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LEXSEE 2002 EPA Consent LEXIS 571

UNITED STATES OF AMERICA Plaintiff, v. CITY OF GALAX, VIRGINIA,  
Defendant, and COMMONWEALTH OF VIRGINIA, Statutory Defendant and Plaintiff  
Cross-Claimant

Case No. 7:01CV00925

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF VIRGINIA,  
ROANOKE DIVISION

*2002 EPA Consent LEXIS 571*

November 14, 2002

COUNSEL:

[\*1] FOR PLAINTIFF THE UNITED STATES OF AMERICA: W. BENJAMIN FISHEROW, Deputy Section Chief, Environment and Natural Resource Division, Environmental Enforcement Section, United States Department of Justice

JOHN W. SITHER, Environmental Enforcement Section, Environment and Natural Resources Division, United States Department of Justice, 1425 New York Avenue, N.W., Washington, DC 20003

JOHN L. BROWNLEE, United States Attorney, Western District of Virginia

JULIE C. DUDLEY, Assistant United States Attorney, Western District of Virginia, 105 Franklin Road, S.W., Roanoke, VA 24011-2305

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

DEANE H. BARTLETT, Senior Assistant Regional Counsel, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103

JOHN PETER SUAREZ, Assistant Administrator, Office of Enforcement and Compliance Assurance, United States Environmental Protection Agency, Washington, D.C. 20460; FOR COMMONWEALTH OF VIRGINIA: ROBERT G. BURNLEY, Director, Department of Environmental Quality

JOHN BYRUM, Assistant Attorney General, Commonwealth of Virginia, 900 East Main Street, Richmond, Virginia 23219; FOR DEFENDANT CITY [\*2] OF GALAX: DANIEL J. CAMPBELL, City Manager; FOR COMMONWEALTH OF VIRGINIA: ROBERT G. BURNLEY, Director, Department of Environmental Quality

JOHN BYRUM, Assistant Attorney General, Commonwealth of Virginia, 900 East Main Street, Richmond, Virginia 23219; FOR DEFENDANT CITY OF GALAX: DANIEL J. CAMPBELL, City Manager

OPINION:

**CONSENT DECREE**

WHEREAS, Plaintiff, the United States of America ("United States"), acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed the Complaint in this action seeking injunctive relief and civil penalties pursuant to Section 309(b) and (d) of the Clean Water Act, 33 U.S.C. §

1319(b) and (d), naming as defendant the City of Galax, Virginia (hereinafter referred to as "Galax"), and as statutory defendant the Commonwealth of Virginia ("Virginia") pursuant to Section 309(e) of the Clean Water Act, 33 U.S.C. § 1319(e); and

WHEREAS, Virginia hereby files, pursuant to this Consent Decree, a Cross-Claim (the "Virginia Cross-Claim"), seeking injunctive relief and penalties pursuant to §§ 62.1 - 44.2 et seq. of the Code of Virginia (1950), as amended ("State Water Control Law"); and

WHEREAS, the parties [\*3] agree that such Virginia Cross-Claim is hereby deemed filed, and the allegations thereof deemed answered and denied by Galax; and

WHEREAS, Galax operates a publicly owned treatment works ("POTW") that serves the citizens of the City of Galax and the surrounding area and which is subject to the terms of National Pollutant Discharge Elimination System ("NPDES") Permit No. VA0078484 issued to Galax by the Virginia Department of Environmental Quality ("DEQ"); and

WHEREAS, the United States alleges that Galax has violated Section 301 of the Clean Water Act, 33 U.S.C. § 1311, by discharging untreated sewage from its sewage collection system to waters of the United States in violation of Section 301 of the Clean Water Act, 33 U.S.C. § 1311; and

WHEREAS Galax owns and operates a plant for the treatment of public drinking water ("Water Treatment Plant"), which was, until approximately June 14, 2000, subject to the terms and conditions of NPDES Permit No. VA0052680, issued to Galax by DEQ; and

WHEREAS, the United States alleges that Galax has violated Section 301 of the Clean Water Act, 33 U.S.C. § 1311, by the occurrence of unauthorized discharges to Chestnut Creek and by otherwise failing [\*4] to comply with the requirements of NPDES Permit No. VA0052680; and

WHEREAS, Virginia alleges that Galax has violated the State Water Control Law by the occurrence of unauthorized discharges to Chestnut Creek and by otherwise failing to comply with the requirements of NPDES Permit Nos. VA0052680 and VA0078484; and

WHEREAS, Galax certifies, in a document attached hereto as Exhibit 1, that as of February 2002 it has implemented the capital improvements to the Ballard's Branch Pump Station and surrounding sewershed described in the final construction plans and specifications submitted to the Virginia Department of Health, dated February 26 and 28, 2001 by Adams-Heath Engineering, Inc., it has provided backup power at the Ballard's Branch pump station, and it has implemented capital improvements to the Fries Road Pump Station; and

WHEREAS, the parties recognize that this Consent Decree is a settlement of a disputed matter and that Galax's participation in the settlement does not constitute or represent any admission of law or fact by Galax; and

WHEREAS, Galax denies all allegations set forth in the Complaint; and

WHEREAS, the parties agree, and the Court finds, that settlement of the claims [\*5] alleged in the Complaint without further litigation or trial of any issues is in the public interest and that the entry of this Consent Decree is the most appropriate way of resolving the claims alleged in the Complaint.

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

## **I. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action and over the parties to this action pursuant to Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b) and 28 U.S.C. § 1367. The Complaint alleges claims against Galax under Section 309 of the Clean Water Act, 33 U.S.C. § 1319, for injunctive relief and civil penalties. The Cross-Claim alleges claims against Galax pursuant to the State Water Control Law. Galax waives any and all objections that it might have to the Court's jurisdiction to enter and enforce this Consent Decree. Authority to bring this action is vested in the United States Department of Justice pursuant to Section 506 of the Clean Water Act, 33 U.S.C. § 1366; and 28 U.S.C. § 516 and 519.

## **II. VENUE**

2. Venue is proper in this Court pursuant to Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b) and 28 U.S.C. § 1391(b) [\*6] and 1395(a).

### III. BINDING EFFECT

3. The provisions of this Consent Decree shall apply to and be binding on Galax, its officers, directors, employees, agents, servants, successors and assigns, and upon the United States and the Commonwealth of Virginia.

4. Effective from the Date of Lodging of this Consent Decree until its termination, Galax shall give written notice of this Consent Decree to any person or entity to whom Galax may transfer ownership or operation of the Publicly Owned Treatment Works, including the collection system ("POTW") and/or its Water Treatment Plant and shall provide a copy of this Consent Decree to any such person or entity. Galax shall notify EPA, DEQ and the United States Department of Justice in writing of any successor in interest at least twenty-one (21) days prior to any such transfer.

5. Galax shall provide a copy of this Consent Decree to each engineering, consulting and contracting firm to be retained to perform the work or any portion thereof required by this Consent Decree upon execution of any contract relating to such work, and shall provide a copy to each engineering, consulting and contracting firm already retained no later than thirty [\*7] (30) days after the Date of Lodging of this Consent Decree. Any action taken by any contractor or consultant retained to implement Galax's duties under this Consent Decree shall be considered an action of Galax for purposes of determining compliance with this Consent Decree. In an action to enforce this Consent Decree, Galax shall not assert as a defense against the United States any act or failure to act by any of Galax's officers, directors, employees, agents, servants, contractors, successors and assigns.

