

INTERLOCAL AGREEMENT
BETWEEN BANGOR AND HAMPDEN
REGARDING THE USE OF BANGOR'S
WASTEWATER TREATMENT PLANT COMPLEX BY HAMPDEN

THIS AGREEMENT is made this 13th day of February, 1996, by and between the CITY OF BANGOR, a municipal corporation located in the County of Penobscot, State of Maine (hereinafter "BANGOR"), and the TOWN OF HAMPDEN, a municipal corporation located in the County of Penobscot, State of Maine (hereinafter "HAMPDEN"),

W I T N E S S E T H:

WHEREAS, BANGOR has historically provided primary wastewater treatment of all domestic and industrial wastewater from HAMPDEN at the existing Primary Wastewater Treatment Plant owned and maintained by BANGOR located on lower Main Street near the HAMPDEN town line under the terms of an Agreement dated August 4, 1978; and

WHEREAS, Hampden currently exceeds its allocated 30 day average flow pursuant to the existing Agreement of .60 million gallons per day (MGD) on a regular basis during wet weather flows and approaches the allocated flow during other times; and

WHEREAS, further sewer connection permits to wastewater generators located in HAMPDEN cannot be issued under the existing Agreement without exceeding the allocated flows; and

WHEREAS, the 1972 Amendment to the Federal Water Quality Act (P.L. 92-500) requires that all municipalities must provide secondary treatment of municipal wastewater; and

WHEREAS, BANGOR and the United States of America have entered into a Consent Decree in the United States District Court for the District of Maine which requires that BANGOR shall upgrade its primary plant to provide secondary treatment, the construction of said upgrade to have been completed not later than December 31, 1992, and the operation of said upgraded plant to be in full compliance with all effluent limitations and other requirements of BANGOR's NPDES Permit and the Act by June 30, 1993, a copy of said Consent Decree attached hereto as Exhibit A; and

WHEREAS, HAMPDEN has previously requested that BANGOR reserve additional capacity in said upgraded plant in excess of the 30-day average daily flow of 0.60 MGD as contained in an existing Agreement dated August 4, 1978; and

WHEREAS, Bangor has completed the upgrading of its primary wastewater treatment plant to provide the required secondary treatment and to provide treatment of a portion of the combined sewer overflow (CSO) from Bangor; and

WHEREAS, the construction and operation of said upgraded Wastewater Treatment Plant Complex requires significant capital expenditures for construction, as well as increased costs of operation and maintenance, thereby rendering the conditions contained in said August 4, 1978 Agreement obsolete and not applicable to the current situation pertaining to the provision of wastewater treatment services;

NOW, THEREFORE, in consideration of the covenants and conditions contained herein, BANGOR and HAMPDEN do mutually agree that said Agreement dated August 4, 1978 shall be null and void, and shall be replaced with the following:

SECTION A - BANGOR AGREES:

1. To construct, furnish and maintain a Wastewater Treatment Plant Complex to provide for adequate and satisfactory treatment of domestic and industrial wastewater as necessary to meet the requirements of BANGOR'S NPDES Permit No. ME-0100781, issued by the Environmental Protection Agency (EPA), including any subsequent renewals, and State Waste Discharge License No. 1041, or W001041-47-B-R, issued by the Maine Department of Environmental Protection (DEP), including any subsequent renewals; said treatment facilities to have a capacity of 18 MGD, with 1.50 MGD of said capacity reserved for HAMPDEN, said capacities based upon the maximum anticipated average 30-day flow.

For reference purposes, the Complex has a current treatment capacity, as designed and built, with allocations for Hampden flows, as follows:

| <u>Design Parameter</u> | <u>Complex</u> | <u>Hampden</u> |
|---------------------------|----------------|----------------|
| Average Daily Flow (MGD) | 10.0 | .84 |
| Maximum 30 Day Flow (MGD) | 18.0 | 1.50 |
| Peak Hydraulic Flow (MGD) | 30.0 | 2.20 |
| Average Daily BOD (lbs) | 11,800 | 1,600 |
| Maximum 30 Day BOD (lbs) | 19,000 | 1,800 |
| Average Daily TSS (lbs) | 15,200 | 1,600 |
| Maximum 30 Day TSS (lbs) | 24,500 | 1,800 |

2. To implement fully and continuously a program for monitoring compliance with pretreatment requirements by HAMPDEN industrial users in accordance with BANGOR'S NPDES Permit, the pretreatment program approved by EPA as of July 19, 1985 or any modification of that program subsequently approved by EPA pursuant to 40 C.F.R. Part 403, including sampling and enforcement of the pretreatment program, as outlined by this Interlocal Agreement, and all other administrative actions that may be required.

3. To administer all other Federal or State regulations, or any modifications or additions thereto, which may directly pertain to the operation and maintenance of said Wastewater Treatment Plant Complex.

4. To operate and maintain an existing interceptor sewer line extending from the Wastewater Treatment Plant Complex to the HAMPDEN town line, said interceptor sewer being the point of connection of the HAMPDEN interceptor sewer which carries the total wastewater flow from HAMPDEN to the Wastewater Treatment Plant Complex.

5. To hold HAMPDEN harmless from any additional construction or operation and maintenance costs incurred by BANGOR for any replacement or addition to the Wastewater Treatment Plant Complex or for new treatment equipment needed to treat additional waste either originating outside of HAMPDEN or not utilizing the HAMPDEN public sewer system which shall be delivered to the Plant for treatment after the signing of this Agreement, where the unusual nature of such waste is responsible for such additional construction and maintenance costs, or where such costs arise from BANGOR, or its assigns, exceeding the design capacities allocated to it under this Agreement. In addition, BANGOR shall hold HAMPDEN harmless from any and all costs, expenses, fines or penalties arising from BANGOR's failure to comply with any applicable laws and regulations or the terms and conditions of any permits or consent agreements between BANGOR and any governmental entities, except to the extent that any such failure is directly attributable to waste originating in Hampden and delivered to the Plant via the HAMPDEN public sewer system. Where the origin of such interference cannot be determined, all

municipal users will be responsible, proportionately, for any resulting fines, penalties or costs.

6. To accept other types of wastewater, such as septage from holding tanks or leachate from industrial/commercial sources, from properties situated in HAMPDEN in accordance with the same policies, procedures, and billing rates used by BANGOR for wastewater which originates in BANGOR.

Provided, however, that said wastewater shall not be counted as part of HAMPDEN's design allocation under this Agreement and shall not be included as flow from HAMPDEN in the calculation of its proportionate share of operation and maintenance costs under Section B, Paragraph 7 unless HAMPDEN has given its prior written approval, including such conditions as it deems appropriate, to the acceptance of said wastewater by BANGOR. It being the intention of the parties that although BANGOR may contract out its design capacity allocation under Section C, Paragraph 1, if BANGOR agrees to directly accept wastewater from industrial users in HAMPDEN said wastewater shall not be included as part of HAMPDEN's design allocation and shall be included as part of BANGOR's flow for the purposes of calculating the parties' proportionate share of operation and maintenance costs.

SECTION B - HAMPDEN AGREES:

1. To maintain all sewer lines and pump stations within the Town limits of HAMPDEN.

2. To adopt and enforce a sewer use ordinance which is consistent with Chapter V, Article 9, Use of Public Sewers and Drains, as contained in the Laws and Ordinances of BANGOR, and to amend or modify said ordinance as may be necessary to comply with any

future Federal or State requirements or to maintain consistency with BANGOR's ordinance. HAMPDEN assumes responsibility for any and all penalties, fines and costs assessed against or incurred by BANGOR in the event HAMPDEN's ordinance is not deemed consistent with BANGOR's ordinance where such inconsistency results in a future enforcement action against BANGOR.

3. To insure that all sewers connected to the interceptor sewer in HAMPDEN are restricted for sanitary or other properly pretreated wastewaters only, and that such wastewater complies with the provisions contained in the above-mentioned Laws and Ordinances of BANGOR, including provisions that all currently known or later discovered improper connections, excessive leakage, storm water, roof drains, and cooling water are eliminated from said wastewater as rapidly as technically and economically feasible.

4. To take whatever steps are necessary to ensure that HAMPDEN's sewer system is operated and maintained in a manner that will not compromise BANGOR's ability to comply with BANGOR's approved Best Management Practices Plan developed pursuant to Paragraph 11 of the Consent Decree. Toward that end, HAMPDEN shall continue its program of sewer system maintenance and rehabilitation and sewer ordinance enforcement to assure that discharges from the HAMPDEN sewer system do not exceed the design capacity allocated to HAMPDEN under Section A, Paragraph 1 above, and to achieve the goal of reducing extraneous system flow from the HAMPDEN sewer system to the lowest practical cost-effective minimum all in accordance with federal and state laws and regulations.

5. To develop and adopt an ordinance permitting agents of BANGOR and HAMPDEN, operating as described below, to gain access for

the purpose of monitoring, sampling and enforcing the industrial pretreatment program as described in Paragraph 2, Section A above. Said ordinance shall specify that BANGOR's Wastewater Treatment Plant Superintendent or the Superintendent's designee(s) shall be the licensing and enforcement authority for all users of the HAMPDEN sewer system who qualify as "to be permitted" under pretreatment discharge regulations of the U.S. EPA or Chapter V, Article 9, of the Laws and Ordinances of the City of BANGOR, or other similar laws, regulations or ordinances hereafter enacted or adopted by the United States, the U.S. EPA, or the City of BANGOR. The conduct and authority of BANGOR's agents and HAMPDEN's agents shall be as outlined in an Interjurisdictional Agreement Between BANGOR and HAMPDEN on Industrial Pretreatment, attached and incorporated herein by reference as Exhibit B.

6. To reimburse BANGOR for a portion of the capital costs of constructing the Wastewater Treatment Plant Complex as described in Section A, Paragraph 1 above. HAMPDEN's reimbursement to BANGOR shall be as follows:

(a) HAMPDEN's reimbursement to BANGOR shall be based on its allocation of design capacity of 1.5 MGD 30 day average flow, which represents 8.33% of the 30-day average design flow. HAMPDEN's reimbursement to BANGOR is in the amount of \$2,494,862.00. Said amount represents HAMPDEN's proportion of the costs as defined in subparagraph (b) below as of the date of this Agreement.

HAMPDEN shall pay its reimbursement to BANGOR as follows: \$1,000,000.00, less any payments previously made, at the time of the signing of this Agreement; the balance within six (6) months of the signing of this Agreement.

On any portion of the payment due at the time of the signing of this Agreement which remains unpaid at said time, HAMPDEN shall pay to BANGOR interest at a rate of 10.75%. On the remaining balance due within six (6) months of the signing of this Agreement HAMPDEN shall pay to BANGOR interest at a rate of 5.06%. On any balance which remains due at the expiration of said six (6) months, HAMPDEN shall pay to BANGOR interest at a rate of 10.75%.

(b) The reimbursement outlined above is based upon the estimated cost and risk to BANGOR for the construction of said Complex and related appurtenances, including documented costs of construction, design, planning, supervision, survey and layout, administrative, legal, fiscal, site acquisition, claims, interest and contingency, as outlined in Exhibit C attached hereto.

BANGOR agrees to provide HAMPDEN's designee(s) with access to all records relating to the costs associated with the construction of the upgraded Wastewater Treatment Plant Complex, and to cooperate fully with said designee(s), for the purpose of permitting HAMPDEN to verify said costs. Any disagreement as to said costs may be submitted to arbitration by either party pursuant to Section C, Paragraph 5 of this Agreement. In the event that the final costs are determined to be less than the amount outlined in Exhibit C, BANGOR agrees to reimburse HAMPDEN for any overpayment, it being the intent of the parties that HAMPDEN's share of the capital costs shall be 8.33% thereof. Any reimbursement due HAMPDEN hereunder shall be paid by BANGOR within three months of the date of the final determination of costs.

