sewage treated at the STPs, by allowing TESI to purchase the assets of Johnson Properties and its subsidiaries and to establish a plan to achieve full compliance with NPDES permit limitations, the Clean Water Act and this Consent Decree on the earliest possible schedule that is reasonable and workable in light of the current condition of the STPs.

10. This decree sets forth certain limited parameters for the exercise of the Plaintiffs' discretion to take civil or administrative enforcement action. This decree does not authorize the Intervening Defendant to violate any statute, regulation or permit requirement. The United

States and LDEQ do not guarantee that compliance with the provisions of this Consent Decree will ensure Intervening Defendant's compliance with any applicable law or regulation.

#### **VI. Special Reservation**

11. This Consent Decree is based on the extraordinary facts and circumstances presented in this particular case, and is not intended to be, nor shall it be construed as, a statement of EPA or LDEQ policy or precedent that is relevant or applicable to any other case or situation.

#### **VII. Compliance Measures At The STPs**

##### **A. Measures to Be Implemented Immediately**

12. On the Closing Date, TESI shall notify the United States and LDEQ of the Closing Date; take over all operations formerly undertaken by the Original Defendants; and use its best efforts to ensure that services to the public are not interrupted and services to the public do not deteriorate during or after the transition. In addition, TESI shall not:

- a. Retain Darren K. Johnson, Glenn K. Johnson or Michael Johnson (**collectively**, the "Johnsons"), or any member of their immediate family, as an employee, consultant, advisor, agent, representative, or any other capacity; or
- b. Sell, lease or transfer ownership to or control over, in whatever form, any of the STPs to (i) any of the Original Defendants; (ii) any of the **Johnsons** or any member of their immediate family; (iii) any entity in which any of the Original Defendants, any of the Johnsons, or any member of their immediate family, have an ownership interest; (iv) any person or entity directly or indirectly owned or operated by, partnered with, or affiliated in any way with any of the Original Defendants, any of the Johnsons, or any member of their immediate family; or (v) any other person or entity who TESI has reason

to believe may transfer ownership or control over any of the STPs to  
(i) ~~scribed in clause (v)~~ of this sentence.

Starting on the Closing the measures set forth  
Subparagraphs 13(a)-(g). below.

a. TESI shall conduct and maintain all sampling  
activities as required by the applicable discharge permits, federal law and state law,  
including but not limited to Discharge Monitoring Reports ("DMRs") and noncompliance

STPs

STPs; maintenance of the

STPs;

c. TESI shall commence a thorough evaluation of the operation and maintenance  
of the STPs, including but not limited to the personnel, equipment, materials, and  
procedures employed for operation and maintenance.

d. TESI shall ensure the STPs have sufficient chlorine tablets, and shall commence a survey to identify all  
the STPs

lack properly functioning disinfection equipment. TESI shall commence installation or repair of such equipment where needed as soon as practicable.

e. TESI shall commence engineering and design activities to evaluate repairs and modifications that must be made in order to ensure that the STPs can operate safely and in compliance with all applicable effluent limitations. The term “safely” shall be construed to refer to the safety of workers at the STPs and persons living and working nearby.

f. TESI shall commence an ongoing public outreach program to inform its customers of the purpose and requirements of this Consent Decree and its capacity as the Intervening Defendant. The outreach program shall include a toll free number for all of its customers to report complaints about the service or lack of service provided by TESI.

g. TESI shall respond to and resolve appropriately all customer complaints as soon as is practical.

#### B. Ninety Day Requirements

14. Within 90 days after the Closing Date, TESI shall perform the following activities:

a. Prepare and submit to EPA and LDEQ a report documenting TESI’s efforts to comply with Paragraph 13 of this Consent Decree.

b. Ensure that all STPs have functioning disinfection equipment.

c. Prepare and submit to EPA and LDEQ a plan for the removal and proper disposal or treatment of solids from the STPs. The plan shall provide for full implementation of a program for the regular removal and proper disposal or treatment of solids from the STPs no later than 180 days after the Closing Date. Said plan shall be

consistent with all regulations regarding the removal, storage, treatment, and disposal of sewage sludge, and may consist of, but is not limited to, the utilization of trucks to haul sludge to a duly permitted treatment or disposal facility.

d. Begin preparing and implementation of a plan to provide capital improvements necessary to meet the requirements of Paragraphs 26 and 27 of this Consent Decree.

e. Submit complete NPDES permit applications for every STP that lacks such a permit.

EPA and LDEQ may comment on the plan called for by Subparagraph 14(c) within thirty (30) days after receiving it. TESI shall proceed to take any action required by the plan as submitted to the extent that doing so does not conflict with the comments. TESI shall amend the plan in accordance with such comments and resubmit the plan to EPA and LDEQ within thirty (30) days after receipt of the comments. TESI may invoke Section XIII (Dispute Resolution) in response to the comments of EPA and/or LDEQ by sending a Notice of Dispute to EPA and LDEQ in accordance with Paragraph 56 no later than 14 days after receipt of the comments to which TESI objects. Notwithstanding the preceding sentence, TESI shall amend the plan in accordance with comments to which it does not object: resubmit the plan within thirty (30) days after receipt of the comments: and proceed with implementation of the plan as amended.

15. Within four months **after** the Closing Date, TESI shall prepare and submit to EPA and LDEQ a report documenting TESI's efforts to comply with Paragraph 14 of this Consent Decree, including a certification of completion of the requirements of Subparagraphs 14(b)-(e).