### IV. PURPOSE

6. The express purpose of the parties entering into this Consent Decree is to further the objectives of and to ensure compliance with the Clean Water Act, particularly Sections 101 and 301, 33 U.S.C. § § 1251 and 1311, the regulations promulgated thereunder, the Virginia water pollution control laws, the regulations promulgated under such laws, and Galax's NPDES Permit No. VA 0078484 and any future extended, modified or reissued permits. It is the further objective of this Consent Decree that Galax implement measures to eliminate sources of inflow and infiltration and Overflows from its sanitary sewer collection system.

### V. DEFINITIONS

7. Unless otherwise [\*8] defined herein, the terms used in this Consent Decree will have the meaning given to those terms in the Clean Water Act, 33 U.S.C. § § 1251 et seq. and the regulations promulgated thereunder. The following terms used in this Consent Decree will be defined as follows:

A. "Permit No. VA0078484" shall mean National Pollutant Discharge Elimination System ("NPDES") permit number VA0078484 issued to the City of Galax pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342, and any future extended, modified, or reissued permit.

B. "Permit No. VA0052680" shall mean National Pollutant Discharge Elimination System ("NPDES") permit number VA0052680 issued to the City of Galax pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342, which expired June 14, 2000.

C. "Ballard's Branch Pump Station" shall mean the sewage pumping station operated by the City of Galax and located off Kenbrook Road in Galax, Virginia, and all components of such pumping station.

D. "Effluent Pump Station" shall mean the sewage pumping station operated by the City of Galax and located at the municipal sewage treatment plant, 271 Stockyard Road, Galax, Virginia, and all components of such pumping station. [\*9]

E. "Fries Road Pump Station" shall mean the sewage pumping station operated by the City of Galax and located off Old Fries Road (State Route 606), Galax, Virginia, and all components of such pumping station.

F. "B.C. Vaughan Pump Station" shall mean the sewage pumping station operated by the City of Galax and located off State Route 726 in Carroll County, Virginia, and all components of such pumping station.

G. "Overflow" shall mean a spill, release, or diversion of wastewater from Galax's sanitary sewer collection system which reaches waters of the United States.

## VI. COMPLIANCE PROGRAM AND SCHEDULES

In settlement of the claims of the United States, Galax agrees to undertake the measures provided in this section.

**8. Ballard's Branch Pump Station** - The Ballard's Branch pump station shall be operated in a manner designed to eliminate all Overflows in violation of Permit No. VA0078484. If after August 31, 2002 and during the term of this Consent Decree, Overflows occur from Ballard's Branch Pump Station in violation of Permit No. VA0078484, Galax shall, upon written demand by EPA, and in accordance with a schedule submitted to EPA, make repairs or improvements to correct [\*10] such Overflows.

**9. Effluent Pump Station** - No later than August 31, 2002 Galax shall provide effluent retention capacity to its chlorination/dechlorination improvements program adequate to retain at least 45 minutes of average flow in the event of a power failure. If after August 31, 2002 and during the term of this Consent Decree, more than two Overflows occur from the Effluent Pump Station in violation of Permit No. VA0078484 within any six-month period, Galax shall, upon demand by EPA, and in accordance with a schedule submitted to EPA, provide a backup power source to enable at least one of the existing 125-horsepower effluent pumps to continue to pump effluent to Outfall 001 in the event of a power failure.

**10. B. C. Vaughan Pump Station** - Galax shall maintain Class I reliability as set forth in the Virginia Sewerage Regulations, 12 VAC 5-581-120.

**11. Fries Road Pump Station** - The Fries Road Pump Station shall be operated in a manner designed to eliminate all Overflows in violation of Permit No. VA0078484.

**12. Continuing Capacity, Management, Operation and Maintenance Program** - Within one hundred and eighty (180) days of the date of entry of this [\*11] Consent Decree, Galax shall provide to EPA for review and comment, a Capacity, Management, Operation and Maintenance ("CMOM") Plan to: a) properly manage, operate and maintain, at all times, all parts of the sewer collection system owned by Galax; b) provide adequate capacity to convey all base flows and peak flows for all parts of the collection system; c) take all feasible steps to stop and mitigate the impact of sanitary sewer overflows in the collection system; and (d) provide notification to parties with a reasonable potential for exposure to pollutants associated with an Overflow event. The CMOM Program shall include, at a minimum, the following elements:

- a. specification of major goals of the program;
- b. identification of administrative and maintenance positions responsible for implementing CMOM program measures, including lines of authority by organization chart or similar document; and the chain of communication for reporting Overflows;
- c. a description of legal authority, through sewer use ordinances, service agreements or other legally binding documents, to:
  - (i) control infiltration and connections from inflow sources;
  - (ii) require that sewers and connections be properly [\*12] designed and constructed;
  - (iii) ensure proper installation, testing, and inspection of all new and rehabilitated portions of the sewer collection system;
  - (iv) address flows from municipal satellite collection systems; and
  - (v) implement the general and specific prohibitions of the national pretreatment program that Galax is subject to under 40 CFR 403.
- d. identification of elements, specifying the person or position within Galax responsible for each element and indicating current staffing and resource commitments, including, but not limited to:
  - (i) maintenance of facilities and equipment;
  - (ii) maintenance of a map of the collection system;

(iii) management of information and use of timely, relevant information to establish and prioritize appropriate CMOM activities (such as the immediate elimination of dry weather Overflows or Overflows into sensitive waters such as public drinking water supplies and their source waters, swimming beaches and waters where swimming occurs, shellfish beds, designated Outstanding National Resource Waters, National Marine Sanctuaries, waters within Federal, State, or local parks, and water containing threatened or endangered species or their habitat), and [\*13] identify and illustrate trends in Overflows, such as frequency and volume;

(iv) routine preventative operation and maintenance activities, including, but not limited to:

- maintenance inspection procedures;
- routine preventative maintenance schedules and procedures;
- corrective maintenance response and reporting procedures;
- equipment databases or other methods used to track inventory and the servicing of equipment;
- proper sealing and/or maintenance of manholes;
- regular repair or replacement of deteriorating sewer lines;
- identifying and remediating improper or inadequate construction;
- ensuring that new sewers and connections are properly designed and constructed (including testing of new sewer installations) to prevent Overflows and that new connections of inflow sources are prohibited;
- ensuring that rehabilitation projects are properly designed and constructed (including testing of rehabilitation installations) to prevent Overflows.

e. a schedule of preventative maintenance activities, which shall include, but not be limited to, the following:

(i) periodic service and calibration of all instrumentation, including flow meters, liquid level sensors, alarm systems, [\*14] elapsed time meters, and remote monitoring equipment;

(ii) routine inspection and service for each pump station, including engines, motors, generators, pumps, wet wells, valves, and related equipment;

(iii) periodic inspection and testing and, if necessary, servicing of all pumps including impellers, seals and bearings, wear clearances, couplings, drives and motors; and

(iv) routine inspection and service for main line sewers, manholes, siphons, and other appurtenances.

f. a program to assess the current capacity of Galax's collection system and treatment facilities, which shall include, but not be limited to the following:

(i) identification and prioritization of structural deficiencies and identification and implementation of short-term and long-term rehabilitation actions to address each deficiency;

(ii) appropriate training on a regular basis; and

(iii) equipment and replacement parts inventories including identification of critical replacement parts.

g. design and performance provisions, which shall include, but not be limited to the following:

(i) requirements and standards for the installation of new sewers, pumps and other appurtenances; and rehabilitation and repair projects; [\*15] and

(ii) procedures and specifications for inspecting and testing the installation of new sewers, pumps, and other appurtenances and for rehabilitation and repair projects.