7. To reimburse BANGOR for a proportionate share of the operation and maintenance costs of the Wastewater Treatment Plant Complex less any direct offsetting non-rate operating revenues

received by BANGOR. These costs are to be paid monthly upon billing by BANGOR based upon the ratio of the total monthly flow from HAMPDEN to the total monthly flow processed by the Complex.

BANGOR reserves the right to bill HAMPDEN based on the unit cost of treating BOD or TSS loading originating from HAMPDEN and delivered to the Plant via HAMPDEN's public sewer system in excess of 350 mg/l or a loading of fats, oils, or greases of animal or vegetable origin or oil and grease or other petroleum or mineral oil products in excess of 140 mg/l. BANGOR would be required to document BOD and TSS and other excess loadings through regular sampling and testing of HAMPDEN's wastewater delivered to the Complex. The costs of this sampling and testing would be included in HAMPDEN's monthly bill. A document entitled "Report on the Costs to Treat Wastewater", attached hereto as Exhibit D, describes how the unit costs are to be established. BANGOR would set HAMPDEN's unit cost based on the fiscal year budget for the Complex, with adjustments to be made as actual costs are determined for each month.

Operation and maintenance costs shall include, but not be limited to, the costs for administration (including administration costs as periodically determined by BANGOR's indirect cost allocation plan), insurance, maintenance, capital costs incidental to maintaining and replacing existing facilities, biosolids processing and disposal, excess loadings, such as BOD, TSS, oil and grease, or other substances which increase the Wastewater Treatment Plant Complex's operation and maintenance costs, and other directly-related costs except as provided in Section A, Paragraph 5 above. Flow from HAMPDEN shall be recorded by the existing metering station that continually records the flow which enters the BANGOR facility from

HAMPDEN to determine HAMPDEN's share of operation and maintenance costs. HAMPDEN shall be afforded the opportunity, at its request, to review the Wastewater Treatment Plant Complex's operation and maintenance costs for any billing period should any questions arise concerning said billings. BANGOR will install at the Facility, at HAMPDEN's sole expense, an instrument that will specifically record HAMPDEN's flow in relation to total flow into the Wastewater Treatment Plant Complex.

HAMPDEN further agrees to pay a surcharge equal to the monthly capital depreciation cost per MGD of capacity times the amount by which HAMPDEN exceeds its maximum 30-day flow design capacity allocated flow of 1.5 MGD, to be calculated on the basis of a running average. The monthly depreciation cost shall be computed as follows:

$$\begin{array}{rcl}
 \text{DEPRECIATION} & = & \text{BANGOR'S NET} \\
 \text{(Cost/Month/MGD)} & & \text{CAPITAL COST} \\
 & & \hline
 & & 360
 \end{array}
 \qquad 18$$

HAMPDEN acknowledges that as of the date of this Agreement BANGOR's CSOs are not being treated. BANGOR and HAMPDEN acknowledge that in the future, as required by the Consent Decree between BANGOR and the United States of America, the Treatment Plant will treat a portion of BANGOR's CSOs. BANGOR agrees to keep HAMPDEN timely informed as to BANGOR's development and/or implementation of plans to treat its CSOs, and to provide HAMPDEN with access to all studies, reports, plans, specifications, contracts, etc. relating to the treatment or processing of BANGOR's CSOs at the Plant. Prior to the

implementation of any plan for the treatment of its CSOs, BANGOR agrees to meet with HAMPDEN to review and discuss the impact of any such plan on (1) the design, treatment, or licensed capacity of the Plant and (2) the direct or indirect costs of operation and maintenance of the Plant. BANGOR agrees that before the date the Treatment Plant begins processing or treating CSO flows from BANGOR, it will have in place a system by which it will be able to measure the costs associated with said CSO treatment or processing. BANGOR agrees to provide HAMPDEN with all information BANGOR has or will have concerning the determination of the direct and indirect costs of treating or processing its CSOs at the Plant. BANGOR will notify HAMPDEN as soon as BANGOR knows the date in which it will begin treating or processing its CSOs at the Plant.

Operation and maintenance costs will not include the cost of treating BANGOR's CSOs. BANGOR agrees that HAMPDEN shall bear no costs, including, but not limited to, capital costs and operation and maintenance costs, associated with the processing or treatment of BANGOR's CSOs.

8. To indemnify BANGOR for the full costs and penalties of violations of the Consent Decree that result from, or for which a causal connection can be made to, any excess loadings or other discharges originating in HAMPDEN and delivered to the Plant via HAMPDEN's public sewer system.

9. To not contract for the use of any of its design capacity allocation as set forth in Section A, Paragraph 1 above with users outside of HAMPDEN's municipal limits without the express written approval of BANGOR. It is expressly understood and agreed that such

approval by BANGOR may be conditioned upon payment of additional costs or fees imposed by BANGOR.

10. To maintain a flow meter that provides an accurate reading of the daily flow of wastewater from HAMPDEN into the BANGOR sewer system. The records of this flow meter will be used by BANGOR in tracking remaining Complex capacity and percent use of HAMPDEN's design capacity allocation and in determining whether future development will cause HAMPDEN to exceed its design capacity allocation. HAMPDEN shall provide, at its expense, for calibration of said flow meter a minimum of once a year by the manufacturer or the manufacturer's qualified representative, as well as at such other times as BANGOR requests should recorded readings indicate unexplained or unanticipated anomalies in the flow from HAMPDEN.

11. To allow BANGOR personnel, in cooperation with HAMPDEN representatives, to sample HAMPDEN's wastewater for BOD, TSS, TTO, pH, metals, oil and grease or other substances which could cause pass through, cause excess loading, affect biosolids or otherwise impact the Wastewater Treatment Plant Complex. The sampling is to take place at locations in HAMPDEN or BANGOR designated by BANGOR. HAMPDEN representatives may accompany BANGOR personnel on these sampling trips, but BANGOR is not precluded from such trips if no HAMPDEN representative is available. BANGOR will provide HAMPDEN with reasonable advance notice of its regular sampling schedule, but nothing herein precludes BANGOR from sampling at other than regularly scheduled times. BANGOR will attempt to contact HAMPDEN representatives prior to any sampling trip. HAMPDEN is to bear the costs of analysis of the wastewater samplings. HAMPDEN may choose to independently contract for the wastewater sampling and analysis;

provided, however, that such sampling and analysis covers all parameters required by BANGOR, that the sampling and analysis frequency and location is approved by BANGOR, and that BANGOR is provided with copies of all reports of each sampling and analysis prepared by the independent contractor for HAMPDEN.

12. In the event that BANGOR believes that capital improvements are necessary to improve or maintain current facilities in compliance with existing or future requirements under applicable State or Federal laws, regulations or permits, it shall provide written notice thereof to HAMPDEN, which notice shall describe the improvements believed to be necessary, identify the laws, regulations, or permits necessitating the same, and provide a cost estimate for the improvements. Prior to undertaking any such improvements, BANGOR shall consult with HAMPDEN concerning the design and costs thereof. If BANGOR and HAMPDEN cannot agree on the necessity of the improvements or the design or costs thereof, the matter shall be submitted to arbitration under Section C, Paragraph 5 of this Agreement.

HAMPDEN agrees to pay its pro-rata portion, based on the percentage that its design allocation at the time of the improvement represents of the total design capacity of the Complex, of the capital costs for improvements determined to be necessary under this Paragraph 12. Payment shall be made as soon as reasonably possible, giving due consideration to the amount to be paid and the necessity of obtaining financing for the same. If financing is necessary, HAMPDEN agrees to pursue said financing in good faith and with due diligence.

SECTION C - BOTH PARTIES AGREE:

1. That the parties' combined average flow at the time of the signing of this Agreement will be less than the total design capacity of the upgraded Wastewater Treatment Plant Complex, and that some provision should be made for the orderly allocation of the excess capacity. The effect of this Agreement is that HAMPDEN shall be entitled to that portion of the design capacity allocated to it under Section A, Paragraph 1, above, and BANGOR shall be entitled to the remainder. It is contemplated that BANGOR may dispose of portions of its remainder by contracting with other parties, including municipalities or industrial users who comply with the provisions of Paragraph 4 of this Section and BANGOR's other industrial pretreatment requirements, to discharge to the Complex.

2. That should BANGOR wish to dispose of any of its remainder in the design capacity of the Wastewater Treatment Plant Complex, and should HAMPDEN wish to receive an additional allocation of design capacity from that remainder after the execution of this Agreement, such additional allocation of design capacity, if available, will require that HAMPDEN pay the full pro-rata capital costs, including, but not limited to, BANGOR's pro-rata bonding and interest costs of the upgraded Wastewater Treatment Plant Complex through the date of such additional allocation of design capacity to HAMPDEN.

3. That if any user of the Wastewater Treatment Plant Complex reaches 80% of its allocated maximum 30-day average flow, that user will be required to initiate an engineering study to determine what future use or remedial action is available to the user to avoid a

future surcharge of its allocated design capacity. BANGOR must approve the consulting engineer chosen to conduct any such study prior to the initiation of the study, said approval not to be unreasonably withheld, but the initiating user shall bear the full cost of the study and make a good faith effort to comply with the recommendations. If subsequent Federal or State statutes or regulations require upgrade, expansion, change of treatment process or other change in the operation of the Wastewater Treatment Plant Complex, the users shall proportionately share in the costs of any engineering study which is required to meet the provisions of such statute or regulation. The users shall mutually agree on a qualified consulting engineer to conduct such a study. The users will be obligated to follow the recommendations of the engineering study and pay their proportionate share of costs to implement the recommendations. All users of the Wastewater Treatment Plant Complex will be required to pay their proportionate share of the replacement or repair costs for any equipment that all users need and/or use that breaks down, otherwise malfunctions, or becomes physically or functionally obsolete.

That if any user of the Wastewater Treatment Plant Complex reaches 100% of its allocated maximum 30-day average flow, that user will be required to provide to BANGOR a plan for reducing flows which is consistent with the above referenced engineering study or will be required to purchase additional capacity from BANGOR provided that BANGOR, in its sole discretion, is willing to sell additional capacity. In the event an engineering study has not been done, then the user will be required to initiate an engineering study as above referenced and provide to BANGOR a plan for reducing flows.

4. Prior to allowing any future industrial users to tie into HAMPDEN's sewer system, HAMPDEN shall require that such potential industrial user submit to BANGOR a detailed listing of all pollutants, effluents or flows which it proposes to introduce into the sewer system. BANGOR will retain the original list and provide a copy to HAMPDEN. This requirement shall be in addition to any other licensing, reporting, monitoring or other requirement imposed under BANGOR's Industrial Pretreatment Program. If, in BANGOR'S reasonably scientific opinion, the characteristics of the proposed discharge or pollutants, effluents or flows are such that it will ultimately be detrimental to the beneficial reuse or disposal of the Wastewater Treatment Plant Complex biosolids, or may result in violations of BANGOR'S NPDES permit, then BANGOR shall require adequate pretreatment prior to connection to HAMPDEN's sewer system or shall refuse the connection of such facilities into HAMPDEN's sewer system.