C. Six Month Reuirements

16. Within six months after the Closing Date. TESI shall:

a. Fully implement the solids management plan in accordance with the plan prepared and submitted pursuant to Subparagraph 14(c).

b. Complete the hiring and training of staff necessary to implement the solids management program and to perform proper operation and maintenance of the STPs.

c. At a STPs as practically possible, but at no fewer than twenty (20) STPs. (i) achieve compliance with such STPs'

including, but not limited to electrical controls, panels, alarms, timers,

STPs'

STPs.

STPs'ased compliance for all remaining

25rough

STPs

on the compliance schedules for each specific STP. EPA and LDEQ may comment plan

action requir

by the plan as submitted to the extent that doing so does not conflict with the comments.

TESI shall amend the in accordance with such comments a r

EPA and LDEQ within thirty (30) days after receipt of the comments. TESI may i n v o k e

Section XIII (Dispute Resolution) in response to the comments of EPA and/or LDEQ by

sending a Notice of Dispute to EPA and LDEQ in accordance with Paragraph 56 no later than 14 days after receipt of the comments to which TESI objects. Notwithstanding the preceding sentence. TESI shall amend the plan in accordance with comments to which it does not object: resubmit the plan within thirty (30) days after receipt of the comments: and proceed with implementation of the plan as amended.

17. Within seven months after the Closing Date. TESI shall prepare and submit to EPA and LDEQ a report documenting TESI's efforts to comply with Paragraph 16 of this Consent Decree. including a certification of completion of the requirements of Subparagraphs 16(a), (b) and (c). The report shall also identify all STPs that have achieved compliance in completion of the requirements of Subparagraph 16(c).

**D. Nine Month Requirements**

18. Within nine months after the Closing Date. TESI shall have on hand and maintain (a) an operator handbook for each STP. listing plant capacity. motor/blower sizes for the STP and any related lift station(s). and any other pertinent operation and maintenance items. and (b) an adequate inventory of all parts and supplies needed to make repairs to STPs and lift stations.

19. Within ten months after the Closing Date. TESI shall prepare and submit to EPA and LDEQ a report certifying completion of the requirements of Paragraph 18 of this Consent Decree.

**E. Twelve. Eighteen. Twenty-Four and Forty-Eight Month Reaquirements**

20. In accordance with the plan submitted in accordance with Subparagraph 16(d), within twelve months after the Closing Date. TESI shall:

(a) At as many additional STPs as practically possible, but at no fewer than twenty (20) additional STPs, (i) achieve compliance with such STPs' permits; and (ii) complete improvements necessary to ensure that adequate backup or auxiliary facilities have been installed, including but not limited to, pumps, blowers, electrical controls, panels, alarms, timers, and switches, which are necessary to maintain compliance with such STPs' permits. The Interim Limitations shall cease for those STPs.

(b) Ensure that all STPs have adequate and functioning disinfection equipment that enables each STP to comply with the limits for Fecal Coliform set forth in each STP's respective permit. For any STP that lacks a NPDES permit, for purposes of this subparagraph the limits shall be deemed to be a monthly geometric average count of 200 colonies/100 milliliters and a daily maximum count of 400 colonies/100 milliliters.

21. Within thirteen months after the Closing Date, TESI shall prepare and submit to EPA and LDEQ a report certifying completion of the requirements of Paragraphs 20 and 26(a) of this Consent Decree. The report shall also identify all STPs that have achieved compliance in completion of the requirements of Subparagraphs 20(a) and 26(a).

22. Within eighteen months after the Closing Date, at as many additional STPs as practically possible, but at no fewer than twenty (20) additional STPs, TESI shall (i) achieve compliance with such STPs' permits; and (ii) complete improvements necessary to ensure that adequate backup or auxiliary facilities have been installed, including but not limited to, pumps, blowers, electrical controls, panels, alarms, timers, and switches, which are necessary to maintain compliance with such STPs' permits. The Interim Limitations shall cease for those STPs.

23. Within nineteen months after the Closing Date. TESI shall prepare and submit to EPA and LDEQ a report certifying completion of the requirements of Paragraph 22 of this Consent Decree. The report shall also identify all STPs that have achieved compliance in completion of the requirements of Paragraph 22.

24. Within twenty-four months after the Closing Date. at all remaining STPs TESI shall (i) achieve compliance with such STPs' permits; and (ii) complete improvements necessary to ensure that adequate backup or auxiliary facilities have been installed. including but not limited to. pumps. blowers. electrical controls. panels. alarms. timers. and switches. which are necessary to maintain compliance with such STPs' permits. The Interim Limitations shall cease for those STPs.

25. Within twenty-five months after the Closing Date. TESI shall prepare and submit to EPA and LDEQ a report certifying completion of the requirements of Paragraphs 24 and 26(b) of this Consent Decree.

26. Within 48 months after the Closing Date. TESI shall complete installation of all improvements needed for long term sustained compliance (not otherwise addressed heretofore in this Consent Decree) at the STPs. TESI shall perform such installation of improvements on a phased-in basis such that TESI will complete such improvements for the number of STPs specified in the following schedule:

(a) 45 STPs at the completion of twelve ( 12) months from the Closing Date:

(b) an additional 45 STPs at the completion of twenty-four (24) months from the Closing Date;

(c) an additional 45 STPs at the completion of thirty-six (36) months from the Closing Date: and

(d) the remaining STPs at the completion of forty-eight (48) months from the Closing Date.

27. Within thirty-seven (37) and forty-nine (49) months after the Closing Date, TESI shall prepare and submit to EPA and LDEQ a report certifying completion of the requirements of Paragraphs 26(c) and 26(d) of this Consent Decree.