h. Monitoring, Measurement, and Program Modifications provisions, which shall include, but not be limited to the following:

(i) monitoring the implementation and measuring the effectiveness of each element of Galax's CMOM program;

(ii) updating program elements as appropriate based on monitoring or performance evaluations;

(iii) updating Galax's CMOM program, as appropriate, to keep it updated and accurate; and

(iv) visual observation and estimation of flows at each collection system pump station during periods of both dry weather and wet weather to verify the continued effectiveness of the CMOM program and the continued adequacy of the sewer system and pump stations.

i. an Overflow Emergency Response Plan that identifies measures to protect public health and the environment. The plan must include mechanisms to:

(i) ensure that Overflows (including those that do not discharge to waters of the U.S.) are addressed appropriately, including ensuring that reports of Overflows are immediately dispatched to appropriate [\*16] personnel for investigation and appropriate response;

(ii) ensure appropriate immediate notification to the public, health agencies, other impacted entities (e.g., water suppliers) and the NPDES authority. The CMOM program shall identify the public health and other officials who will receive immediate notification;

(iii) ensure that appropriate personnel are aware of and follow the plan and are appropriately trained; and

(iv) provide for emergency operations.

j. a System Evaluation and Capacity Assurance Plan, which at a minimum, must include:

(i) Evaluation - Steps to evaluate those portions of the collection system which are experiencing or contributing to an Overflow caused by hydraulic deficiency or to noncompliance at a treatment plant. The evaluation must provide estimates of peak flows (including flows that escape from the system) associated with conditions similar to those causing overflow events, provide estimates of the capacity of key system components, identify hydraulic deficiencies (including components of the system with limiting capacity) and identify the major sources that contribute to the peak flows associated with overflow events.

(ii) Capacity Enhancement Measures [\*17] - Short- and long-term actions to address each hydraulic deficiency including prioritization, alternatives analysis, and a schedule.

(iii) Plan Updates - The plan must be reevaluated at least annually and updated, if necessary, to describe any significant change in proposed actions and/or implementation schedule. The plan must also be updated to reflect available information on the performance of measures that have been implemented.

The CMOM Plan and information regarding its implementation shall be available to the public upon request.

Within one year of entry of the Consent Decree, Galax shall implement the CMOM in accordance with the schedule contained therein.

### **13. Record Keeping and Reporting of Overflows**

Galax shall maintain records a minimum of five (5) years of the following information for each sewer system Overflow from its pump stations:

a.) the location of the Overflow and any receiving water;

b.) an estimate of the volume of the Overflow;

c.) the duration of the Overflow

d.) a description of the sewer system component from which the Overflow occurred (e.g., manhole, constructed Overflow pipe, crack in pipe, etc.);

e.) the estimated date and time when the Overflow [\*18] began and when it stopped;

f.) the cause or suspected cause of the Overflow; and

g.) steps that have been and will be taken to prevent the Overflow from recurring and a schedule for those steps; including

i.) work order records associated with investigation and repair of system problems related to sanitary sewer Overflows;

ii) a list and description of complaints from customers or others; and

iii) documentation of performance and implementation measures.

#### **14. Reporting of Discharge Events**

A. Galax shall report to EPA by oral notification any Overflow of wastewater from Galax's collection system to any surface water body within twenty-four (24) hours of the time Galax first becomes aware of the Overflow. The report shall be made to David Arent, NPDES Enforcement Branch, Office of Compliance and Enforcement, Water Protection Division, United States Environmental Protection Agency, Region III, (215-814-5440). Voicemail notification to Mr. Arent shall be deemed sufficient to satisfy this requirement. A written submission shall also be provided to Mr. Arent of EPA within five (5) days of the time Galax first becomes aware of the Overflow. The written submission shall contain the [\*19] following: i) the cause of the Overflow; ii) duration and volume (estimate if unknown); iii) description of the source (e.g., manhole cover, pump station); iv) type of collection system that overflowed (i.e., combined or separate); v) location by street address, or any other appropriate method; vi) date of event; vii) the ultimate destination of the flow to a surface water body; and viii) corrective actions or plans to eliminate future Overflows.

B. Compliance with the reporting and notification requirements imposed by this Consent Decree shall not relieve Galax from the obligation to submit reports or retain documents and information as required by the Clean Water Act, the regulations promulgated thereunder, the NPDES permits, or any other permit, or Federal, state or local law.

C. Galax shall maintain for five (5) years a copy of any written submissions prepared pursuant to this Section VI.

**15. Water Treatment Plant-** Galax shall strictly adhere to the procedures set forth in the Galax Water Treatment Plant Operation and Maintenance Manual, updated May 2000, to prevent the existing cross-connections identified in the Olver, Inc. letter dated August 16, 1999 (attached [\*20] hereto as Exhibit 2) from allowing water and associated treatment chemicals to discharge to the raw water well and into Chestnut Creek through the Water Treatment Plant inlet. If such discharge occurs, Galax shall remove the existing cross-connections to eliminate the possibility of such discharge.

### **VII. REVIEW PROCEDURES**

16. a Following submission of any plan, program, or other document required by this Consent Decree, EPA may comment on the submission, and Galax shall modify the submission to conform to and incorporate EPA's comments and resubmit such plan, program, or other document to EPA. If EPA does not comment within 60 days, Galax shall implement such plan or program as submitted. Notwithstanding EPA's comments, Galax shall remain fully responsible for compliance with the Consent Decree, the Permits, and federal, state and local laws.

b. All programs, plans or other documents required to be submitted pursuant to Section VII shall become incorporated into and enforceable under this Consent Decree, upon submission of the final versions of such documents to EPA.

### **VIII. CERTIFICATION**

17. Any notice, report, certification, data or other document required to be [\*21] submitted by Galax under this Consent Decree, which discusses, describes, demonstrates, supports any finding, or makes any representation concerning Galax's compliance or non-compliance with this Consent Decree, shall be signed and certified by a responsible official, as defined in 40 C.F.R. § 122.22. The certification of the responsible official shall be in the following form:

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 am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(Signature)

(Name Typed or Printed)

(Title)

#### **IX. CIVIL PENALTY**

18. Galax shall pay a civil penalty to the United States in the amount of Thirty Thousand Dollars [\*22] (\$ 30,000) for the violations alleged by the United States in the Complaint and shall pay a civil penalty of Twenty Thousand Dollars (\$ 20,000) to the Commonwealth of Virginia for the violations alleged in the Virginia Cross-Claim within thirty (30) days after entry of this Consent Decree, as set forth below.

19. The United States and the Commonwealth of Virginia shall each be deemed a judgment creditor for purposes of collection of this penalty.

20. Payment of the civil penalty to the United States shall be made by tendering a certified or cashier's check for the appropriate amount payable to the "United States Treasury," referencing DOJ No. 90-5-1-1-07198. The payment shall be delivered to the United States Attorney, Western District of Virginia, 105 Franklin Road, S.W., Roanoke, Virginia, 24011-2305. Notice of the payment shall simultaneously be mailed to the following:

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

Deane H. Bartlett (3RC20)  
Senior Assistant Regional Counsel  
U.S. EPA - Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029; and

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. [\*23] Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Re: DOJ No. 90-5-1-1-07198

The transmittal letters forwarding such notice shall include the caption, civil action number and judicial district of this action. Payment of the civil penalty to the Commonwealth of Virginia shall be made by tendering a certified or cashier's check for the appropriate amount payable to the Virginia Department of the Treasury. Payment shall be delivered to John Byrum, Assistant Attorney General, Office of the Attorney General, 900 East Main Street, Richmond, Virginia, 23219.