5. Except as provided in this paragraph, if the parties are unable to agree concerning the enforcement, administration, or interpretation of the provisions of this Agreement, or if one party disagrees with action taken by the other party, the matter shall be submitted to arbitration in accordance with 14 M.R.S.A. §§ 5927 et seq., as the same may be amended from time to time. Provided, however, the parties may not submit to arbitration matters that are mandated by federal or state law, or are required under any permits issued by federal or state regulatory agencies.

6. Any notice required or given in connection with the terms of this Agreement shall be directed to the HAMPDEN Town Manager, 106 Western Avenue, Hampden, Maine, 04444, or to the BANGOR City Manager, City Hall, 73 Harlow Street, Bangor, Maine, 04401.

7. This Agreement shall remain in full force and effect for thirty (30) years from its effective date so long as wastewater from HAMPDEN is discharged into the BANGOR sewer system or until such time as this Agreement may be amended or replaced by a new contract mutually agreed upon by the parties, or is terminated pursuant to Paragraph 10 below.

8. During each calendar year the administration of this Agreement shall be reviewed by HAMPDEN and BANGOR. Additionally, at the time of renewal of BANGOR's NPDES permit, the parties shall meet to review the substance of this Agreement, as well as any changes necessitated by the NPDES permit renewal process. If it is determined by either party at any time that conditions have changed to the extent that any provisions of this Agreement are in need of modification, then the provisions at issue shall be renegotiated in good faith.

9. Nothing herein shall prevent BANGOR from entering into a similar Agreement with other municipalities or users; provided that HAMPDEN's allocated design capacity as described in Section A, Paragraph 1 above is not reduced and that said Agreements contain substantially similar terms and conditions to those stated herein.

10. This Agreement will be effective upon approval by the EPA and the DEP, except that all monies, including, but not limited to, operation and maintenance costs and capital costs specified herein are to be paid as required when due under this Agreement whether or not such approval has been received.

11. If in BANGOR's opinion HAMPDEN has breached any of the terms and conditions of this Agreement, including but not limited to, failure to make timely payments, failure to comply with the terms and

conditions of the Interjurisdictional Agreement between BANGOR and HAMPDEN on Industrial Pretreatment, or failure to fully cooperate in maintaining the proper operation and integrity of the entire wastewater treatment system, BANGOR shall provide HAMPDEN with written notification of the breach. HAMPDEN shall, within sixty (60) days of said notification, enter into a Schedule of Compliance with BANGOR. Said Schedule of Compliance shall set forth the nature of the breach, HAMPDEN's plan for correction and prevention of reoccurrence of the breach, and such other conditions as are necessary to insure the safe and efficient operation of the Wastewater Treatment Plant Complex. In no event shall such Schedule of Compliance provide for more than one hundred eighty (180) days for full corrective action to be completed by HAMPDEN.

If HAMPDEN fails to enter into a Schedule of Compliance within sixty (60) days of said notification of breach, or fails to comply with the terms and conditions of the Schedule of Compliance, or if the continued existence of the breach interferes with the proper operation of the Complex, BANGOR shall have the right to terminate this Agreement, or any part thereof, and limit HAMPDEN's input of wastewater to the level of the most recent 30-day average flow preceding the date of BANGOR's decision to terminate this Agreement, or any part thereof, upon sixty (60) days written notice to HAMPDEN. Regardless of whether this Agreement, or any part thereof, is terminated pursuant to this provision and during any period covered by a Schedule of Compliance, HAMPDEN shall still pay its proportionate share of the operation and maintenance costs of the Wastewater Treatment Plant Complex as well as any surcharges or

additional costs as provided by this Agreement so long as wastewater continues to flow from HAMPDEN to BANGOR.

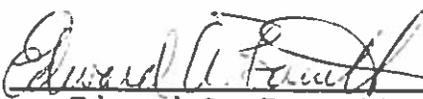
If there is a dispute as to matters which may be referred to arbitration pursuant to Section C, Paragraph 5, then the dispute may be referred to arbitration in accordance with 14 M.R.S.A. §§ 5927 et seq., as the same may be amended from time to time, upon the written request of HAMPDEN, which request must be received by BANGOR within twenty (20) business days of the action or decision by BANGOR complained of by HAMPDEN.

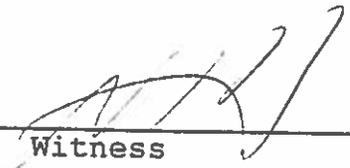
12. Should any term of this Agreement be held null and void or rescinded by a court of competent jurisdiction, the remaining terms of this Agreement will be unaffected and enforceable.

13. Definitions: Certain of the terms used in this Agreement are defined in Exhibit E attached hereto, which is incorporated herein by this reference.

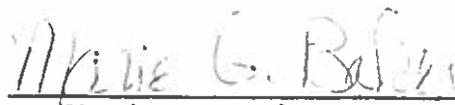
IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed and their corporate seals affixed hereto as of the date first above written.

CITY OF BANGOR

By 
Edward A. Barrett
City Manager


Witness

TOWN OF HAMPDEN

By 
Marie G. Baker
Town Manager


Witness

STATE OF MAINE

Penobscot, ss.

February 13, 1996

Then personally appeared the above-named EDWARD A. BARRETT, in his capacity as City Manager, and acknowledged the above Agreement to be his free act and deed in his said capacity and the free act and deed of said body corporate.

Before me,

Terry Lee Corey
Notary Public/Attorney-at-Law
Printed Name: Terry Lee Corey
12/23/96

STATE OF MAINE

Penobscot, ss.

February 13, 1996

Then personally appeared the above-named MARIE G. BAKER, in her capacity as Town Manager, and acknowledged the above Agreement to be her free act and deed in her said capacity and the free act and deed of said body corporate.

Before me,

Paula M. Newcomb
Notary Public/Attorney-at-Law
Printed Name:

Paula M. Newcomb
Notary Public • Maine
My Commission Expires September 10, 2002

FOR THE CITY OF BANGOR

Joanne W. Young
Joanne W. Young
Howard B. Epstein
Lord Day & Lord, Barrett Smith
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 393-5024

FOR THE STATE OF MAINE

Jon Edwards / 6203
Jon H. Edwards
Assistant Attorney General
State of Maine
State House Station 6
Augusta, Maine 04333
(207) 289-3661

The foregoing Stipulation and Order Modifying Consent Decree
in United States v. City of Bangor, Civil No. 88-0048-B, is
hereby ENTERED as an Order.

Dated:

June 28, 1991

D. Brock Hornby
D. Brock Hornby
United States District Judge

of Maine, duly organized and existing under the laws of that State, and is a person and a municipality as defined in the Act;

WHEREAS, Bangor owns and operates a publicly owned treatment works ("POTW"), within the meaning of Section 212 of the Act, 33 U.S.C. § 1292, and a sewage collection system located in the City of Bangor, Maine;

WHEREAS, in operating its POTW, Bangor is currently subject to the requirements of NPDES Permit No. ME0100781, issued by EPA effective December 30, 1986, and State Waste Discharge License No. W001370-47-C-R effective September 28, 1987.

WHEREAS, the State of Maine (the "State") was joined as a defendant solely pursuant to Section 309(e) of the Act, 33 U.S.C. § 1319(e), and shall be deemed to be a plaintiff in this matter for the purposes of this Consent Decree;

WHEREAS, Bangor and the State previously entered into a Consent Order ("State Consent Order") in the Superior Court for Penobscot County, Maine, Docket No. CV-87-281, approved by that court on June 30, 1987 and amended on December 1, 1987, which State Consent Order required Bangor to pay a \$40,000 civil penalty and provides other relief for certain of the violations of NPDES permit requirements alleged in the United States' Complaint in this matter;

WHEREAS, the relief sought by the United States and the State (collectively, "Plaintiffs") in this matter includes relief similar to that set forth in the State Consent Order and certain additional relief not provided for in that Order;

WHEREAS, the Plaintiffs have requested, Bangor has submitted, and the State has approved final plans and specifications for Bangor's construction of an upgraded wastewater treatment plant; and

WHEREAS, the United States, the State, and Bangor (the "parties") have each consented to the entry of this Consent Decree without the determination of any issue of fact or law, and the parties hereby stipulate to the Court that, in order to resolve the claims stated in the United States' Complaint, this Consent Decree should be entered;

NOW, THEREFORE, the Court having considered the matter and being duly advised, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action and over the parties pursuant to Section 309 of the Act, 33 U.S.C. § 1319 and 28 U.S.C. §§ 1331, 1345, and 1355. Venue is proper in this District under 28 U.S.C. § 1391(b). The United States' Complaint states a claim upon which relief may be granted pursuant to Sections 301 and 309 of the Act, 33 U.S.C. §§ 1311 and 1319.

APPLICABILITY

2. The provisions of this Consent Decree shall apply to and be binding upon the parties and upon their officials, departments, agencies, employees, successors, assigns, and all persons in active concert or participation with them.

3. No later than thirty (30) days prior to any transfer of ownership, operation, or other interest in its POTW, Bangor shall give written notice of this Consent Decree to any successor in interest and each contractor retained to perform any activity required by the Consent Decree. Bangor shall condition the transfer of ownership, operation, or other interest, or any contract related to the performance of this Consent Decree, upon the successful execution of the terms and conditions of this Consent Decree. Bangor shall notify EPA and the State in writing of any successor in interest at least thirty (30) days prior to any transfer.

OBJECTIVES AND EFFECT OF CONSENT DECREE

4. All analyses, studies, reports, plans, construction, remedial maintenance activities, monitoring programs, and other obligations under this Consent Decree, or resulting from the activities required by this Consent Decree, shall have the objective of causing Bangor to come into and remain in full compliance with the Act, the terms and conditions of Bangor's NPDES permit, and the provisions of applicable federal and state laws, regulations, and permits governing discharges from Bangor's POTW and sewer system. With respect to CSOs, compliance shall be achieved in accordance with the National Combined Sewer Overflow Strategy (the "National CSO Strategy") and the Region I Policy Statement Concerning the Relationship Between the Regulation of Discharges from CSOs and Water Quality Standards ("Region I CSO Policy"). Nothing in this Decree shall prevent Bangor from

seeking a modification of water quality standards in accordance with applicable federal and State law where appropriate.

5. For the purposes of this Consent Decree, the State shall be considered a plaintiff in this action. Plaintiffs, the United States and the State, shall each be entitled to enforce the terms of this Consent Decree as provided herein.

6. This Consent Decree supersedes the State Consent Order and EPA's June 19, 1990 Clean Water Act Section 308 Information Request (No. 90-308-37) prospectively, except as specifically provided to the contrary herein. Thus, except as provided in this Consent Decree, Bangor shall not be bound by requirements that would be imposed under the State Consent Order or the Section 308 Information Request after the date of entry of this Consent Decree, but nothing herein shall affect or relieve Bangor of, or prevent the State or EPA from enforcing, any obligation that was imposed under the State Consent Order or the Section 308 Information Request, prior to the entry of this Consent Decree.

UPGRADING OF WASTEWATER TREATMENT FACILITIES

7. Bangor shall upgrade its existing wastewater treatment facilities and/or shall construct new wastewater treatment facilities as necessary for it to achieve and thereafter maintain compliance with its current NPDES permit and the Act, in accordance with the recommendations in the Wastewater Facilities Report approved pursuant to the State Consent Order and with the schedule set forth in Paragraph 8 of this Consent Decree. In the event there is any inconsistency between the Wastewater

Facilities Report and the terms of this Consent Decree, the terms of this Consent Decree shall control.

8. A. By June 1, 1991, Bangor shall commence on-site physical construction work on the wastewater treatment facilities proposed in the plans and specifications, or any modifications thereto, submitted to and approved by the State.