28. All reports required by Section VII (Compliance Measures at the STPs) of this Consent Decree shall identify any anticipated or encountered problems relative to achieving compliance at the STPs, and the proposed resolution of those problems.

29. The compliance measures set forth in Paragraphs 12 through 28 of this Consent Decree are necessary for compliance with state and federal regulations and the STPs' NPDES permits and/or requirements. These compliance measures are deemed prudent and useful for compliance.

### **VIII. Quality Assurance, Quality Control and Sampling**

30. Throughout all sample collection and analysis activities, TESI shall use EPA approved quality assurance, quality control and chain-of-custody procedures.

31. TESI shall ensure that all laboratories used for analyses perform such analyses according to the EPA approved methods outlined in 40 C.F.R. Part 136. If methods other than the EPA approved methods are to be used by such laboratories, TESI shall submit all protocols to be used for analyses to EPA for approval at least 30 calendar days prior to the commencement of the analyses.

32. TESI shall ensure that laboratories used for analyses participate in a quality assurance/quality control program equivalent to that which is followed by EPA. As part of such a program, and upon request by **EPA** or **LDEQ**, such laboratories shall perform analyses of samples provided by **EPA** or **LDEQ** to demonstrate the quality of the analytical data. All laboratories used for samples from Louisiana STPs must have been certified in accordance LDEQ regulations.

#### **IX. Endangerment**

33. If EPA or LDEQ determine that any activities undertaken pursuant to this Consent Decree have caused or may cause an imminent and substantial risk of harm to the public health or the environment, either Agency may order TESI to (1) stop immediately any specified activities under this Consent Decree for such period of time as may be needed to abate any such release and (2) undertake any action which the Agency determines is necessary to abate such release or threat. Relevant schedules affected by the work stoppage shall be extended by any period during which implementation is stopped by order of EPA or LDEQ plus any reasonable demobilization and/or re-mobilization periods, provided that the release or threat is not due to noncompliance by TESI with this Decree.

#### **X. Project Coordinators**

**34. The** Consenting Parties designate the following individuals to act as Project Coordinators to monitor the progress of the activities required under this Consent Decree, to communicate informally concerning problems which have arisen or which are anticipated in the implementation of this Consent Decree, and to coordinate communications between **Intervening** Defendant and the Agencies:

As to EPA:

Bradley Crawford  
U.S. Environmental Protection Agency  
Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

As to LDEQ:

Peggy Hatch  
Program Manager  
Enforcement Section 3  
Enforcement Division  
Louisiana Department of Environmental Quality  
P.O. Box 82215  
Baton Rouge, Louisiana 70884-22 15

As to Intervening Defendant:

Paul Maeder  
Chief Executive Officer  
Total Environmental Solutions, Inc.  
P.O. Box 4037  
Houma, LA 70361

35. Such coordination and informal communication by the Project Coordinators shall not relieve the intervening Defendant of any notice and reporting requirements set forth elsewhere in this Decree.

36. The United States, LDEQ and Intervening Defendant shall each have the unilateral right to change their respective Project Coordinator. Such a change does not require approval of the Court and shall be accomplished by notifying the other Project Coordinators of the change in writing at least seven calendar days prior to the effective date of the change.

## XI. Site Access

37. EPA and LDEQ, their employees, and their authorized agents (including contractors and subcontractors), shall have access to the STPs at all reasonable times for the purposes of inspecting, investigating or verifying compliance with the terms of this Consent Decree, including but not limited to, the requirements of Section VII (Compliance Measures at the STPs), consistent with the authority set forth in Section 308 of the Clean Water Act, 33 U.S.C. § 13 18, and La. R.S. 30:2012. Access shall include access to, and the right to make copies of, all records, documents or information relating to or pertaining to the STPs.

38. The intervening Defendant shall have the right to accompany EPA and LDEQ representatives and employees throughout their presence at the STPs and to monitor and record the investigative activities conducted by the Agency. If such a recording of the Agency's investigatory activities is made, the intervening Defendant shall, upon request, provide a copy of the recording to the Agency in question. This request shall be confirmed in writing.

39. This Section in no way limits any right of inspection and/or entry available to EPA and LDEQ pursuant to applicable federal or state laws, regulations, or permits.

30. To the extent that work required by this Consent Decree, or by any approved plan prepared pursuant to this Consent Decree, must be done on property not owned or controlled by TESI, it shall use its best efforts to obtain access agreements from the **owner(s)** of such property within 30 days. "Best efforts" as used in this Paragraph shall include, at a minimum, a certified letter from TESI to the present owners of such property requesting access agreements to permit TESI and the Agencies and their authorized representatives to enter and move freely about such property. Any such access agreement shall be incorporated by reference into this Consent

Decree. In the event that agreements for access are not obtained. TESI shall notify EPA and the appropriate state Agency in writing within 10 **days** thereafter regarding both the efforts undertaken to obtain access and its failure to obtain such agreements. In the event EPA or LDEQ obtains access for TESI. TESI shall undertake on such property the work required by this Consent Decree or approved plan pursuant to this Consent Decree for which access was obtained. Inability to obtain off-site access despite best efforts as defined herein will not constitute a violation of this Consent Decree.