21. If Galax fails to tender all or any portion of the civil penalty payment owed to the United States within thirty (30) days of the Date of Entry of this Consent Decree interest on the unpaid amount shall accrue in accordance with the provisions of 28 U.S.C. § 1961 and be paid from the date said payment is due until all amounts owed are paid.

#### **X. SUPPLEMENTAL ENVIRONMENTAL PROJECT**

22. Galax shall undertake a Supplemental Environmental Project ("SEP"), which the United States and Galax agree is intended to secure significant environmental or public health protection and improvement, and is in accordance with [\*24] EPA's May 1, 1998 Supplemental Environmental Projects Policy. Galax agrees to perform the SEP in accordance with the terms of this Consent Decree, Section X and Exhibit 3 hereto, which is hereby incorporated by reference. The SEP shall include off-stream livestock watering and fencing and other hardened stream access to avoid in-stream livestock impacts in the Chestnut Creek watershed upstream of Galax. The SEP will be performed under the immediate supervision of the New River Soil and Water Conservation District (the "District"). By no later than sixty (60) days after entry of this Consent Decree, or such longer period as Galax and the EPA shall agree in writing, Galax shall enter into a contract with the District under which the District shall agree to undertake supervision and implementation of the



SEP, and Galax shall be obliged to fund the implementation of the SEP in accordance with the schedule set forth in Exhibit 3. Galax shall provide a copy of the contract to EPA within ten (10) days of its execution. Notwithstanding such contract, Galax shall be solely responsible for the implementation of the SEP. Said contract shall specify and identify the specific projects to be undertaken [\*25] by the District in accordance with Exhibit 3.

23. Galax will implement the SEP pursuant to the description, work plan and time schedule set forth in Exhibit 3 hereto. The Completion Date for the SEP shall be three years from the date of entry of this Consent Decree.

24. The total expenditure for the SEP shall not be less than \$ 50,000.

25. Galax shall submit to EPA a SEP Status Report within six (6) months of entry of the Consent Decree, and every six months thereafter until the SEP is completed. The SEP Status Report shall include a description of the SEP implementation activities undertaken during the time period covered by the report, along with an itemized accounting of costs expended for the SEP as of the reporting date. The SEP Status Report shall also discuss whether the work on the SEP is proceeding in accordance with the work plan and schedule described in Exhibit 3 to this Decree and, if not, identify any problems encountered in performing the work, discuss any actual or potential delays in the work, and describe any actions taken or to be taken to prevent or mitigate such delays.

26. No later than sixty (60) days after Galax completes the SEP described in this Section Galax [\*26] shall, in accordance with the requirements this Decree, submit to EPA a SEP Completion Report containing the following information:

a. a description of the SEP as fully implemented, including a statement whether the work required by this Consent Decree for the SEP has been completed and shall include a certification that the SEP has been fully implemented pursuant to the provisions of this Consent Decree;

b. a description of the work undertaken to complete the SEP;

c. a description of the environmental or public health benefits resulting from implementation of the SEP;

d. verified and sworn statements of itemized and total net costs of the SEP, with appropriate documentation of the expenditures;

e. a certification that the SEP has been fully implemented pursuant to the provisions of this Consent Decree.

27. Galax shall maintain legible copies of documentation of the underlying data for any and all documents or reports submitted to EPA pursuant to this Consent Decree for a period of not less than three years after completion of the SEP, and Galax shall provide the documentation of any such underlying data to EPA within twenty-one (21) days of a written request for such information. [\*27] All documents or reports, including without limitation, the SEP Status and Completion Reports, submitted to EPA pursuant to this Consent Decree shall be certified in accordance with Section XII of this Decree.

28. Following receipt of the SEP Completion Report described in Paragraph 26 above, EPA will either (1) accept the Report and notify Galax in writing of that acceptance or (2) reject the Report and notify Galax, in writing, of deficiencies in the Report and any additional actions and/or information which is required to be taken or supplied by Galax to comply with the SEP provisions of this Decree. Galax shall take action to satisfy any deficiencies and address any comments provided by EPA and notify EPA in writing when such efforts have been completed, EPA shall notify Galax in writing whether or not it accepts the SEP as completed.

29. Galax hereby certifies that, as of the date of signing this Consent Decree, Galax is not required, by virtue of any local, state or federal statute, regulation, order, consent decree or other law or voluntary agreement, to develop or implement the SEP described above. Galax further certifies that it has not received, nor is it presently negotiating [\*28] to receive, credit in any other enforcement action for the SEP. In addition, Galax certifies that none of the actions required by this Section of the Decree or Exhibit 3 hereto had been started, nor funds committed thereto, prior to commencement of settlement discussions in this matter, and that all projects are being performed in settlement of this litigation.

30. Galax recognizes and agrees that the funding for the work required by this Section of this Decree can not be directly or indirectly, in whole or in part, from any grant or any source of funds which were, in whole or in part, received from the United States Government.

31. The determination of whether the SEP has been satisfactorily completed and whether Galax has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

32. In the event that Galax fails to complete the SEP as set forth in this Consent Decree or that the actual expenditures for the SEP do not equal or exceed the amount specified in Paragraph 24 above, Galax shall be liable for stipulated penalties according to the provisions set forth below:

a. Except as provided in subparagraph (b) immediately below, if the SEP is not [\*29] completed, and EPA determines that Galax has not made a good faith effort to complete the SEP, Galax shall pay a stipulated penalty for the SEP to the United States in the amount of \$ 45,000.

b. If the SEP is not completed but (i) EPA determines that Galax has made a good faith effort to complete the SEP, and (ii) Galax certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Galax will not be liable for any stipulated penalty related to the SEP.

c. If the SEP is completed, but Galax spends less than 90 percent of the amount stated in Paragraph 24 above for the SEP, Galax shall pay a stipulated penalty to the United States in the amount of \$ 5,000.

d. If the SEP is completed, and Galax spends at least 90 percent of the amount stated in Paragraph 24 above for the SEP, Galax shall not pay any stipulated penalty with respect to the SEP.

e. For failure to submit the SEP Status Report or SEP Completion Report required by Paragraphs 25 and 26 above, Galax shall pay a stipulated penalty in the following amounts

Period of Noncompliance	Penalty per Day per Violation
1st to 14th day	\$ 100
15th to 30th day	\$ 250
each day beyond 30<th> day	\$ 500

[\*30]

f. Galax shall pay any stipulated penalty due under this Paragraph within thirty (30) days after receipt of written demand by EPA for such penalty, in accordance with the method specified in Paragraph 40, below. Interest shall be paid on any stipulated penalty not paid when due, in accordance with Paragraph 44, below.

33. Any public statement, oral or written, made by Galax in reference to the SEP shall include a statement that this project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency for alleged violations of the Clean Water Act as amended, 33 U.S.C. § 1251, et seq., and its implementing regulations.

34. EPA's acceptance of the SEP specified in this Consent Decree shall not be construed as EPA's endorsement or approval of any particular brand of equipment or technology utilized by Galax or any non-parties in implementing the SEP. The SEP must be implemented in compliance with any and all applicable federal, state and local laws and regulations.

35. Unless addressed specifically within this Section, issues involving stipulated penalties for any violations of this Section of the Decree are governed [\*31] by Section XV of this Consent Decree.