B. By December 31, 1992, Bangor shall complete all on-site physical construction work necessary to begin operation, and shall achieve full physical operation of the wastewater treatment facilities.

C. By June 30, 1993, all discharges from Bangor's POTW (designated outfall number 001 in Bangor's NPDES permit) shall be in full compliance with all effluent limitations and other requirements of its NPDES Permit and the Act.

COMBINED SEWER OVERFLOWS COMPLIANCE PROGRAM

9. Interim Sewer Rehabilitation Projects

Until the schedule in the CSO Facilities Plan required by Paragraph 10 is approved, Bangor shall implement sewer rehabilitation projects in accordance with the schedule set forth in the November, 1988 Sewer System Evaluation Study ("SSES") or any modifications thereto subsequently agreed to in writing by the parties. The schedule in the November, 1988 SSES may be modified with the written consent of the parties upon a showing by Bangor that such modification results in a substitution of projects which are (1) more cost-effective and of an equal or greater environmental benefit or (2) necessary because

deteriorated sewers cause a threat to the health or the environment thereby requiring priority for rehabilitation.

10. CSO Facilities Plan

A. Objectives of Plan. Bangor shall develop and submit to EPA and the State for review and approval a prioritized, long-term master plan for sewer rehabilitation, abatement of CSO discharges, and other relevant projects (hereinafter referred to as the "CSO Facilities Plan"), which shall have the objectives of: (1) substantially reducing the infiltration or inflow of ground or surface water into Bangor's sewer system, and (2) bringing all CSOs on the system into compliance with the terms and conditions of Bangor's NPDES permit and the Act. Consistent with the National CSO Strategy and the Region I CSO Policy, the CSO Facility Plan shall require the elimination of CSOs except where such elimination would be infeasible. The CSO Facilities Plan should consider various CSO control measures, including but not limited to improved operation and maintenance, best management practices, system-wide storm water management programs, supplemental pretreatment program modifications, sewer ordinance, local limits program modifications, identification and elimination of illegal discharges, monitoring requirements, pollutant specific limitations, compliance schedules, flow minimization and hydraulic improvements, direct treatment of overflows, sewer rehabilitation, in-line and off-line storage, reduction of tidewater intrusion, construction of CSO controls within the

sewer system or at the CSO discharge point, sewer separation, and new or modified wastewater treatment facilities. The CSO Facilities Plan shall include the most cost-effective control measures necessary to bring all CSOs on Bangor's sewer system into full compliance with the terms and conditions of Bangor's NPDES permit and the Act, as soon as practicable taking into account Bangor's capacity to finance such measures. The CSO Facilities Plan shall contain a schedule for the implementation of such projects. Nothing in this Decree shall prevent Bangor from seeking a water quality standards modification in accordance with applicable federal and State law where appropriate. A modification of the applicable water quality standards may be grounds for Bangor to seek a revision of the scope or scheduling of projects in the CSO Facilities Plan by written agreement of the parties. Bangor shall develop the CSO Facilities Plan in accordance with the following requirements.

B. Scope of Work. On or before January 15, 1991, Bangor shall submit to EPA and the State for review and approval a Scope of Work for the development of a CSO Facilities Plan consistent with the requirements of this paragraph. The Scope of Work shall contain a critical path of tasks to be performed along with milestones, including dates for submitting a draft and final CSO Facilities Plan, which milestones shall be incorporated into the Consent Decree upon Plaintiffs' approval of the Scope of Work.

C. CSO Assessment. On or before November 1, 1990, Bangor shall complete an assessment of its sewer system and CSOs and shall submit a CSO Assessment Report to EPA and the State for review and approval. Such Report shall contain:

(1) An up-to-date map of the as-built sewerage system, including recent modifications and showing planned future modifications;

(2) The latitude/longitude of, or other specific locational information for, all wastewater or stormwater discharge locations within the City or immediately upstream or downstream of the City, on either side of the Kenduskeag Stream and the Penobscot River, including CSO structures, stormwater outfalls, industrial discharges, and discharges from neighboring communities;

(3) A detailed description of the drainage area of each CSO on Bangor's sewer system, including the size of the drainage area, topography, population and residential density, average daily volume of water use and/or average daily sewage flow, and all significant industrial, commercial, and other land uses that are likely to affect runoff or wastewater quality;

(4) A description and map of receiving waters, indicating the existing, designated, and expected future aquatic and wildlife habitat, recreational, and commercial uses of such receiving waters under State water quality standards; and

(5) A characterization of historic water use impairments caused in whole or in part by Bangor's CSOs.

D. CSO Monitoring Plan. The CSO Assessment Report shall also include a plan for monitoring to evaluate the frequency, volume, pollutant loads, and impacts of Bangor's CSO discharges and to provide data for prioritizing projects to abate such discharges. This CSO Monitoring Plan shall have three components, each described more fully below: monitoring of the CSO discharge volumes and durations; monitoring of the pollutant loads in CSO discharges; and receiving water monitoring. Upon approval of the CSO Monitoring Plan or any modifications thereto by Plaintiffs in accordance with Paragraph 18 of this Consent Decree, Bangor shall implement the Plan or any revisions thereto subsequently agreed to in writing by the parties.

(1) CSO discharge volumes and durations. The CSO Monitoring Plan shall specify the measurement points and sampling protocol for a monitoring program to assess the flow volumes and flow durations of Bangor's CSO discharges. If fewer than all CSOs are to be sampled, the Plan shall include a demonstration that the CSO sampling points selected are representative of the overall sewer system. Sampling shall be performed during dry periods and during storm events of a sufficient range of intensities and durations to characterize CSO discharges in all foreseeable conditions.

(2) Pollutant loads. The CSO Monitoring Plan shall specify the measurement points and sampling protocol (including the parameters for which samples are to be analyzed) for a monitoring program to define the pollutant loads from CSOs during varying rainfall and dry weather conditions. If fewer than all CSOs are to be sampled, the Plan shall include a demonstration that the CSO sampling points selected are representative of the overall sewer system. This monitoring program shall also conform to the following:

(a) Sampling shall be performed during dry periods and during storm events of a sufficient range of intensities and durations to characterize CSO discharges in all foreseeable conditions;

(b) In each storm event selected for sampling, sampling must be performed during the "first flush" and at consistent intervals (or continuously) during sustained flow;

(c) Priority should be given to sampling those CSOs that function first during storm events, that frequently discharge high volumes, or that are believed to impair or threaten impairment of water uses; and

(d) Observations of the aesthetics of the receiving water near the sampling location (floatables,

debris, scum, oil and grease, odor, etc.) shall be made at the time of sampling.

(3) Receiving water sampling. The CSO Monitoring Plan shall specify the measurement points and sampling protocol (including the parameters for which samples are to be analyzed) for a monitoring program to define the impacts of Bangor's CSOs on instream water quality and uses and to provide a basis for predicting the effects of sewer rehabilitation and separation projects on CSO discharges and on the receiving waters.

E. CSO Monitoring Report. On or before December 1, 1991, Bangor shall complete the CSO monitoring required by the CSO Monitoring Plan and shall submit a report of the results of such monitoring to EPA and the State for review and approval. This Monitoring Report shall include summaries of all sampling data and a discussion of any deviations from the approved monitoring plans. The Monitoring Report shall also include an evaluation of the CSO system in dry weather and a variety of storm conditions, through use of a sewer system model or other means of predictive analysis.

F. Facilities Plan. Bangor shall submit to EPA and the State for review and approval a draft CSO Facilities Plan and a final CSO Facilities Plan in accordance with the dates contained in the Scope of Work. The draft and final CSO Facilities Plans shall be due no later than August 15, 1992, and January 15, 1993 (or three months after Bangor's receipt of

Plaintiffs' comments on the draft Plan, if that is later), respectively, unless Bangor shows adequate technical justification for later dates at the time of its submission of the Scope of Work. Bangor shall use its best efforts to complete and submit the draft and final CSO Facilities Plans as far in advance of these dates as practicable. The CSO Facilities Plan shall include: an evaluation of the effectiveness of the Best Management Practices, pretreatment program, and secondary treatment plant, and the interim measures taken by Bangor under the 1988 SSES; an assessment of alternative measures to reduce or eliminate CSO discharges or to apply treatment technology to improve the quality of such discharges; the selection of control strategies for individual CSOs or groups of CSOs; and a master plan with steps and timetables for CSO abatement projects, designed to achieve the objectives set forth in Paragraph 10.A. of this Consent Decree.

(1) Bangor must assess the full range of possible alternatives, from no action to complete elimination of all CSOs. In assessing each alternative the City shall consider:

(a) the minimum size storm required to activate each overflow or group of overflows, volume discharged from each overflow or group of overflows for various size storms, and volume discharged and number of overflow events per year based on historic rainfall data;

(b) the existing and designated uses of receiving waters under the State water quality standards in the area affected by of each CSO discharge;

(c) the alternative's expected effects on instream water quality and uses;

(d) the effects of the best management practices to be implemented under Paragraph 11 as well as the pretreatment program and the improvements of the secondary treatment plant;

(e) the estimated cost and construction dates for implementing the CSO control strategies identified in the Final CSO Facilities Plan;

(f) a comparative analysis of the costs of each control strategy for each CSO or group of CSOs with the overall benefits derived from each such strategy to the instream water quality and uses within those segments of the Penobscot River and the Kenduskeag Stream affected by Bangor's CSO discharges;

(g) a sewer rate analysis, including but not limited to an examination of grant funding, phasing of projects, and rate stabilization; and

(h) To extent appropriate, and consistent with the National CSO Strategy and the Region I CSO Policy, the possible redesignation of State water

quality uses pursuant to applicable federal and State law.

(2) In selecting and scheduling CSO abatement projects, Bangor shall give priority to abating CSO discharges in the following order:

(a) CSOs that may impair water contact recreation uses or create public health concerns in a receiving water;

(b) CSOs that may impair aquatic life uses;

(c) CSOs that contain significant industrial or high strength wastes, including hospital wastes;

(d) CSOs that have caused localized nuisance conditions; and

(e) all other CSO discharges.

Additionally, high priority should be given to abating all CSO discharges which occur during the so-called "first flush" of suspended sediments from the sewer system at the beginning of a storm event.

(3) The CSO Facilities Plan shall also include a Compliance Monitoring Plan for the regular monitoring of the CSO discharges which may remain after implementation of the CSO Facilities Plan and the waters receiving those discharges. The Compliance Monitoring Plan shall be designed to assess whether Bangor is complying with the requirements of its NPDES permit applicable to CSOs. Upon approval, the final Compliance Monitoring Plan shall be

deemed incorporated into this Consent Decree and shall be enforceable hereunder, and Bangor shall immediately commence implementation of the Compliance Monitoring Plan or any revisions thereto subsequently agreed to in writing by the parties, and shall continue the monitoring required by the Plan until the termination of this Consent Decree.

G. Implementation of CSO Facilities Plan. Upon approval of the CSO Facilities Plan or any modifications thereto by Plaintiffs in accordance with Paragraph 18 of this Consent Decree, the CSO Facilities Plan and the schedule contained therein shall be deemed incorporated into this Consent Decree and shall be enforceable hereunder. Bangor shall implement all work called for by the CSO Facilities Plan approved by Plaintiffs, and any revisions to that plan subsequently agreed to in writing by the parties, in accordance with the schedule set forth in the approved plan or revisions thereto. The schedule contained in the CSO Facilities Plan may provide for the commencement of implementation of the CSO control measures at any time not later than three months after approval of the Plan by Plaintiffs.