**XII. Stimulated Penalties**

41. Except as set forth in Section XIV (Force Majeure), if TESI fails to comply timely with any requirement set forth in Sections VII or VIII of this Consent Decree during the first six months after the Closing Date. it shall pay the following stipulated penalties for each day of each violation:

Period of Failure To Comulv	Penalty Per Violation Per Day
1 st through 30th day	\$100.00
3 1 st through 60th day	6250.00
6 1 st day and beyond	\$500.00

42. Except as set forth in Section XIV (Force Majeure). if TESI fails to comply timely with any requirement set forth in Sections VII or VIII of this Consent Decree during the seventh through twelfth months after the Closing Date. it shall pay the following stipulated penalties for each day of each violation:

<u>Period of Failure</u> <u>To Comnlv</u>	<u>Penalty Per Violation</u> <u>Per Dav</u>
1st through 30th day	\$ 250.00
31st through 60th day	\$ 500.00
61st day and beyond	\$1.000.00

43. Except as set forth in Section XIV (Force Majeure), if TESI fails to comply timely with any requirement set forth in Sections VII or VIII of this Consent Decree during the second year after the Closing Date, it shall pay the following stipulated penalties for each day of each violation:

<u>Period of Failure</u> <u>To Comnlv</u>	<u>Penalty Per Violation</u> <u>Per Dav</u>
1st through 30th day	\$ 250.00
31st through 60th day	\$ 750.00
61st day and beyond	\$2.000.00

44. Except as set forth in Section XIV (Force Majeure), if TESI fails to comply timely with any requirement set forth in Sections VII or VIII of this Consent Decree more than two years after the Closing Date, it shall pay the following stipulated penalties for each day of each violation:

<u>Period of Failure</u> <u>To Comnlv</u>	<u>Penalty Per Violation</u> <u>Per Dav</u>
1st through 30th day	\$ 500.00
31st through 60th day	\$1.500.00
61st day and beyond	\$4.500.00

45. Except as set forth in Section XIV (Force Majeure), for each violation of the Interim Limitations provided in Section XVII (General Provisions) of this Consent Decree, TESI shall pay \$200 per parameter per facility per month for a Monthly Average violation and, \$100 per parameter per facility per day for a “Daily Maximum” violation. If TESI fully complies with the requirements of Paragraphs 12 through 14 of this Consent Decree, then the stipulated penalties under this Paragraph shall not apply during the first three months after the Closing Date. If TESI fully complies with the requirements of Paragraphs 13 through 16 of this Consent Decree, then the stipulated penalties for Fecal Coliform under this Paragraph shall not apply during the first twelve (12) months after the Closing Date for those STPs listed in Appendix A that have not become subject to Subparagraph 16(c).

46. Except as set forth in Section XIV (Force Majeure), after the expiration of the Interim Limitations, but before twenty-four months after the Closing Date, for each violation of a Final Effluent Limitation provided in a NPDES permit (or in Paragraph 68(b) of this Consent Decree for any STP lacking a NPDES permit), TESI shall pay \$500 per parameter per facility per month for a Monthly Average violations and, \$200 per parameter per facility per day for a “Daily Maximum” or “7-day average” or “weekly average” violation

47. Except as set forth in Section XIV (Force Majeure), after twenty-four months after the Closing Date, for each violation of a Final Effluent Limitation provided in a NPDES permit (or in Paragraph 68(b) of this Consent Decree for any STP lacking a NPDES permit), TESI shall pay \$1500 per parameter per facility per month for a Monthly Average violation and, \$500 per parameter per facility per day for a “Daily Maximum” or “7-day average” or “weekly average” violation.

48. If the United States and LDEQ jointly seek to enforce this Consent Decree, stipulated penalties shall be shared equally between the United States and LDEQ. Stipulated penalties paid to the United States shall be paid by certified check payable to the “Treasurer of the United States” and shall be sent to Chief, Civil Division, United States Attorney’s Office, Western District of Louisiana, 600 Jefferson Street, Suite 1000, Lafayette, Louisiana 70501. Stipulated penalties paid to LDEQ shall be payable to “Louisiana Department of Environmental Quality” and shall be sent to Office of Management and Finance, P.O. Box 8223 1, Baton Rouge, Louisiana 70884-223 1. A copy of any check and correspondence from the Intervening Defendant to a Plaintiff shall be sent to each other Plaintiff as provided in Section XIX (Notices).

49. The Intervening Defendant shall notify EPA and LDEQ in writing of any failure to meet Consent Decree requirements for which stipulated penalties may be due as soon as it has knowledge of such failure. The Plaintiffs reserve the right to demand payment of stipulated penalties upon a determination by one or more of the Plaintiffs that a violation of this Consent Decree has occurred.

50. All stipulated penalties begin to accrue on the day after performance is due to be completed or on the day a violation occurs, and continue to accrue through the final day of correction of the noncompliance. Nothing herein shall preclude the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Decree. Penalties shall accrue regardless of whether a Plaintiff has notified Intervening Defendant of a violation. All stipulated penalties owed to the Plaintiffs under this Section shall be due and payable within 30 days of Intervening Defendant’s receipt from EPA or LDEQ of a written demand for payment of

the penalties, unless Intervening Defendant invokes the Dispute Resolution procedures under Section XIII (Dispute Resolution).

5 1. Stipulated penalties shall accrue during any dispute resolution period, except for the periods of any extensions of (i) Plaintiffs' time to make submissions, or (ii) the time for the Director of the Compliance Assurance and Enforcement Division, EPA Region 6, to issue a final written decision resolving the dispute. If the Plaintiff(s) prevail by decision of this Court, Intervening Defendant shall remit payment of all accrued penalties within 15 days of receipt of the Court's decision. If Intervening Defendant fails to pay stipulated penalties when due, the Plaintiff(s) may institute proceedings to collect the penalties and any interest that has accrued.