## **XI. COMPLIANCE REPORTING**

36. To the extent required by Section VI, Paragraphs 9 and 15 of this Consent Decree, on or before six months from the entry date of this Consent Decree, and continuing every six months thereafter, Galax shall provide to EPA a report containing a summary of all actions taken in compliance with such paragraphs.

## **XII. STIPULATED PENALTIES**

37. Failure to Submit Timely Reports. Galax shall pay to the United States stipulated penalties as set forth below, for each day that Galax fails to submit the plans and reports required under this Consent Decree. If a due date falls on a holiday or week-end, the due date shall be the following business day. The stipulated penalties for failure to meet such document submittal dates shall be as follows:

Period of Noncompliance	Penalty per Day per Violation
1st to 14th day	\$ 200

15th to 30th day	\$ 500
each day beyond 30<th> day	\$ 750

38. Galax shall pay to the United States stipulated penalties as set forth below for failure to meet the deadlines and requirements of Paragraphs 8, 9, 10, 11, 12, 14, or 15. The stipulated penalties shall be as follows:

Period of Noncompliance	Penalty per Day per Violation
1st to 14th day	\$ 500
15th to 30th day	\$ 1000
each day beyond 30<th> day	\$ 2,500

[\*32]

39. Post-Compliance Date Overflows. Galax shall pay to the United States stipulated penalties, upon written demand by the United States, as set forth below, for each day of each Overflow that occurs in violation of Permit No. VA0078484 from the Ballard's Branch, B.C. Vaughan, Fries Road and Effluent Pump Stations. The determination of whether any such Overflow has occurred in violation of Permit No. VA0078484 shall be made by the United States. The stipulated penalties per day for each such Overflow shall be \$ 1,500.

40. Payments. All payments of stipulated penalties shall be made by tendering a certified or cashier's check for the appropriate amount payable to the "United States Treasury," referencing DOJ No. 90-5-1-1-07198. The payment shall be delivered to the United States Attorney, Western District of Virginia, 105 Franklin Road, S.W., Roanoke, Virginia, 24011-2305. Notice of the payment shall be simultaneously mailed, along with a cover letter specifying the amount and date of payment, civil docket number, and reason for payment, to the following:

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

41. Accrual of Stipulated [\*33] Penalties. Stipulated penalties shall begin to accrue on the day after performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree. Penalties shall accrue regardless of whether EPA has notified Galax of a violation.

42. No Effect on Obligation to Comply. The payment of penalties shall not alter in any way Galax's obligation to comply with the requirements of this Consent Decree.

43. Effect of Dispute Resolution. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to the United States within fifteen (15) days of the execution of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Galax shall pay all accrued penalties determined [\*34] by the Court to be owed to the United States within thirty (30) days of receipt of the Court's decision or order, except as provided in subparagraph (c), below;

c. If this Court's decision is appealed by any party, Galax shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within thirty (3) days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every thirty (30) days. Within fifteen (15) days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to the United States or to Galax to the extent that each prevails.

44. Interest on Late Payment. If Galax fails to pay stipulated penalties when due, Galax shall pay interest on the penalties at the rate established by the Secretary of the Treasury under 31 U.S.C. § 3717.

45. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Decree. The United States expressly reserves the right to seek any other relief it deems appropriate, including but not limited to, [\*35] action for statutory penalties, contempt, or injunctive relief against Galax. However,

the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

### **XIII. FORCE MAJEURE**

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

47. When Galax knows or should [\*36] have known, by the exercise of due diligence, of an event that might delay completion of any requirement of this Consent Decree, whether or not the event is a Force Majeure event, Galax shall notify EPA, in writing, within ten (10) business days after Galax first knew, or in the exercise of reasonable diligence under the circumstances, should have known of such event. The notice shall indicate whether Galax claims that the delay should be excused due to a Force Majeure event. The notice shall describe in detail the basis for Galax's contention that it experienced a Force Majeure delay, the anticipated length of the delay, the precise cause or causes of the delay, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which those measures will be implemented. Galax shall adopt all reasonable measures to avoid or minimize such delay. Failure to so notify EPA shall render this Section void and of no effect as to the event in question, and shall be a waiver of Galax's right to obtain an extension of time for its obligations based on such event.

48. If EPA finds that a delay in performance is, or was, caused by a Force Majeure event, it [\*37] shall extend the time for performance, in writing, for a period to compensate for the delay resulting from such event and stipulated penalties shall not be due for such period. In proceedings on any dispute regarding a delay in performance, the dispute resolution provisions of Section XV (Dispute Resolution) shall apply, and Galax shall have the burden of proving that the delay is, or was, caused by a Force Majeure event, and that the amount of additional time requested is necessary to compensate for that event.

49. Compliance with a requirement of this Consent Decree shall not by itself constitute compliance with any other requirement. An extension of one compliance date based on a particular event shall not automatically extend any other compliance date. Galax shall make an individual showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought.

### **XIV. RETENTION OF JURISDICTION**

50. This Court shall retain jurisdiction of this matter for the purposes of implementing and enforcing the terms and conditions of this Consent Decree and for the purpose of adjudicating all disputes among the parties that may arise [\*38] under the provisions of this Consent Decree, to the extent that this Consent Decree provides for resolution of disputes by the Court.

### **XV. DISPUTE RESOLUTION**

51. 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 United States to enforce obligations of Galax that have not been disputed in accordance with this Section.

52. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between Galax and EPA. If one of the parties to this Consent Decree believes it has a dispute with respect to this Consent Decree with the other party, it shall notify the party in writing, setting forth the matter(s) in disputes, within fourteen (14) days of the circumstances giving rise to the dispute. If the dispute cannot be resolved by the parties within twenty-one (21) days from receipt of such notice, Galax shall comply with the position of the United States unless [\*39] Galax files a petition with the Court for resolution of the dispute within forty-five (45) days of

receipt of the notice of dispute. The petition to the Court shall set forth the nature of the dispute and include a proposal for its resolution. The United States may, within thirty (30) days of receipt of Galax's petition to the Court for resolution, file a response with an alternate proposal for resolution. In resolving any dispute between the parties to this Consent Decree, the Court shall apply the legal standard provided by applicable law.

53. All documents required by this Section to be served upon the other parties shall be served upon the addressees and in the manner identified in Section XXII (Form of Notice).

54. Submission of any matter to the Court for resolution shall not extend any of the deadlines set forth in this Consent Decree unless the parties agree to such extension in writing or the Court grants an order extending such deadline. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 43. Notwithstanding the stay of payment, stipulated penalties shall [\*40] accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Galax does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XII.

## **XVI. RIGHT OF ENTRY**

55. EPA, together with its authorized representatives and contractors shall have authority at all reasonable times, upon the presentation of credentials, to enter the premises of Galax to: monitor the progress of activities required by this Consent Decree; verify any data or information submitted to the United States; obtain samples, and, upon request, obtain splits of any samples collected by Galax or its consultants and contractors; observe performance tests; inspect and evaluate any portion of the Galax sewage treatment plant and collection system and the Water Treatment Plant; and inspect and review any record required to be kept under the terms and conditions of this Consent Decree, Permit No. VA0078484 and/or the Clean Water Act. These inspection rights are in addition to, and in no way limit or otherwise affect, EPA's statutory authorities to conduct inspections, to require monitoring and to obtain information from [\*41] Galax as authorized by law.