11. Best Management Practices Plan

A. Within ninety (90) days after the date of entry of this Consent Decree, Bangor shall submit to EPA and the State for review and approval a Best Management Practices Plan ("BMP Plan") containing the institutional measures ("BMPs") that the City intends to implement to reduce CSO or stormwater discharges of

pollutants and a schedule for implementation of those measures.

The BMPs shall include, to the extent feasible:

(1) adoption and enforcement of an ordinance or rules prohibiting the introduction of uncontaminated water into the sewer system from new private sources such as roof or cellar drains, surface drainage, and non-contact cooling water;

(2) development and implementation of a plan for the gradual elimination of existing sources of inflow and infiltration from private sources into the sewer system where elimination is feasible, or where it can be accomplished in connection with a sewer rehabilitation project to be implemented under Paragraph 9 of this Consent Decree;

(3) formal plans for regular cleaning of sewer lines, especially in those sections where the deposition of solids may restrict flow and cause surcharges which result in overflows;

(4) development and implementation of a high flow management plan designed to optimize the use and overall effectiveness of the treatment system during high flows;

(5) formal plans for maintaining overflow control structures, pumping stations, tide control gates and other structures in the sewer system in good working condition and adjusted to minimize CSO discharges;

(6) adding septage and other wastes delivered to the treatment plant and to the sewer system only during times when CSO points are not active;

(7) special efforts to assure that industrial high strength wastewater and other non-"conventional" pollutants (such as hospital wastes) do not overflow and that such wastewater receives full treatment;

(8) prohibiting the addition of new or increased volumes of industrial process or high-strength wastewaters into the sewer system that have not been subject to pretreatment in accordance with applicable federal and State requirements under circumstances in which they could be discharged through a CSO point;

(9) conducting periodic surveys of all municipal discharges (CSO and stormwater) during dry weather to verify that no dry weather sanitary discharge exists;

(10) effective street sweeping and catch basin cleaning;

(11) managing stormwater to reduce discharges through such techniques as flow slipping (i.e., the redirection of stormwater flows to limit the amount that enters the combined sewer system) and surface impoundment;

(12) allowing the introduction of additional sanitary wastewater into the system only upon the removal of five gallons of uncontaminated water for each gallon of sanitary wastewater added. This ratio shall be based upon

the volume of daily wet weather flow removed from the sewer system against the daily new sanitary flows. Bangor may use as credit against new sanitary flows introduced into the system, the documented reduction in: (i) CSO overflow volumes resulting from best management practices in control measures completed pursuant to the CSO Facilities Plan; and (ii) inflow and infiltration into the sewer system as a result of sewer system separation or rehabilitation projects completed pursuant to the State Consent Order, dated June 29, 1987; and

(13) any additional measures that Bangor may deem appropriate.

B. Upon approval of the BMP Plan or any modifications thereto by Plaintiffs in accordance with Paragraph 18 of this Consent Decree, the BMP Plan shall be deemed incorporated into this Consent Decree and shall be enforceable hereunder. Bangor shall implement all measures called for by the BMP Plan approved by Plaintiffs, and any revisions to that plan subsequently agreed to by the parties, in accordance with the schedule(s) set forth in the approved plan or revisions thereto.

INTERIM EFFLUENT LIMITATIONS

12. For purposes of compliance under its NPDES permit, Bangor shall comply with the following interim effluent limitations at discharge point No. 001 from the date of entry of this Consent Decree until June 30, 1993. Except with regard to BOD₅, TSS, and settleable solids, these interim requirements

shall be identical in all respects to the effluent limitations and the monitoring, notice, and reporting requirements of Bangor's NPDES permit. For BOD₅, TSS, and settleable solids, the following interim discharge limitations and monitoring requirements shall apply:

| <u>Parameter</u> | <u>Discharge Limitations</u> | | | <u>Monitoring</u> | |
|-------------------------------------|-------------------------------------|----------------------|---|--|-------------------|
| | <u>Monthly Average</u> ¹ | <u>Daily Maximum</u> | <u>12-Month Running Ave.</u> ² | <u>Monitoring Frequency</u> ³ | <u>Type</u> |
| BOD ₅ Percent removal | n/a | n/a | 20% | 5/week | 24-hour composite |
| TSS Percent removal | n/a | n/a | 55% | 5/week | 24-hour composite |
| Settleable Solids | 0.1 ml/l | 1.0 ml/l | n/a | 1/day | grab |

Footnotes to Bangor interim effluent limitations:

¹ Monthly average percent removal values shall be computed as follows:

$$100 \times \frac{(\text{mo. avg. influent conc.}) - (\text{mo. avg. effluent conc.})}{\text{mo. avg. influent conc.}}$$

² The 12-month running average for any month shall be computed as the arithmetic mean of the monthly average values for the twelve months ending with the month in question.

³ BOD and TSS shall be measured in both influent and effluent.

13. This Consent Decree is not and shall not be interpreted to be an NPDES permit or a modification of Bangor's existing NPDES permit, nor shall it in any way relieve Bangor of its obligation to comply with the requirements of its NPDES permit and the Act and with any other applicable federal, state, or

local law, regulation, or permit. The pendency or outcome of any proceeding concerning the issuance, reissuance, or modification of an NPDES permit shall neither affect nor postpone Bangor's duties and liabilities as set forth in this Consent Decree. The State reserves its rights under 38 M.R.S.A. §§ 347, 348, and 349 to seek penalties and to enforce Bangor's State Waste Discharge License, including but not limited to any more stringent effluent limitations or monitoring requirements applicable to Bangor under State law.

FINAL EFFLUENT LIMITATIONS

14. Beginning on June 30, 1993, Bangor shall comply with all the final effluent limitations, including those for BOD5, TSS, and settleable solids, set forth in its present NPDES Permit. Nothing in this Consent Decree shall relieve Bangor of its obligation to meet any more stringent effluent limitations set forth in a future NPDES permit issued to Bangor or any more stringent effluent limitations applicable under state law.

REPORTING

15. Compliance Reports

A. Within ten (10) days of each compliance date specified in Paragraphs 8-11 or in the plans and schedules incorporated into this Consent Decree under Paragraphs 9 (Interim Sewer Rehabilitation Plan), 10.D and 10.F.3 (CSO Monitoring Plans), 10.G (CSO Facilities Plan), and 11.B (BMP Plan), Bangor shall submit written notice of compliance or noncompliance with the specific actions required by such

paragraph or plan to EPA, the Department of Justice, and the State.

B. Within ten (10) days of completion of any action that has been the subject of a notification of noncompliance under subparagraph A above, Bangor shall submit written notification of the completion of the action to EPA, the Department of Justice, and the State.

C. By the fifteenth day of each calendar month following the calendar month in which this Consent Decree is entered and continuing until the termination of this Consent Decree, Bangor shall submit copies of its Discharge Monitoring Reports (DMRs) to both of the EPA representatives identified in or under Paragraph 28 in addition to sending the DMRs to the EPA address required under Bangor's NPDES permit.

16. Progress Reports

A. Within fifteen (15) days of the end of the calendar quarter ending January 15, 1991, and every calendar quarter thereafter until completion of construction and achievement of final effluent limitations in compliance with this Consent Decree, Bangor shall submit in writing to EPA and the State a progress report on the construction of the wastewater treatment facility. Each construction progress report shall contain a detailed description of the work performed during the previous quarter and a projection of the work to be performed pursuant to this Consent Decree during the six month period to follow.

B. Within fifteen (15) days of the end of the calendar month following approval of the CSO Facilities Plan by EPA and the State, and every six months thereafter until termination of this Consent Decree, Bangor shall submit in writing to EPA and the State a progress report on the implementation of the projects required by the CSO Facilities Plan. Each progress report shall contain a detailed description of the work performed during the previous six month period and a projection of the work to be performed pursuant to the CSO Facilities Plan during the six month period to follow.

17. The reporting requirements of this Consent Decree shall not relieve Bangor of its obligation to submit any other reports or information required by its NPDES Permit or under the Act or State law.

REVIEW AND APPROVAL OF PLANS, REPORTS,
AND OTHER ITEMS REQUIRING AGENCY APPROVAL

18. A. The State shall serve as the lead agency in communicating to Bangor the Plaintiffs' comments on and approvals or disapprovals of plans, reports, and other items required to be submitted to EPA and the State for review and approval under this Consent Decree ("joint action items"). The State shall consult fully with EPA regarding joint action items, including but not limited to timely providing a copy of any proposed written comments or notice of approval or disapproval to both EPA representatives identified in or under Paragraph 28 and obtaining the written concurrence of the EPA counsel designated in or under

Paragraph 28 before sending such comments or notice to Bangor; provided that nothing herein shall restrict informal consultation by Bangor with either of the Plaintiffs. A written statement that EPA does not intend to comment on a joint action item, or a failure by EPA to respond to the State's written request for concurrence in a proposed State response to a joint action item within thirty (30) days of EPA's actual receipt of the request and the proposed State response, shall be deemed concurrence by EPA.

B. Any disagreement between EPA and the State regarding a joint action item shall be resolved in accordance with the dispute resolution procedures of Paragraphs 22 and 23. A dispute between EPA and the State regarding a joint action item may, but shall not necessarily, constitute a Force Majeure event. Unreasonable delay by EPA in providing the concurrence required by subparagraph A above may constitute a Force Majeure event.

C. If Plaintiffs disapprove any joint action item, or if EPA disapproves any item requiring only its approval, in whole or in part, then Bangor shall have thirty (30) days from the receipt of notice of such disapproval to correct any deficiencies and resubmit the item for approval, unless a shorter or longer period is specified in the notice. Any notice of disapproval by Plaintiffs or EPA shall include an explanation of why the item, or portion thereof, is being disapproved. Bangor must address all comments set forth in the notice of disapproval and resubmit

the previously disapproved item with the required changes within the deadline set forth above or in the notice of disapproval.

D. If any plan, report, or other item requiring approval hereunder cannot be approved by Plaintiffs or EPA, as applicable, after resubmission, then, subject only to its right to invoke the dispute resolution procedures of Paragraphs 21 and 23, Bangor shall be deemed to be out of compliance with this Consent Decree.

FORCE MAJEURE

19. A. "Force Majeure" for the purposes of this Consent Decree is defined as an event arising from causes entirely beyond the control of Bangor and of any entity controlled by Bangor, including its consultants and contractors, which delays or prevents the performance of any obligation under this Consent Decree and which cannot be overcome by reasonable diligence. 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 necessary to meet the requirements of this Consent Decree is not a Force Majeure event.

B. When circumstances are occurring or have occurred which are likely to delay the completion of any requirement of this Consent Decree, whether or not due to a Force Majeure event, Bangor shall so notify EPA and the State, in writing, within ten (10) days after Bangor knew or should have known that a delay is probable. The notice shall describe in detail 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. Failure to so notify EPA and the State shall constitute a waiver of any claim of Force Majeure as to the event in question. Notification of any anticipated delay or noncompliance shall not by itself excuse such delay or noncompliance.

C. If a delay in performance is or was caused by a Force Majeure event, the parties shall extend the time for performance, in writing, for a period equalling the actual, unavoidable delay resulting from such event. In proceedings on any dispute regarding a delay in performance, Bangor shall have the burdens of proving (1) that the delay is or was caused by a Force Majeure event, and (2) that the amount of additional time requested is necessary to compensate for that event.

D. 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 may, but shall not necessarily, result in the extension of a subsequent compliance date or dates.