52. Except as provided by Section XVII (General Provisions) and this Paragraph, nothing in this Consent Decree shall be construed as prohibiting, altering or in any way limiting the ability of the EPA or LDEQ to seek other remedies or sanctions available by virtue of Intervening Defendant's violation(s) of this Consent Decree or of any statutes and regulations referenced herein. As long as TESI uses its best efforts to comply with this Consent Decree and uses due diligence in achieving compliance with NPDES effluent limitations and the compliance measures set forth in this Consent Decree, only stipulated penalties shall be applicable to violations of this Consent Decree. Otherwise, the Plaintiffs may elect, at their sole discretion, whether to seek stipulated penalties under this Section of the Consent Decree or to seek civil penalties under the Act for a particular violation of the Consent Decree. Intervening Defendant shall not be liable for both stipulated penalties and statutory penalties for the same violation. Stipulated penalties shall not be applicable after the termination of this Consent Decree pursuant to Section XXI (Effective and Termination Dates).

53. The payment of stipulated penalties shall not **alter** in any way Intervening Defendant's obligation to complete the performance of the actions described in this Consent Decree.

54. Notwithstanding any other provision of this Section, the United States and LDEQ may, in their discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

### **XIII. Dispute Resolution**

55. 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. However, the procedures set forth in this Section shall not apply to actions by the EPA or LDEQ to enforce obligations of Intervening Defendant that have not been disputed in accordance with this Section.

56. The dispute resolution procedures of this Consent Decree are invoked by one party sending the other party a written Notice of Dispute. **Any** dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the Consenting Parties. The Consenting Parties agree to attempt to resolve expeditiously and informally any disagreements concerning implementation of this Consent Decree. The period for informal negotiations shall not exceed 21 days from the date of the Notice of Dispute, unless it is modified by written agreement **of the** parties to the dispute.

57. In the event that the Consenting Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA and LDEQ shall be considered binding unless, within 14 days after the conclusion of the informal negotiation

period. Intervening Defendant invokes the formal dispute resolution procedures of this Section by serving on the EPA and LDEQ a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, affidavits, analysis or opinion supporting that position and any supporting documentation relied upon by the Intervening Defendant.

58. Within 14 days after receipt of Intervening Defendant's Statement of Position, EPA and LDEQ will serve on Intervening Defendant their Statements of Position, including, but not limited to, any factual data, analysis, affidavits, or opinion supporting that position and all supporting documentation relied upon by EPA and LDEQ. Within seven (7) days after receipt of the governments' Statements of Position, TESI may submit a reply.

59. Within 30 days following receipt of all Statements of Position, the Director of the Compliance Assurance and Enforcement Division, EPA Region 6, will issue a **final** written decision resolving the dispute, which sets forth the basis for EPA's decision. The Division Director's decision shall be binding on Intervening Defendant unless, within 21 days of receipt of the decision, Intervening Defendant files with the Court and serves on the United States a notice of judicial appeal setting forth the **matter** in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States and LDEQ may file a response to Intervening Defendant's notice of judicial appeal.

60. Judicial review of the dispute shall be limited to the administrative record of the dispute. For purposes of this Section, the administrative record shall consist of the Notice of Dispute, the Statements of Position and all supporting documentation, the Division Director's written decision and any other written records submitted by the Consenting Parties.

61. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of Intervening Defendant under this Consent Decree not directly in dispute, unless EPA and LDEQ agree, or the Court orders, otherwise.

#### **XIV. Force Majeure**

62. Intervening Defendant's obligation to comply with one or more of the provisions of this Consent Decree shall be deferred or excused to the extent and for the duration that the delay in compliance or inability to comply is caused by a "force majeure". A "force majeure" is defined as an event or set of circumstances that is beyond Intervening Defendant's control or the control of any entity controlled by the intervening Defendant, including its agents, consultants and contractors, and that could not have been prevented by due diligence of Intervening Defendant. This force majeure provision shall not apply to any delay due to increased costs or Intervening Defendant's financial inability to carry out the provisions of this Consent Decree, or to Intervening Defendant's failure to make timely and bona fide applications and to exercise diligent effort to obtain permits.

63. Intervening Defendant shall notify EPA and the appropriate state Agency within 72 hours by telephone and shall submit written notification to EPA and the appropriate state Agency within seven business days after the date when it first obtained knowledge of a delay or potential delay. Such notice shall include the nature, cause and anticipated length of the delay and the steps which Intervening Defendant has taken and will take, with a schedule for implementation, to avoid or minimize the delay. Failure to provide this written notice within the required time period shall constitute a waiver of Intervening Defendant's right to invoke "force majeure" as a

basis for delay or prevention of **performance** under this Consent Decree. If the Consenting Parties agree that the delay was attributable to a “force majeure” event, the time for performance of the provision shall be extended for a period of time equal to the delay caused by the event plus any period of time necessary for any demobilization and remobilization.

64. If the Consenting Parties do not agree that the delay or inability to perform **was** caused by a “force majeure” event, or are unable to agree on the extent of delay, Intervening Defendant may invoke the dispute resolution procedures set forth in Section XIII of this Consent Decree. In any such proceeding, Intervening Defendant shall have the burden of proving that the delay was attributable to a “force majeure” event, that Intervening Defendant has exercised due diligence in minimizing the delay, and that, as a result of the **delay**, a particular extension period for compliance is required.