## **XVII. NOT A PERMIT/COMPLIANCE WITH OTHER STATUTES/REGULATIONS**

56. This Consent Decree is not and shall not be construed as a permit issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342, nor as a modification of any existing permit so issued, nor shall it in any way relieve Galax of its obligations to obtain a permit for Galax's POTW, the Collection System or any other part of its sewage treatment and collection system or facilities and to comply with the requirements of any NPDES permit or with any other applicable federal or state law or regulation. Galax must comply with any new permit, or modification of existing permits in accordance with applicable federal and state laws and regulations.

57. Nothing herein shall be construed as relieving Galax of the duty to comply with the Clean Water Act, the regulations promulgated under that act, and all applicable permits issued under that act and regulations.

## **XVIII. FAILURE OF COMPLIANCE**

58. The United States does not by its consent to the entry of this Consent Decree, warrant or aver in any manner that Galax's complete compliance with this Consent Decree will result in [\*42] compliance with the provisions of the Clean Water Act, 33 U.S.C. § § 1251 et seq. or with Galax's NPDES permits. Notwithstanding EPA's review of or comments on any plans, reports, policies, or procedures formulated pursuant to this Consent Decree, Galax shall remain solely responsible for any non-compliance with the terms of this Consent Decree, all applicable permits, the Clean Water Act and regulations promulgated under that Act. The pendency or outcome of any proceeding concerning issuance, reissuance, or modification of any permit shall neither affect nor postpone Galax's duties and obligations as set forth in this Consent Decree.

## **XIX. EFFECT OF SETTLEMENT**

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

60. The parties agree that Galax is responsible for achieving and maintaining complete compliance with all applicable federal and state laws, regulations, and permits, and that compliance with this Consent Decree shall be no defense to any actions commenced pursuant to said laws, regulations, or permits, except as otherwise expressly specified in the Consent Decree.

61. [\*43] This Consent Decree does not limit or affect the rights of Galax or the United States, or the Commonwealth of Virginia, as against any third parties that are not parties to this Consent Decree.

62. The United States reserves any and all legal and equitable remedies available to enforce the provisions of this Consent Decree.

63. This Consent Decree shall not limit any authority of EPA or the Commonwealth of Virginia under the Clean Water Act, the State Water Control Law, or any applicable statute, including the authority to seek information from Galax or to seek access to the property of Galax.

64. Performance of the terms of this Consent Decree by Galax is not conditioned on the receipt of any federal, state or local funds. Application for construction grants, state revolving loan funds, or any other grants or loans, or delays caused by inadequate facility planning or plans and specifications on the part of Galax shall not be cause for extension of any required compliance date in this Consent Decree.

65. It is the intent of the parties hereto that the clauses hereof are severable, and should any clause(s) be declared by a court of competent jurisdiction to be invalid and unenforceable, [\*44] the remaining clauses shall remain in full force and effect.

66. The United States and the Commonwealth of Virginia reserve all remedies available to them for civil violations of the Clean Water Act and the State Water Control Law by Galax occurring before and after the date of Lodging of this Consent Decree, other than for (A) all Overflows occurring from November 21, 1996 to the date of Lodging of this Consent Decree, in violation of Permit No. VA0078484; (B) the discharge of Polyaluminum chloride from the Galax Water Treatment Plant on October 21-22, 1997 in violation of Permit No. VA0052680; and (C) the failure from November 1993 to October 1997 to maintain records of discharges to Chestnut Creek as required by the Galax Water Treatment Plant Operations and Maintenance Manual in violation of Permit No. VA0052680.

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

68. Nothing in this Consent Decree shall be construed to limit the authority of the United States or the Commonwealth of Virginia to undertake any action against any person, including Galax, in response to conditions that may present an [\*45] imminent and substantial endangerment to the environment or to the public health or welfare.

## **XX. COSTS OF SUIT**

69. Each party shall bear its own costs and attorney's fees with respect to matters resolved by this Consent Decree.

## **XXI. RECORD KEEPING**

70. A. Galax shall maintain copies of any reports, plans, permits and documents, submitted to EPA pursuant to this Consent Decree, including any underlying research and data, for a period of five (5) years from date of submission. Galax shall require any independent contractor operating any portion of the Galax sewage treatment plant or collection system or Water Treatment Plant, or implementing any portion of this Consent Decree to also retain such materials for a period of five (5) years from date of submission. Galax shall submit such supporting documents to EPA upon request.

B. In addition to the reports and documentation required to be provided by Galax under the terms of this Consent Decree, Galax shall also provide, upon demand, any analytical data or any other documents requested by the United States to review work done, or to be done, by Galax or to determine Galax's compliance with the terms of this Consent [\*46] Decree.

71. Galax shall notify EPA ninety (90) days prior to the disposal or destruction of such records at the end of this five-year period and shall, upon EPA's request, deliver such records to EPA prior to such disposal or destruction.

**XXII. FORM OF NOTICE**

72. Unless otherwise specified, all reports, notices, or any other written communications required to be submitted under this Consent Decree shall be sent to the respective parties at the following addresses:

**As to the Department of Justice:**

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
1425 New York Avenue, N.W.  
Washington, D.C. 20005  
Reference DOJ Case No. 90-5-1-1-07198

**As to EPA:**

Deane H. Bartlett (3RC20)  
Senior Assistant Regional Counsel  
United States Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103

Chief, NPDES Branch (3WP31)  
Office of Compliance and Enforcement  
Water Protection Division  
United States Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103

**As to Commonwealth of Virginia**

Rick R. Linker, Esquire  
Assistant Attorney General  
Office of the Attorney General [\*47]  
900 East Main Street  
Richmond, Va 23219

**As to Galax:**

Daniel Campbell  
City Manager  
City of Galax  
P.O. Box 1187  
111 East Grayson Street  
Galax, VA 24333

Notifications shall be deemed submitted on the date they are received.

**XXIII. MODIFICATION**

73. There shall be no modification of this Decree without written agreement of all parties and approval by the Court, except that minor adjustments to schedules or technical matters may be made by written agreement of the parties.

**XXIV. PUBLIC COMMENT**

74. The Parties agree and acknowledge that final approval of the United States and entry of this Consent Decree are subject to the requirements of 28 C.F.R. § 50.7, which requires that notice of this proposed Consent Decree be published in the Federal Register and the public be given an opportunity to comment thereon and have comments considered by the United States before a proposed Consent Decree is entered. The United States may withdraw or withhold its consent on the basis of such comments.

**XXV. TERMINATION**

75. This Consent Decree shall terminate by the Court's order granting a motion of any party to the Court after all of the following have occurred: [\*48]

a. Galax has paid all penalties, including stipulated penalties, due under this Consent Decree and no payments are outstanding or owed to the United States or the Commonwealth of Virginia;

b. The United States has made a written determination that Galax has completed the SEP described in Section X, or that Galax has fully satisfied the assessment of stipulated penalties for any failure to complete such SEP;

c. Galax has completed the requirements of Section VI (Compliance Program and Schedules) and any reporting required in Section XI (Compliance Reporting);

d. After completion of the above requirements, Galax has achieved compliance with Permit No. VA0078484 for a period of at least six consecutive months;

e. Any issues under dispute resolution pursuant to the procedures provided for in Section XV above have finally been resolved, including but not limited to any opposition by the United States to termination of the Consent Decree; and

f. No action to enforce this Consent Decree is pending.

Any party may oppose a motion to the Court for termination of the Consent Decree.

76. Those provisions of this Consent Decree such as the releases and waivers of claims, which are perpetual in [\*49] nature, shall remain in effect unless specifically terminated.