DISPUTE RESOLUTION

20. Informal Negotiations Required. Any dispute arising under or with respect to this Consent Decree, including but not limited to the scope and scheduling of CSO control strategies identified in the CSO Facilities Plan, shall in the first instance be the subject of informal negotiations between or among

the parties to the dispute for a period of up to fifteen (15) working days from the time notice of the existence of the dispute is given. Both Plaintiffs shall automatically be considered parties to any such dispute. The period for negotiations may be extended by agreement of the parties to the dispute.

21. Disputes Between Plaintiffs and Bangor. If a dispute between Plaintiffs and Bangor cannot be resolved by informal negotiations under the preceding paragraph, then the position advanced by Plaintiffs shall be considered binding unless, within fifteen (15) days after the end of the informal negotiations period, Bangor files a petition with this Court setting forth the matter in dispute, the efforts made by the parties to resolve it, and its proposed resolution. Plaintiffs shall have twenty (20) days to file a response to Bangor's petition with an alternative proposal for resolution of the dispute. In proceedings on any dispute under this paragraph, Bangor shall have the burden of showing that its proposal meets the requirements of this Consent Decree and the Act.

22. Disputes Between EPA and the State

A. If EPA and the State disagree regarding a joint action item or other matter requiring action by both Plaintiffs under this Consent Decree, and the dispute cannot be resolved by informal negotiations under Paragraph 20, then the disputed matter shall be referred to the Director, Water Management Division, EPA Region I and the Bureau Chief, Bureau of Water Quality Control, Maine Department of Environmental Protection

("DEP"), who will attempt to resolve the dispute within ten (10) working days of the referral.

B. If the Director, Water Management Division, EPA Region I and the Bureau Chief, Bureau of Water Quality Control, Maine DEP, are unable to reach agreement on the disputed matter within ten (10) working days after the referral, or within such longer period as they may agree, then the State and EPA shall file a petition with this Court setting forth the matter in dispute, the efforts made by the State and EPA to resolve it, EPA's written position on the matter, and the State's proposed alternative resolution.

23. Effect of Pendency of Dispute. The filing of a petition asking the Court to resolve a dispute shall not of itself extend or postpone any obligation of Bangor under this Consent Decree, but the payment of stipulated penalties with respect to the disputed matter shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any provision of this Consent Decree and shall be paid within fifteen (15) days after the Court issues an order resolving the dispute. To the extent Bangor shows that a delay or other noncompliance was due to a Force Majeure event or otherwise prevails on the disputed issue, stipulated penalties shall be excused.

STIPULATED PENALTIES

24. A. If Bangor fails to comply with any requirement of Paragraph 8 of this Consent Decree, Bangor shall pay stipulated penalties in the following amounts, one-half to the United States and one-half to the State, for each day of each and every violation of said requirements:

| <u>Duration of Violation</u> | <u>Penalty Per Violation Per Day</u> |
|------------------------------|--------------------------------------|
| 1-30 Days | \$ 1,000 |
| 31-60 Days | \$ 1,500 |
| Beyond 60 Days | \$ 3,000 |

If Bangor fails to comply with any requirement of Paragraphs 10 or 11 of this Consent Decree, or any requirement of the plans and schedules incorporated into this Consent Decree pursuant to Paragraphs 10.D, 10.F.3, 10.G, and 11.B, Bangor shall pay stipulated penalties in the following amounts, one-half to the United States and one-half to the State, for each day of each and every violation of said requirements:

| <u>Duration of Violation</u> | <u>Penalty Per Violation Per Day</u> |
|------------------------------|--------------------------------------|
| 1-30 Days | \$ 500 |
| 31-60 Days | \$ 1,500 |
| Beyond 60 Days | \$ 3,000 |

Stipulated penalties under this subparagraph A shall begin to accrue on the day that performance is due or noncompliance occurs, and shall continue to accrue through the final day of correction of the noncompliance. Nothing herein shall prevent

the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

B. If Bangor fails to comply with any of the interim effluent limitations set forth in or incorporated under Paragraph 12 of this Consent Decree, it shall pay stipulated penalties in the following amounts to the United States for each and every such violation of any limitation for any parameter:

For each violation of a daily limit

| | |
|-----------------------------|-------------|
| by a factor of up to 50% | - \$ 250; |
| by a factor of 50% to 100% | - \$ 500; |
| by a factor of 100% or more | - \$ 1,500. |

For each violation of a monthly average limit

| | |
|----------------------------|-------------|
| by a factor of up to 20% | - \$ 500; |
| by a factor of 20% to 40% | - \$ 1,500; |
| by a factor of 40% or more | - \$ 2,500. |

For each violation of a 12-month running average limit

| | |
|----------------------------|-------------|
| by a factor of up to 20% | - \$ 1,000; |
| by a factor of 20% to 40% | - \$ 2,000; |
| by a factor of 40% or more | - \$ 4,000. |

If Bangor fails to comply with any monitoring requirement set forth in or incorporated under Paragraph 12, it shall pay stipulated penalties of one thousand five hundred dollars (\$1,500) to the United States for each and every instance of such noncompliance.

C. For each and every day that Bangor is late in submitting to EPA any report or other document required by Paragraphs 15 and 16 of this Consent Decree, Bangor shall pay stipulated penalties of five hundred dollars (\$500.00) per day to the United States.

D. Bangor shall pay any stipulated penalties without demand within fifteen (15) days of the end of the month in which the violation(s) occurred. Payments to the United States shall be made by submitting a certified check, payable to "Treasurer of the United States of America," to the United States Attorney for the District of Maine, together with a letter describing the basis for the penalty. Payments to the State shall be made by submitting a certified check, payable to "Treasurer of the State of Maine", to the Deputy Attorney General, Natural Resources Division, Department of the Attorney General, State of Maine, together with a letter describing the basis for the penalty. Copies of each such letter and check shall be mailed concurrently to EPA, the Department of Justice, and the State.

E. In the event that a stipulated penalty is not paid when due without demand, the penalty shall be payable upon the demand of the United States or the State, together with interest from the original due date to the date of payment at the statutory judgment rate set forth at 28 U.S.C. § 1961 as of the date of demand.

F. The stipulated penalties set forth above shall be in addition to any other remedies, sanctions, or penalties which may be available to the United States or the State or their agencies by reason of Bangor's failure to comply with requirements of this Consent Decree, the Act, or State law. The United States may, in its sole discretion not subject to judicial

review, waive or suspend the accrual or payment of any stipulated penalties due to it under this section.

CIVIL PENALTY

25. Bangor shall pay a civil penalty in the amount of twenty thousand dollars (\$20,000) in full satisfaction of the United States' claims for Bangor's violations of the Clean Water Act, its NPDES permits, and the EPA Administrative Orders as set forth in the Complaint filed herein through the date of lodging this Decree. Payment shall be made within fifteen (15) days after the date of entry of this Decree by delivering a certified check in the sum stated above payable to "Treasurer of the United States" to the United States Attorney for the District of Maine. A copy of the check and letter tendering such check shall be mailed to the EPA and the Department of Justice. In the event of failure to make timely payment, interest will be charged in accordance with the statutory judgment interest rate from the time payment is due until such payment is made.

SUSPENDED CIVIL PENALTY

26. A. Pursuant to Section 5B of the State Consent Order dated June 29, 1987, a \$100,000 penalty was suspended provided that Bangor complied with the requirements of a master plan which was to be submitted and approved by the Maine Department of Environmental Protection (MEDEP) with or without conditions. In November, 1988, Bangor submitted a master plan to MEDEP and in July, 1989, MEDEP commented on said plan. In November, 1990, Bangor submitted to MEDEP proposed amendments to its master plan.

B. Bangor has satisfactorily completed the short-term sewer rehabilitation projects set forth in Section 3A of the State Consent Order, has begun long-term sewer rehabilitation and CSO abatement projects, and has expended considerable amounts of money and amounts in excess of the amounts required by Section 5B of the State Consent Order. Pursuant to the 1988 proposed Master Plan, the City has replaced, separated, or relined existing segments of its sewer system, removed in excess of a million gallons of daily wet weather flow from the system, eliminated five CSOs, and made numerous other improvements to its sewer program. In recognition thereof, the suspended penalty in the State Consent Order shall be extinguished upon commencement of the implementation of the CSO Facilities Plan required by Paragraph 10 of this Consent Decree.

C. Any payment required under this paragraph shall be made within thirty (30) days of the State's determination of noncompliance, or the conclusion of a dispute resolution proceeding pursuant to Paragraphs 20-21 of this Consent Decree, if any, by delivering a certified check payable to "Treasurer of the State of Maine" to the Deputy Attorney General, Natural Resources Division, Department of the Attorney General, State of Maine. The payment required by this paragraph corresponds to, and supersedes, the suspended portion of the civil penalty which Bangor agreed to pay under Section 5B of the State Consent Order.

RIGHT OF ENTRY

27. Until termination of this Consent Decree, EPA, the State, and their contractors, consultants, and representatives, shall have the authority to enter any property and facility owned or controlled or accessible by Bangor at all reasonable times, upon proper presentation of credentials to the manager or managers of the facility or in the manager's absence, to the highest ranking employee present on the premises, for the purposes of monitoring the progress of activities required by this Consent Decree, verifying any data or information submitted under this Consent Decree, obtaining any samples or, on request, splits of any samples taken by Bangor or its consultants, or assessing Bangor's compliance with this Consent Decree. This provision in no way limits or otherwise affects any right of entry held by the United States or the State pursuant to applicable Federal and State laws, regulations, or permits. Bangor shall have the right to splits of any samples taken by such contractors, consultants or representatives of EPA or the State.

NOTICES AND SUBMITTALS

28. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one party to another, it shall be directed to the individuals and addresses specified below, unless those individuals or their successors give notice of changes to the other parties in writing. Written notice in

accordance with this paragraph shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to EPA, the State, and Bangor, respectively. Notice to the Department of Justice and EPA as specified in this paragraph shall constitute notice to the United States.

As to EPA:

Joy Larson
Water Compliance Section
U.S. Environmental Protection Agency, Region I
John F. Kennedy Federal Building
Boston, MA 02203

and

Tonia D. Bandrowicz, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency, Region I
John F. Kennedy Federal Building
Boston, MA 02203
Re: U.S. v. City of Bangor

As to the Department of Justice:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
10th and Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Attn. DOJ #90-5-1-1-2883

As to the State:

Deputy Attorney General
Natural Resources Division
Maine Office of the Attorney General
State House, Station No. 6
Augusta, Maine 04333

and

Bureau Chief
Bureau of Water Quality Control
Maine Department of Environmental Protection
State House, Station No. 17
Augusta, Maine 04333

As to Bangor:

Edward Barrett
City Manager
City of Bangor
73 Harlow Street
Bangor, Maine 04401

and

Joanne W. Young
Lord Day & Lord, Barrett Smith
1201 Pennsylvania Avenue
Washington, D.C. 20004

OBLIGATION TO COMPLY

29. The United States and the State do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Bangor's compliance with the Consent Decree will result in compliance with the provisions of its NPDES Permit or the Act. Notwithstanding Plaintiffs' review and approval of any plans formulated pursuant to this Consent Decree, Bangor shall remain solely responsible for compliance with the terms of its NPDES permit, the Act, and the Consent Decree.

NON-WAIVER PROVISIONS

30. A. Nothing in this Consent Decree shall relieve Bangor of its responsibility for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits, and compliance with this Consent Decree shall be no defense to any action pursuant to said laws, regulations, or permits.

B. Nothing in this Consent Decree shall be construed to prevent or limit the rights of the United States and the State

to obtain penalties or injunctive relief for any violation of the Act or other federal or State statutes or regulations except as expressly stated herein. The United States reserves its claim in this action against the State of Maine.