#### XV. **Public Access to Documents**

65. All data, factual information, and documents obtained by the United States from Intervening Defendant pursuant to this Consent Decree shall be subject to public inspection unless identified as confidential by Intervening Defendant in conformance with **40 C.F.R. Part 2**. Any assertion of confidentiality must be accompanied by responses to the questions listed at **40 C.F.R. §2.204(e)(4)**. The data, factual information, and documents so identified as confidential shall be disclosed only in accordance with appropriate EPA **and** DOJ regulations. Environmental contamination data, including hydrogeological or chemical data, or any other scientific or engineering tests *or* data, shall not be deemed confidential. All data, factual information, and documents obtained by LDEQ from Intervening Defendant pursuant to this Consent Decree shall be subject to public inspection unless declared confidential **by** the Secretary of LDEQ pursuant to

La. R.S. 30:2030 and 2076(D). Any request for confidentiality must comply with Louisiana Administrative Code 33:I, Chapter 5.

#### **XVI. Record Retention**

66. Intervening Defendant shall preserve, during the pendency of this Consent Decree and for a minimum of five years after its termination, or as required by law, whichever period is longer, at least one legible copy of all non-privileged records and documents, including computer records, in its possession which relate to its performance of its obligations under this Consent Decree. Not less than 60 days before expiration of the record retention requirements under this Consent Decree, Intervening Defendant shall notify EPA and LDEQ of the expiration of its record retention obligation and give EPA and LDEQ the opportunity to inspect and copy the applicable documents. This notification will identify the nature of the documents and their storage location or locations.

67. Intervening Defendant further agrees that within 30 days of retaining or employing any agent, consultant or contractor for the purpose of carrying out the terms of this Consent Decree, it will enter into an agreement, with any such agents, consultants or contractors whereby such agents, consultants and/or contractors (excluding outside legal counsel) will be required to provide a copy to Intervening Defendant for subsequent retention by Intervening Defendant of all documents produced pursuant to this Consent Decree. Such agreement shall require said agents, consultants and/or contractors upon completion of their work or such earlier time as requested by the Plaintiffs to furnish Intervening Defendant a copy of originals of all documents, data, analyses, and all other materials created or obtained during their performance of work specified in this Consent Decree.

**XVII. General Provisions**

**68. (a)** Based on the extraordinary facts and circumstances presented in this case, the United States and LDEQ agree that if TESI complies with its obligations under this Consent Decree and uses due diligence in achieving compliance with NPDES effluent limitations and the compliance measures set forth in this Consent Decree, they shall not impose or seek to impose civil penalties, stipulated penalties, or other sanctions or remedies for the claims alleged in the Complaint in this action for the first three months after the Closing Date. The United States and LDEQ further agree that if TESI complies with its obligations under this Consent Decree and uses due diligence in achieving compliance with NPDES effluent limitations and the compliance measures set forth in this Consent Decree, they shall not impose or seek to impose civil penalties, stipulated penalties, or other sanctions or remedies for failure to comply with an NPDES permit limit for a facility then subject to interim Limitations.

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(b) The following Interim Limitations shall apply to each STP listed in Appendix A:

<u>Effluent Characteristics</u>	<u>Discharge Limitations</u>		
	(lbs./day) <u>Monthly Avg.</u>	(other units) <u>Monthlv Avg.</u>	<u>Daily max.</u>
Flow (MGD)		report	
Biochemical Oxygen Demand. 5 day, (BOD5)	report	30 mg/l	45 mg/l
Carbonaceous Biochemical Oxygen Demand. 5 day, (CBOD5)	report	20 mg/l	30 mg/l
Total Suspended Solids (TSS) (for Lagoons/ponds)	report report	30 mg/l 90 mg/l	45 mg/l 135 mgil
Ammonia-Nitrogen (NH3-N)	report	report	report
Fecal Coliform (FC)		200 colonies/100ml	400 colonies/ml
Oil and Grease (O&G)		15 mg/l weekly average	
Total Residual Chlorine		report	report
Dissolved Oxygen		report daily minimum	

The pH shall be not less than 6.0 standard units nor greater than 9.0 standard units. except in the case of lagoons/ponds. in which case the pH shall be not less than 6.0 standard units nor greater than 10.0 standard units. For each STP that has an NPDES permit. the parameters set forth in this Subparagraph shall apply to those Effluent Characteristics specified in the NPDES permit and shall be monitored and reported at the frequency and the sample type as specified in the permit. For each STP that lacks a permit. the parameters to be monitored and reported shall be BOD5. TSS. FC. and pH. For STPs lacking permits. the parameters shall be monitored once per month by grab sample and reported on monthly Discharge Monitoring Reports that shall be

submitted to EPA and LDEQ quarterly no later than the 28<sup>th</sup> day following the end of each calendar quarter.

(c) The Interim Limitations shall expire for each facility at the time specified in Section VII (Compliance Measures at the STPs) of this Consent Decree. Once the Interim Limitations expire for a facility, the Final Effluent Limitations shall be effective as specified in the respective NPDES/LPDES permits (or in Paragraph 68(b) of this Consent Decree for any STP lacking a permit). This paragraph shall not be construed as a permit.

69. This Consent Decree is not intended and shall not be construed to operate in any way to resolve any other civil or criminal liability of the Intervening Defendant.

70. This Consent Decree shall not relieve the Intervening Defendant of its obligation to comply with all applicable provisions of federal, state or local law, permit limitations or regulations, or with any order of the Court, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

71. Compliance with this Consent Decree shall not be a defense to any actions not related to this Consent Decree subsequently commenced pursuant to federal laws and regulations administered by EPA or to state laws and regulations administered by LDEQ, or to take any action within their authority to abate an imminent and substantial risk of harm to human health or the environment.