**XXVI. AUTHORITY TO SIGN CONSENT DECREE**

77. The undersigned representative of Galax certifies that he is authorized to enter into this Consent Decree and to execute and legally bind Galax to the terms and conditions of this Consent Decree.

a. Attached hereto as Exhibit 4 is a resolution of the City Council of the City of Galax authorizing its City Manager to enter into this Consent Decree on its behalf.

The Parties hereby consent to the entry of this Consent Decree, subject to the public notice and comment requirements of 28 C.F.R. § 50.7, and agree that such entry shall constitute dismissal of the Commonwealth of Virginia as statutory defendant in this action.

**ATTACHMENT:****CITY OF GALAX CERTIFICATION OF WORK PERFORMED**

I certify under penalty of law that the City of Galax has completed the following actions to improve its sewer collection and treatment system and its water treatment system as of May 1, 2002:

Ballard's' Branch Pump Station - installation of a new pump station, including a new wet well, two new pumps and new controls, installation of a 150 KW generator for emergency power;

Ballard's Branch Interceptor - replaced [\*50] old sewer lines in conformance with the Final Plans and Specifications submitted to the Virginia Department of Health, dated February 26 and 28, 2001 prepared by Adams-



Heath Engineers, Inc. and any subsequent design or operational changes approved by the Department of Health or the Virginia Department of Environmental Quality;

Fries Road Pump Station - reactivation of the old existing wet well to provide additional on-site storage during high flow conditions; installation of a six inch overflow pipe from the comminutor vault to the old wet well; maintenance of a portable sump pump on site which can be manually activated when needed to pump the old wet well contents back into the current pump station wet well when flow returns to normal;

B.C. Vaughan Pump Station - installation of 480 volt electrical controls;

Operation and Maintenance - the City has a tank truck and has identified several septic haulers whom it will employ if needed to pump sewage from any of the pump stations; and

Water Treatment plant - placement of lockout/tagout valves on cross-connected lines to prevent overflow and backflow into Chestnut Creek.

7/23/02

DATE

Daniel J. Campbell

CITY OF GALAX

Name:

Title: [\*51] City Manager

August 16, 1999

Mr. Dallas Sizemore  
Department of Environmental Quality  
Southwest Regional Office  
355 Deadmore Street  
Abingdon, VA 24012

Re: City of Galax Water Treatment Plant, Raw Water Cross Connection

Dear Mr. Sizemore:

At the request of the City of Galax, we completed a drawing review of the plant and process piping at the City of Galax's Water Treatment Plant to identify possible cross connections between the plant processes and drains, and the raw water inlet well. We also evaluated the potential for the cross connections to result in the release of process water or other waters to Chestnut Creek. Our findings are as follows:

1) There exists a potential cross connection between the raw water well and the backwash waste line. If the two valves on the sedimentation drain/overflow line shown on Figure 1 (attached) are opened simultaneously, flow from the backwash waste line could backup and enter the raw water well. Existing plant O&M procedures prevent this valve sequence from being employed, and the City has agreed to eliminate this possible cross connection in conjunction with plans to connect the backwash waste holding tank to the sanitary sewer. Therefore, [\*52] this cross connection will soon be eliminated.

2) There exists a known cross connection between the sedimentation tank overflow lines and the raw water inlet well. Under normal operating conditions (two raw water pumps in operation; plant flow = 1460 gpm) there is a small continuous return of water from the sedimentation tank to the raw water well. The rate of this return varies with a maximum reported value of approximately 350 gpm (see attached calculations). There is no overflow if only one raw water pump is operating (plant flow = 700 gpm). Discharges to Chestnut Creek are possible from this source under the following conditions:

. If the rate of raw water pumping is allowed to fall below the rate of return.

. For a short duration following plant shutdown when overflow is still occurring but raw water pumping is not.

In speaking with the City water treatment plant staff regarding these possibilities, operational procedures are in place to prevent these scenarios from occurring. In the first instance the minimum raw water pumping rate is never less than 700 gpm (one pump in operation), and the return rate cannot physically exceed the raw water pumping rate.

In the second [\*53] instance, the plant operators reduce flow through the plant when a shutdown is necessary by first shutting down one of the raw water pumps, and thus the sedimentation tank levels are reduced below the overflow before the last plant water pump is shutdown.

3) There exists a known cross connection between the sedimentation tank decant lines and the raw water well. These lines draw from several feet above the bottom of the sedimentation basin (elevation 2351.5), and are used to decant clarified water to the head of the plant when the sedimentation basins are taken down for maintenance. Because the water surface in the basins at the beginning of a decant cycle is almost 21 feet above the water surface in the raw water inlet well, it is possible to decant through the existing 8" line at rates of up to 2,240 gpm (see attached calculation) if the valve on the sedimentation tank is fully opened and the sedimentation basin is full at elevation 2360.5. Because the normal pumping capacity of the plant is 1,460 gpm, and sedimentation overflow can be 350 gpm, decanting at a rate greater than 1,110 gpm could result in a discharge of clarified water to the creek. This possibility has been limited [\*54] by employing a standard operating procedure which limits the decant flow by limiting the valve to 3 turns open. Our calculations (attached) show this will produce the necessary effect. At the 25% open position (approximately 4 turns), the maximum discharge rate through the connection would be approximately 1,040 gpm.

4) There are two drain connections to the backwash waste line shown on the plant drawings (Figure 1). Each of these connections show a valved bypass to the river that I presume is normally closed. If either of these valves were opened, a discharge to the creek is possible.

My conclusion is that under normal conditions, and complying with the maintenance procedures set forth in the plant O&M Manuals, discharges to Chestnut Creek should not occur.

Sincerely,

OLVER INCORPORATED

Shawn Veltman, P.E.  
Senior Environmental Engineer

[SEE MATERIAL IN ORIGINAL]

FIGURE 1

[SEE MATERIAL IN ORIGINAL]

#### **City of Galax, Virginia Supplemental Environmental Project Chestnut Creek Agricultural Best Management Practices**

For its Supplemental Environmental Project ("SEP"), the City of Galax will spend approximately \$ 25,000 per year, for two consecutive years, totaling \$ 50,000, in constructing [\*55] agricultural best management practices, with primary emphasis on off-stream livestock watering systems, fencing, and other hardened stream access to avoid instream livestock impacts along Chestnut Creek immediately upstream of the City. The work will be performed by and under the immediate supervision of the New River Soil and Water Conservation District under the Commonwealth of Virginia's Agricultural Best Practice Management ("BMP") Cost-Share Program. The work will also be consistent with the earlier Watershed Plan for the Chestnut Creek Hydrologic Unit prepared by the USDA Natural Resources Conservation Service and other federal, state, and local entities.

None of the work involved in the SEP is required by the City's VPDES permit, or otherwise required by federal or state law. Because of the factors addressed below, including the immediate water quality benefit to Chestnut Creek, there is a substantial nexus between the SEP and the matters alleged in the Complaint of the United States.

As the Chestnut Creek Watershed Plan indicated, the riparian areas above the City are primarily silvicultural and agricultural. Livestock watering typically takes place in the Creek itself. This [\*56] practice results in animal wastes in the stream, stress to stream banks leading to erosion, and other stress on water quality and the general amenities of the watershed. The SEP provides for the construction of off-stream watering which, in conjunction with fencing and other barrier systems, substantially alleviates these stresses. The City and the District estimate a total cost of between \$ 1000

and \$ 2000 for typical agricultural off-stream watering systems, although the size of these systems and the costs will vary depending on the location and the number of livestock served. The City estimates that it will construct through the SEP approximately 30 off-stream watering systems or other projects providing similar benefits, although the actual number will vary depending on costs and the District's evaluation of the most beneficial specific projects.