C. This Consent Decree does not limit or affect the rights of Bangor or of the United States or the State against any person not a party hereto, nor does it limit the rights of such third parties against any other parties.

D. The United States and the State reserve any and all legal and equitable remedies available to them to enforce the provisions of this Consent Decree.

COSTS OF SUIT

31. Each party shall bear its own costs and attorney's fees in this action. Should Bangor subsequently be determined to have violated the terms and conditions of this Consent Decree, Bangor shall be liable to the United States and the State for all reasonable costs and attorney's fees incurred by the United States and the State, respectively, in any action against Bangor for noncompliance with this Consent Decree.

MODIFICATION

32. Except as expressly provided herein, this Consent Decree may not be modified without the written consent of all parties and the approval of the Court.

SEVERABILITY OF PROVISIONS

33. The provisions of this Consent Decree shall be severable, and should any provision be declared by a court of

competent jurisdiction to be inconsistent with federal law, and therefore unenforceable, the remaining provisions of this Consent Decree shall remain in full force and effect.

RETENTION OF JURISDICTION

34. This Court shall retain jurisdiction to enforce the terms and conditions of this Consent Decree, including by contempt order, to make modifications necessary to effectuate compliance with the Consent Decree, the Act, the regulations promulgated under the Act, any applicable permits, and any other federal, state, or local laws or regulations, and to resolve disputes arising hereunder as may be necessary or appropriate for the implementation of this Consent Decree.

TERMINATION OF CONSENT DECREE

35. Any party may move for termination of this Consent Decree when Bangor has completed all actions required under the Consent Decree (except for the continuing compliance monitoring required under Paragraph 11.F.(3) hereof) and has achieved and maintained compliance with all terms and conditions of the Consent Decree and its NPDES permit continuously for a period of one year.

PUBLIC COMMENT

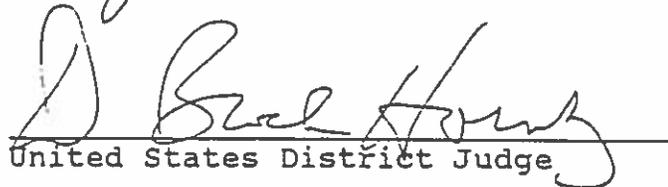
36. Final approval by the United States and entry of this Consent Decree are subject to the requirements of 28 U.S.C. § 50.7, which requires, inter alia, publication of notice of this Consent Decree and an opportunity for public comment. Bangor and

the State consent to the entry of this Consent Decree without further notice.

SIGNATORIES

37. Each undersigned representative of a party to this Consent Decree certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree in United States v. City of Bangor, Civil No. 88-0048-B (D. Me.), and to execute and legally bind such party to this document.

SO ORDERED, this 28th day of June, 1991.


United States District Judge

[Consent Decree in United States v. City of Bangor, Civil No. 88-0048-B (D. Me.)]

THE UNDERSIGNED PARTIES enter into this Consent Decree relating to the wastewater treatment plant and sewer system of the City of Bangor, Maine, and submit it to the Court so that it may be approved and entered.

FOR PLAINTIFF, THE UNITED STATES OF AMERICA:

Dated: _____

4-1-91



Richard B. Stewart
Assistant Attorney General
Environment and Natural
Resources Division
United States Department of Justice
Washington, D.C. 20530



William D. Brighton
Daniel C. Beckhard
Environmental Enforcement Section
Environment and Natural
Resources Division
United States Department of Justice
Washington, D.C. 20530

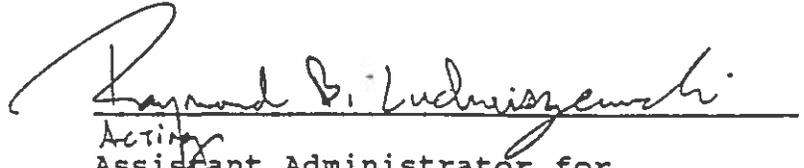
Richard S. Cohen
United States Attorney for the
District of Maine

By: _____



David R. Collins
Assistant U.S. Attorney
156 Federal Street
Portland, Maine 04104

[Consent Decree in United States v. City of Bangor, Civil No.
88-0048-B (D. Me.)]



Acting
Assistant Administrator for
Enforcement
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460



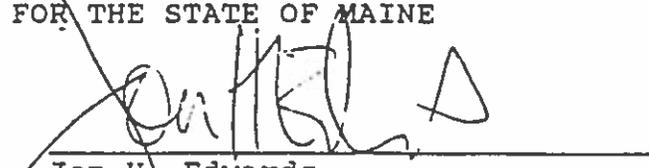
Tonia D. Bandrowicz
Office of Regional Counsel
U.S. Environmental Protection Agency
- Region I
2203 John F. Kennedy Federal Building
Boston, Massachusetts 02203

[Consent Decree in United States v. City of Bangor, Civil No.
88-0048-B (D. Me.)]

FOR THE STATE OF MAINE

Dated: _____

2/13/91



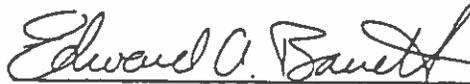
Jon H. Edwards
Assistant Attorney General
State of Maine
State House Station 6
Augusta, Maine 04333

[Consent Decree in United States v. City of Bangor, Civil No.
88-0048-B (D. Me.)]

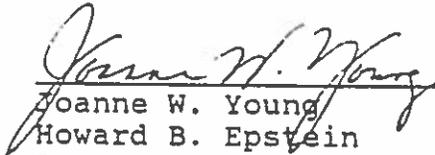
FOR DEFENDANT, THE CITY OF BANGOR

Dated:

4-9-91



Edward Barrett
City Manager
City of Bangor
73 Harlow Street
Bangor, Maine 04401



Joanne W. Young
Howard B. Epstein
Lord Day & Lord, Barrett Smith
1201 Pennsylvania Avenue
Washington, D.C. 20004

INTERJURISDICTIONAL AGREEMENT BETWEEN
BANGOR AND HAMPDEN
ON
INDUSTRIAL PRETREATMENT

This Agreement is entered into this _____ day of _____, 1996, between the CITY OF BANGOR (hereinafter "BANGOR"), a municipal corporation located in the County of Penobscot, State of Maine, and the TOWN OF HAMPDEN (hereinafter "HAMPDEN"), a municipal corporation located in the County of Penobscot, State of Maine (hereinafter sometimes jointly referred to as the "Parties").

RECITALS

1. BANGOR owns and operates a Wastewater Treatment Plant Complex.
2. HAMPDEN currently utilizes this Wastewater Treatment Plant Complex.
3. Users in HAMPDEN currently contribute wastewater to the Complex which may include industrial waste.
4. Both parties recognize their respective need to implement and enforce a pretreatment program to control industrial waste under 40 CFR Part 403 and 38 M.R.S.A. § 414-B, as the same may be amended from time to time.

AGREEMENT

1. HAMPDEN shall adopt a sewer use ordinance which is consistent with BANGOR's sewer use ordinance - Use of Public Sewers and Drains, Chapter V, Article 9 of the Laws and Ordinances of the City of BANGOR as it pertains to matters of industrial pretreatment and discharge limits or any matters mandated by Federal or State law. HAMPDEN's ordinance shall also provide that BANGOR's Wastewater Treatment Plant Superintendent or the Superintendent's



designee(s) shall have the authority to conduct or require all reasonable inspections, tests, or wastewater discharge sampling procedures necessary to enforce HAMPDEN'S pretreatment ordinance, or as otherwise required under Federal or State law. A representative(s) from HAMPDEN shall be afforded the opportunity to participate in and/or observe such activities through reasonable advance notice from BANGOR, but nothing herein shall preclude BANGOR from conducting such activities without the presence of the HAMPDEN representative(s). HAMPDEN's ordinance shall provide that BANGOR's Superintendent or the Superintendent's designee(s) shall have the authority to issue licenses or permits, assess fines and revoke licenses or permits of industrial users of the HAMPDEN sewer system, in accordance with BANGOR's pretreatment ordinance provisions. BANGOR agrees that it will administer its industrial pretreatment program in a manner that treats all dischargers to the Wastewater Treatment Plant Complex, including those who discharge into HAMPDEN's sewer system, fairly and consistent with applicable laws, regulations or ordinances.

2. Whenever BANGOR proposes to amend its sewer use ordinance, it shall provide a copy of the proposed ordinance amendment to HAMPDEN at the time the proposed amendment is placed on the Bangor City Council agenda for first reading. HAMPDEN will be notified of the time, date and location of any subsequent hearing of the City Council Committee having jurisdiction over sewer issues or Council workshop on the proposed amendment; as well as for the second reading and action by the City Council. HAMPDEN shall be afforded the opportunity to participate in any public

hearings or other public discussions concerning the proposed amendment. BANGOR shall forward to HAMPDEN a copy of any such amendments within five (5) business days of a final vote enacting the same by the City Council. Within sixty (60) days of receipt of any such amendments, HAMPDEN shall enact amendments to its sewer use ordinances to maintain consistency with BANGOR's amended ordinance as it pertains to matters of industrial pretreatment and discharge limits or any other matters mandated by Federal or State law. Examples of ordinance provisions which would require amendment by HAMPDEN in order to maintain such consistency include, but are not limited to, ordinance amendments enacted by BANGOR in the following circumstances: 1) where the amendments are necessary to comply with federal or state laws or regulations; 2) where the amendments are necessary, based on scientific and engineering grounds, to protect or enhance the integrity and operation of the Wastewater Treatment Plant Complex; or 3) where the amendments are necessary to maintain, improve or enhance the overall operation and maintenance of the Wastewater Treatment Plant Complex or the administration and implementation of the industrial pretreatment program.

3. The Parties will periodically review their respective sewer use ordinances and jointly draft and adopt amendments, which are consistent in scope and stringency, to their respective sewer use ordinances when deemed necessary for the effective administration and operation of the pretreatment program. This review will be conducted no less than once every five (5) years.

6. BANGOR, on behalf of and as agent for HAMPDEN, will perform all technical and administrative duties necessary to implement and enforce HAMPDEN's sewer use ordinance as regards industrial users located in HAMPDEN and using HAMPDEN's public sewer system for the delivery of wastewater to the Plant. Such duties by BANGOR may include, but not be limited to: (1) issuing permits or licenses to all HAMPDEN users required to obtain a permit or license; (2) conducting inspections, sampling, and analysis in HAMPDEN; (3) taking all appropriate enforcement action against HAMPDEN users as outlined in BANGOR's enforcement response plan, including the execution of administrative consent decrees; and (4) performing any other technical or administrative duties the parties to this Agreement deem appropriate. BANGOR agrees to conduct these activities in HAMPDEN consistent with the manner that such activities are conducted in BANGOR. All fines, fees and other charges assessed against or required to be paid by HAMPDEN users shall be consistent with those charged or assessed to BANGOR users. A representative of HAMPDEN may accompany BANGOR personnel during any such activity. BANGOR will make an effort to notify HAMPDEN reasonably in advance of such activity, but lack of an accompanying HAMPDEN representative shall not preclude BANGOR from conducting such activity. In addition, BANGOR may, as an agent of HAMPDEN, take emergency action to stop or prevent any discharge which presents or may present an imminent danger to the health or welfare of humans, which reasonably appears to threaten the environment, or which threatens to cause interference, pass

HAMPDEN at the time said bills are sent to said industrial users. Any bill remaining unpaid for 65 days after the billing date shall be paid by HAMPDEN within 10 business days of notice by BANGOR that the bill remains unpaid. BANGOR will provide HAMPDEN, upon request, copies of all records and information pertinent to any such uncollected or unpaid bills.