72. This Consent Decree shall not be construed to affect or limit in any way the obligation of Intervening Defendant to comply with all federal, state and local laws and regulations governing the activities required by this Consent Decree.

73. This Consent Decree shall not be construed as a ruling or determination of any issue related to any federal, state, or local permit, if required in order to implement this Consent Decree or required in order to continue or alter operations of the STPs or drinking water plants acquired by Intervening Defendant and Intervening Defendant shall remain subject to all such permitting requirements. Intervening Defendant shall be responsible for obtaining any federal, state, or local permit(s) for any activity at the STPs or drinking water plants acquired through the bankruptcy proceeding including those necessary for capital improvements at the STPs and the drinking water plants.

#### **XVIII. costs**

74. Each Consenting Party shall bear its own costs and attorneys' fees in the action resolved by this Consent Decree.

#### **XIX. Notices**

75. Whenever under the terms of this Consent Decree notice is required to be given or a report or other document is required to be forwarded by one party to another, it shall be directed to the following individuals at the addresses specified below, unless it is otherwise specifically provided in this Consent Decree. Any change in the individuals designated by a Consenting Party must be made in writing to the other Consenting Parties. Any correspondence submitted to the United States or EPA shall include a reference to the case caption and index number of this court action.

As to the United States and EPA:

Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044

and

Director  
Compliance Assurance and Enforcement Division  
U.S. Environmental Protection Agency, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

As to LDEO:

Peggy Hatch  
Program Manager  
Enforcement Section 3  
Enforcement Division  
Louisiana Department of Environmental Quality  
P.O. Box 822 15  
Baton Rouge, Louisiana 70884-22 15

As to Intervening Defendant:

Paul Maeder  
Chief Executive Officer  
Total Environmental Solutions, Inc.  
P.O. Box 4037  
Houma, LA 70361

Brett P. Furr  
Anne J. Crochet  
Taylor, Porter, Brooks & Phillips  
P.O. Box 2471  
Baton Rouge, LA 70821

76. Such communication is intended to facilitate meeting the objectives of this Consent Decree and shall not relieve the Consenting Parties of the notice and reporting requirements set forth elsewhere in this Consent Decree and its attachments.

## **XX. Modification**

77. Except as provided for herein, there shall be no modification of this Consent Decree without the written approval of the Consenting Parties and the Court.

## **XXI. Effective and Termination Dates**

78. This Consent Decree shall be effective upon the date of its **entry** by the Court. The Consent Decree shall be terminated upon completion of all requirements of this Consent Decree excluding record retention.

79. When TESI determines that it has complied with all requirements of this Consent Decree, it shall certify such compliance in writing to the EPA and LDEQ. The certification by TESI shall indicate the case name and civil action number and include the **following language**:

“I certify pursuant to Section XXI (Effective and Termination Dates) of the Consent Decree that TESI has completed all the requirements set forth in the Consent Decree.”

The United States and LDEQ shall have 120 days following receipt of such certification to serve on TESI written notice stating any opposition to the compliance certificate. EPA and LDEQ may in their discretion issue notice of approval of the compliance certificate. Any opposition shall state what requirements of the Consent Decree have not been fulfilled. In the event of such opposition, TESI shall have sixty (60) days in which to cure **any** asserted deficiencies or to provide additional information and to submit a revised certification. After receiving written notification from the EPA or LDEQ or after the expiration of the 120-day time period, TESI may file its certification with the Court and petition the Court with notice to the EPA and LDEQ for termination of this Consent Decree. TESI shall have the burden of proving completion of all requirements of this Consent Decree. The United States and LDEQ may support or oppose TESI's petition, and the Court may conduct such inquiry and rule as it deems appropriate.

80. Notwithstanding the preceding Paragraph, the Consenting Parties may at any time move jointly to terminate this Consent Decree without the certification based on every Consenting Party's representation that all of the requirements have been satisfied, and the Court may order such termination after conducting such inquiry as it deems appropriate. Termination of this Consent Decree will not terminate Intervening Defendant's obligation to preserve all records in accordance with the Record Retention provisions contained in Section XVI (Record Retention).

### **XXII. Retention of Jurisdiction**

81. This Court shall retain jurisdiction of this matter until further order of the Court or until termination of this Consent Decree.

82. The United States and LDEQ retain the right to seek to enforce the terms of this Consent Decree and take any action authorized by federal or state law not inconsistent with the terms of this Consent Decree to achieve or maintain compliance with the terms and conditions of this Consent Decree or otherwise.

### **XXIII. Public Notice Requirements**

83. The Consenting Parties agree that final approval by the United States and LDEQ and entry of this Consent Decree is subject to the requirements of 28 C.F.R. § 50.7, which provides for, inter alia, notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and consideration of any comments. Further, the signature of the LDEQ Secretary (or his authorized representative) shall not be effective until the applicable public notice and public comment requirements of La. R.S. 30:2050.7 have been satisfied.

84. The United States and LDEQ reserve the right to withdraw or withhold their consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper or inadequate. The Intervening Defendant consents to the entry of this Consent Decree without further notice.

#### **XXIV. Signatories/Service**

85. Each undersigned representative of the Intervening Defendant, the Assistant Attorney General for Environment and Natural Resources of the Department of Justice, and the Assistant Secretary for Louisiana Department of Environmental Quality, 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 such party to this document.

86. **The** Intervening Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States and LDEQ have given written notice that they no longer support entry of the Consent Decree.