The mix of projects may vary based on availability and water quality benefit. Also, the mix and selection of projects may vary based on private landowners' willingness to participate in the program. All the projects will use a 25% landowner cost-share component, which the Soil and Water Conservation Districts find useful in assuring landowner [\*57] commitment and interest and the permanency of the projects.

The construction of the off-stream livestock watering, fencing, and other projects will have an immediate positive benefit on water quality and all the amenities offered by the Chestnut Creek watershed. The earlier Chestnut Creek Watershed Plan describes these projects and the benefits in substantial detail. The Commonwealth's current BMP Program uses a list of 45 BMPs that the Soil and Water Conservation Districts typically finance under the program. Attached is a portion of the Galax USGS topographic map with the intended, affected riparian areas on Chestnut Creek highlighted. Depending on the availability of specific projects, the work may extend further upstream.

The following is the schedule for implementation of the SEP.

Fiscal Year 2003	. 15 off-stream livestock watering and other projects	25,000
Fiscal Year 2004	. 15 off-stream livestock watering and other projects	25,000
TOTAL		\$ 50,000

The City shall submit written semi annual reports to EPA that describe the actions which have been taken toward implementation of the SEP during the previous period and which describe all actions planned to be [\*58] taken toward implementation of the SEP for the next period.

New River Soil and Water Conservation District  
968 East Stuart Drive  
Galax, Virginia 24333  
(276) 236-7191

July 9, 2002

Mr. Daniel J. Campbell  
City Manager  
City of Galax  
123 North Main Street  
Galax, Virginia 24333

Re: Agricultural BMPs

Dear Mr. Campbell,

We are writing to outline our proposal for a program of Agricultural Best Management Practices which the Soil and Water Conservation District would implement, using a \$ 50,000 contribution to be provided by the City of Galax.

Under Virginia's Agricultural Best Management Practices (BMP) Cost-Share Program, the Soil and Water Conservation Districts use state and other non-federal funds to implement BMPs in areas with known water quality needs. One area with these needs is the Chestnut Creek watershed upstream of the City. We propose to identify a series of projects on Chestnut Creek providing excellent water quality benefits for the funds to be committed. This project will be separate from any other, in that the District is not currently doing these projects on Chestnut Creek. The projects will be taken from the list of 46 BMPs that we typically finance under this program, [\*59] with particular emphasis on off-stream livestock watering, and fencing and other hardened stream access to avoid instream livestock impacts.

As the earlier Chestnut Creek Watershed Plan indicated, the riparian areas above the City are primarily silvicultural and agricultural. Livestock watering typically takes place in the creek itself. This practice results in animal waste in the stream, stress to stream banks leading to erosion, and other stress on water quality and the general amenities of the watershed. The project will provide for the construction of off-stream watering, which in conjunction with fencing and other barrier systems substantially alleviates these stresses. Although it is not possible to estimate the cost of individual projects before they are identified (they vary depending on the location and the number of livestock served), we believe that this effort will support about thirty of such projects.

On Galax's written authorization to the District to proceed with these projects, we will identify the BMP projects and their locations/landowners, which we believe to provide substantial short-term and long-term water quality benefits. Although it is not possible for us [\*60] to identify those for the City's approval prior to our field work, we will identify those for the City's approval prior to the work. Our projects will also be targeted to constructing and completing the work within approximately two years of your authorization to proceed. All the projects will include a landowner cost-share component of 25%, which we find useful in assuring landowner commitment and interest and the permanency of the projects. After your approval of the specific projects, or after completion of the work, we will bill the City for the costs. At six month intervals and on completion of the projects, we would provide the City with brief letter reports confirming the amounts spent at each location, itemized statements of such amounts, and a full description of the work done at completion. Of course, the projects would be available for inspection by the City or other interested parties with landowner approval.

In accomplishing projects of this nature, the District uses none of the funds provided for its own administrative expenses. Rather, all the funds will be directly applied to these projects. Attached is a copy of the New River Soil and Water Conservation District's [\*61] current Chestnut Creek plan. We appreciate your interest in the Virginia Agricultural Best Management Practices Cost-share Program, and we look forward to working with you on these projects.

Sincerely,

Cynthia V. Williams  
District Chairperson  
New River Soil and Water Conservation District

[SEE MATERIAL IN ORIGINAL]

#### **CITY OF GALAX RESOLUTION Agreeing to a Consent Decree with the Environmental Protection Agency**

**WHEREAS**, the preservation of the environment is important to all citizens and to all future generations; and

**WHEREAS**, the protecting and safeguarding of the environment is of foremost concern to the City Council of the City of Galax; and

**WHEREAS**, the City Council of the City of Galax recognizes that the mission of the United States Environmental Protection Agency is to protect human health and to safeguard the natural environment - air, water, and land - upon which life depends; and

**WHEREAS**, the City Council of the City of Galax further recognizes that one of the several purposes of the United States Environmental Protection Agency is to fairly enforce the Federal Laws that protect human health and the environment; and

**WHEREAS**, the City Council of the [\*62] City of Galax acknowledges that the City of Galax has in the past experienced bypasses at its sanitary sewer lift stations primarily because of the aging technology and that all of these bypasses were dutifully reported as required; and

**WHEREAS**, the City of Galax has expended its own funds and has worked diligently and earnestly under the auspices of the Virginia Department of Environmental Quality to mitigate and to successfully eliminate all but the unforeseeable or unpredictable bypasses; and

**WHEREAS**, the City Council of the City of Galax is cognizant that sewer bypasses routinely occur in other jurisdictions in the Commonwealth of Virginia; and

**WHEREAS**, the City Council of the City of Galax is further aware of and identifies jurisdictions that have frequent sanitary sewage bypasses which are blatant and more conspicuous in that the volumes of these sanitary sewage bypasses range from the hundreds of thousands to the tens of millions of gallons per occurrence; and

**WHEREAS**, the City Council of the City of Galax believes that the City of Galax has been unfairly singled out by the United States Environmental Protection Agency as the agency ignores more egregious bypasses [\*63] in the Commonwealth of Virginia; and

**WHEREAS**, the City Council of the City of Galax acknowledges, while the United States Environmental Protection Agency is disregarding the facts that the City of Galax dutifully and responsibly reported all of the sanitary sewage bypasses and expediently mitigated the obvious and common causes of the bypasses with local taxpayers funds, that the United States Environmental Protection Agency is exacting a Consent Decree with the City of Galax which is enforceable by Federal Law; and

**WHEREAS**, the City Council of the City of Galax acknowledges that equity and fairness to the citizens of the City of Galax have not been served and that the actions of the Commonwealth of Virginia through its Department of Environmental Quality as well as those proceedings executed by the Federal Government's Environmental Protection Agency against the City of Galax truly represent a travesty of justice; and

**WHEREAS**, the City Council of the City of Galax further recognizes that to continue to defend its position and rightful beliefs against such a formidable agency of the government of the United States of America as the United States Environmental Protection [\*64] Agency, with its unlimited resources, would financially be too costly, and, as such, can not be seen as being in the best interest of the City of Galax; and now

**THEREFORE BE IT RESOLVED THAT**, under duress, the City Council of the City of Galax authorizes the City Manager, Daniel J. Campbell, to sign and accept the Consent Decree from the United States Environmental Protection Agency and to send a copy of this order to any elected public official in protest of the outrageous and unfair practices imposed upon the City under the refuge of Federal and State Bureaucracy.

ADOPTED: This 10 day of June, 2002.

Mayor

ATTEST:

Clerk