87. The intervening Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of it with respect to all matters arising under or relating to this Consent Decree. Intervening Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

#### **XXV. Judgment**

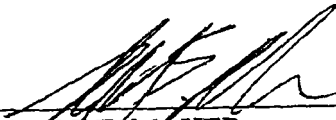
88. Because this Consent Decree's objectives include ceasing the STPs' violations of the law and excessive discharge of pollutants, this court finds no just reason for delay in entering

FOR PLAINTIFF - UNITED STATES OF AMERICA

  
\_\_\_\_\_  
LOIS J. SCHIFFER

Assistant Attorney General  
U.S. Department of Justice  
Environment and Natural Resources  
Division  
10th & Pennsylvania Avenues  
Washington, D.C. 20530

DATE: Sept. 28, 00

  
\_\_\_\_\_  
ROBERT E. MAHER

S&or Attorney  
U.S. Department of Justice  
Environment and Natural Resources  
Division  
Environmental Enforcement Section  
1425 New York Avenue, N.W.  
Washington, D.C. 20005  
(202) 5 14-4241

DATE: 9/28/00

\_\_\_\_\_  
WILLIAM J. FLANAGAN  
United States Attorney  
Western District of Louisiana

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

\_\_\_\_\_  
KATHERINE W. VINCENT (18717)  
Assistant United States Attorney  
Western District of Louisiana  
800 Lafayette Street, Suite 2200  
Lafayette, Louisiana 70501  
(337) 262-6618

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

FOR PLAINTIFF - UNITED STATES OF AMERICA

\_\_\_\_\_  
**LOIS J. SCHIFFER**

Assistant Attorney General  
U.S. Department of Justice  
Environment and Natural Resources  
Division  
10th & Pennsylvania Avenues  
Washington, D.C. 20530

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

\_\_\_\_\_  
**ROBERT E. MAHER**

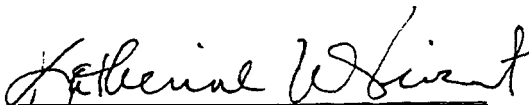
Senior Attorney  
U.S. Department of Justice  
Environment and Natural Resources  
Division  
Environmental Enforcement Section  
1425 New York Avenue, N.W.  
Washington, D.C. 20005  
(202) 5 14-4241

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

  
WILLIAM J. FLANAGAN

United States Attorney  
Western District of Louisiana

October 5, 2000

  
KATHERINE W. VINCENT (18717)

Assistant United States Attorney  
Western District of Louisiana  
800 Lafayette Street, Suite 2200  
Lafayette, Louisiana 70501  
(337) 262-6618

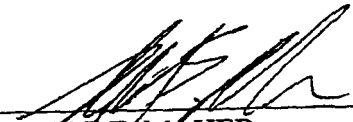
DATE: October 5, 2000

FOR PLAINTIFF - UNITED STATES OF AMERICA

  
\_\_\_\_\_  
LOIS J. SCHIFFER

Assistant Attorney General  
U.S. Department of Justice  
Environment and Natural Resources  
Division  
10th & Pennsylvania Avenues  
Washington, D.C. 20530

DATE: Sept. 28, 00

  
\_\_\_\_\_  
ROBERT E. MAHER

Senior Attorney  
U.S. Department of Justice  
Environment and Natural Resources  
Division  
Environmental Enforcement Section  
1425 New York Avenue, N.W.  
Washington, D.C. 20005  
(202) 5 14-4241

DATE: 9/28/00

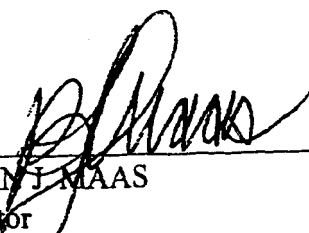
\_\_\_\_\_  
WILLIAM, J. FLANAGAN  
United States Attorney  
Western District of Louisiana

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

\_\_\_\_\_  
KATHERINE W. VINCENT (18717)  
Assistant United States Attorney  
Western District of Louisiana  
800 Lafayette Street, Suite 2200  
Lafayette, Louisiana 70501  
(337) 262-6618

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

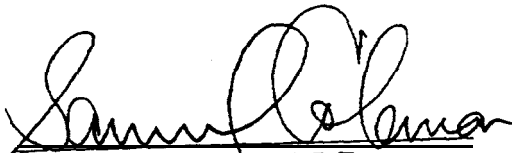
FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

  
\_\_\_\_\_  
BRIAN J. MAAS  
Director  
Water Enforcement Division  
Office of Regulatory Enforcement  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

DATE: 10/6/00

OF COUNSEL:

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Attorney- Advisor  
Water Enforcement Division  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
401 M Street, S.W.  
Washington, D.C. 20460



DATE: 10/5/00

SAMUEL COLEMAN, P.E.

Director

Compliance Assurance and  
Enforcement Division

U.S. Environmental Protection  
Agency, Region 6

1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

OF COUNSEL:

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Enforcement Counsel

**Office** of Regional Counsel


U.S. Environmental Protection Agency, Region 6

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Dallas, Texas 75202-2733

FOR PLAINTIFF - LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY

J. DALE GIVENS  
Secretary  
Louisiana Department of Environmental Quality

By:

  
LINDA KORN LEVY  
Assistant Secretary

DATE: 10/16/00

Louisiana Department of Environmental Quality  
P.O. Box 82215  
Baton Rouge, Louisiana 70884-2215

FOR INTERVENING DEFENDANT

Total Environmental Solutions, Inc.



Paul Maeder

Chief Executive Officer

Total Environmental Solutions, Inc.

P.O. Box 4037

Houma, LA 70361

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