11. In addition to the itemized costs in Paragraph 8 above, HAMPDEN shall pay BANGOR Two Thousand Seven Hundred Dollars (\$2,700.00) per year for costs associated with administering the industrial pretreatment program. BANGOR agrees to perform additional pretreatment-related services for HAMPDEN, such as sample taking, at HAMPDEN's request, to be billed on a time and materials basis.

12. Any disputes arising out of this Agreement will be submitted to arbitration pursuant to 14 M.R.S.A. § 5927 et seq., as the same may be amended from time to time. A decision reached in arbitration, or the fact that the parties are engaged in arbitration, will in no way limit BANGOR's power to enforce requirements of this Agreement directly against users in HAMPDEN, nor will it preclude BANGOR from taking any emergency action, such as that which is described in Paragraph 6 above, against HAMPDEN directly.

13. Should any term of this Agreement be held null and void or rescinded by a court of competent jurisdiction, the remaining terms of this Agreement will be unaffected and enforceable.

STATE OF MAINE

PENOBSCOT, ss.

, 1996

Then personally appeared the above-named EDWARD A. BARRETT, in his capacity as City Manager, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of said body corporate.

Before me,

Notary Public/Attorney-at-Law
Printed Name:
My Commission Expires:

STATE OF MAINE

PENOBSCOT, ss.

, 1996

Then personally appeared the above-named MARIE G. BAKER, in her capacity as Town Manager, and acknowledged the foregoing instrument to be her free act and deed in her said capacity, and the free act and deed of said body corporate.

Before me,

Notary Public/Attorney-at-Law
Printed Name:
My Commission Expires:

**WASTEWATER TREATMENT PLANT COSTS
THROUGH FEB 13, 1996**

| | WWTP Costs | Hampden Share |
|-------------------------------------|-----------------------|--------------------------|
| Non-Financing Costs | | |
| Audited Costs | \$24,552,029 | \$2,045,184 |
| Fiscal 1995 Costs | \$51,916 | \$4,325 |
| Fiscal 1996 Costs | \$38,495 | \$3,207 |
| Less | | |
| Amounts Not Attributable to Hampden | (\$654,572) | (\$54,526) |
| GAAP Basis Capitalized Interest | (\$77,885) | (\$6,488) |
| Mobil Settlement | (\$450,047) | (\$37,489) |
| Total Non-Financing Costs | \$23,459,936 | \$1,954,213 |
| Financing Costs | | |
| Interest Expense | \$5,147,927 | \$428,822 |
| MMBB Fees | \$291,372 | \$24,271 |
| Interest on D/S Cash Flows* | \$87,556 | \$87,556 |
| Total Financing Costs | \$5,526,855 | \$540,650 |
| TOTAL COSTS | \$28,986,791 | \$2,494,862 |

* Financing costs attributable to Hampden only



REPORT ON THE COSTS TO TREAT WASTEWATER

This report discusses the allocation of costs to the various processes in the collection and treatment of wastewater for the City of Bangor and the Town of Hampden.

The Wastewater Treatment Plant has six accounting categories for the allocation of expenses. Each category is further detailed with line item subcategories that are beyond the scope of this report.

The six main categories with the FY 1994 expenditures are as follows:

| No. | Description | FY 1994 Expenditure |
|-----------------------|----------------------------|-----------------------|
| 80-01 | Administration | \$637,946.00 |
| 80-02 | Operation/Maintenance | \$2,562,201.00 |
| 80-03 | Sewer Department | \$361,130.00 |
| 80-04 | Composting/Sludge Disposal | \$209,112.00 |
| 80-05 | Debt Service | \$1,741,742.00 |
| 80-06 | Pretreatment | \$47,212.00 |
| FY 1994 TOTALS | | \$5,559,343.00 |

The treatment of wastewater has three major categories that must be reported to the regulatory agencies. These three categories are Flow, Biochemical Oxygen Demand (BOD), and Total Suspended Solids (TSS).

For FY 1994, the following quantities of each category were treated at the City of Bangor Wastewater Treatment Plant:

| MONTH | FLOW (MG) | BOD (LBS) | TSS (LBS) |
|------------------|----------------|----------------|----------------|
| JUL | 145.40 | 249891 | 231167 |
| AUG | 139.34 | 210242 | 223045 |
| SEP | 144.28 | 214350 | 254790 |
| OCT | 158.82 | 233058 | 336691 |
| NOV | 223.00 | 176340 | 341220 |
| DEC | 359.38 | 209033 | 343263 |
| JAN | 196.50 | 174189 | 223448 |
| FEB | 187.66 | 163072 | 286944 |
| MAR | 409.73 | 234732 | 438247 |
| APR | 410.97 | 181350 | 327960 |
| MAY | 273.41 | 285324 | 374635 |
| JUN | 174.60 | 274050 | 338190 |
| FY TOTAL | 2823.09 | 2605631 | 3719600 |
| AVG DAILY | 7.73 | 10022 | 14306 |



The Treatment Plant staff has analyzed the operation of the newly upgraded facility in order to determine the cost apportionment to each of these categories.

Following is a summary of the analysis:

FLOW BASED COSTS -- 32% of the treatment plant costs plus all of the Sewer Department Costs.

Includes the following processes:

- Screening
- Grit removal
- Biopumps
- Raw sewage pumps
- Primary sludge pumps
- Chlorination
- De-chlorination
- Collection system

BOD BASED COSTS -- 30% of the Treatment Plant Costs.

Includes the following processes:

- Biofilter
- Aeration basins
- Reaeration basins
- Secondary clarifiers
- RAS pumps
- Blowers
- Secondary complex

TSS BASED COSTS -- 38% of the Treatment Plant Costs.

Includes the following processes:

- Primary clarifiers
- Primary sludge
- WAS
- Thickeners
- Thickened sludge pumps
- Dewatering operations
- Sludge disposal

Wastewater Treatment costs include all accounting categories except 80-03, Sewer Department expenditures. Below is a summary of the 1994 expenditures.

| | |
|--------------------|----------------|
| Sewer Department | \$361,130.00 |
| Treatment Plant | \$5,198,213.00 |
| Total Expenditures | \$5,559,343.00 |

Following is an allocation of these expenditures to the three categories:

FLOW BASED COSTS -- 32% of the treatment plant costs plus all of the Sewer Department Costs.

| | | |
|-------|----------------|----------------|
| 100% | \$361,130.00 | \$361,130.00 |
| 32% | \$5,198,213.00 | \$1,663,428.16 |
| TOTAL | | \$2,024,558.16 |

BOD BASED COSTS -- 30% of the Treatment Plant Costs.

| | | |
|-----|----------------|----------------|
| 30% | \$5,198,213.00 | \$1,559,463.90 |
|-----|----------------|----------------|

TSS BASED COSTS -- 38% of the Treatment Plant Costs.

| | | |
|-----|----------------|----------------|
| 38% | \$5,198,213.00 | \$1,975,320.94 |
|-----|----------------|----------------|

With the data that has been recorded at the treatment plant during the FY 1994 period, unit costs for the treatment of flow, BOD, and TSS can be calculated. The following table shows those unit prices for all flow, BOD, and TSS treated at the treatment plant in FY 1994:

WASTEWATER TREATMENT PLANT

| CATEGORY | FY 1994 QUANTITY TREATED | FY 1994 ALLOCATED COST | FY 1994 UNIT COST |
|-----------|--------------------------------|------------------------------|-------------------------|
| FLOW (MG) | 2823 | \$2,024,558.16 | \$717.14 |
| BOD (LBS) | 2605631 | \$1,559,463.90 | \$0.60 |
| TSS (LBS) | 3719600 | \$1,975,320.94 | \$0.53 |

HAMPDEN SEWER COSTS

For treatment of Hampden's wastewater, there are certain items in the treatment costs that apply only to the City of Bangor and which should be subtracted out of the total costs before calculation of Hampden's costs can be properly computed.

The following table is a repeat of the table shown on page 1, with the necessary modifications shown:

| No. | Description | FY 1994 Expenditure |
|-------|--------------------------------|---------------------|
| 80-01 | Administration | \$637,946.00 |
| | less street sweeping | (\$42,000.00) |
| | less street reconstruction | (\$81,524.00) |
| 80-02 | Operation/Maintenance | \$2,562,201.00 |
| | less equipment buy-back | (\$109,550.00) |
| | less pump station O&M | (\$65,656.00) |
| | less depreciation expense 0711 | (\$1,230,916.00) |
| | less depreciation contrib 0776 | (\$132,818.00) |
| | less depreciation contrib 0778 | (\$136,609.00) |
| | less depreciation contrib 0779 | (\$9,974.00) |
| | plus depreciation credit 9800 | \$279,401.00 |
| 80-03 | Sewer Department | \$361,130.00 |
| | less all sewer costs | (\$361,130.00) |
| 80-04 | Composting/Sludge Disposal | \$209,112.00 |
| | less composting revenues | (\$14,481.00) |
| 80-05 | Debt Service | \$1,741,742.00 |
| | less all debt service | (\$1,741,742.00) |
| 80-06 | Pretreatment | \$47,212.00 |
| | less all pretreatment costs | (\$47,212.00) |
| <hr/> | | |
| | Totals | \$1,865,132.00 |

The above modified cost has removed those costs which apply to only Bangor. That amount which remains is the base cost to treat wastewater. This base cost presumes that Hampden has paid a lump sum amount for the town's share of available capacity and that debt service for that capacity is outside the scope of this report. Also, Hampden's pretreatment program will not be included in these costs.

Total Expenditures \$1,865,132.00

Following is an allocation of these expenditures to the three categories:

FLOW BASED COSTS -- 32% of the treatment plant costs plus all of the Sewer Department Costs.

32% \$1,865,132.00 \$596,842.24

BOD BASED COSTS -- 30% of the Treatment Plant Costs.

30% \$1,865,132.00 \$559,539.60

TSS BASED COSTS -- 38% of the Treatment Plant Costs.

38% \$1,865,132.00 \$708,750.16

With the data that has been recorded at the treatment plant during the FY 1994 period, unit costs for the treatment of flow, BOD, and TSS can be calculated. The following table shows those unit prices for all flow, BOD, and TSS treated at the treatment plant in FY 1994:

WASTEWATER TREATMENT PLANT

| CATEGORY | FY 1994 QUANTITY TREATED | FY 1994 ALLOCATED COST | FY 1994 UNIT COST |
|-----------|--------------------------------|------------------------------|-------------------------|
| FLOW (MG) | 2823 | \$596,842.24 | \$211.41 |
| BOD (LBS) | 2605631 | \$559,539.60 | \$0.21 |
| TSS (LBS) | 3719600 | \$708,750.16 | \$0.19 |

To date, only the flow component of Hampden's wastewater has been recorded. Therefore, Hampden has been charged that proportion of the total flow that the town has contributed. This assumes that the BOD and TSS concentrations are the same or very similar to those that are treated at the treatment plant.

For FY 1994, this would be calculated as follows:

| TOTAL TREATED FLOW (MG) | HAMPDEN MEASURED FLOW (MG) | HAMPDEN PORTION |
|-------------------------|----------------------------|-----------------------|
| 2823.09 | 250.95 | 0.0889 |
| HAMPDEN PORTION | TOTAL TREATMENT COSTS | FY 1994 HAMPDEN COSTS |
| 0.0889 | \$1,865,132.00 | \$165,795.24 |

With the unit costs for BOD and TSS shown above, it is also possible to compute Hampden's costs based in the actual number of pounds of BOD and TSS treated. This would require regular sampling and testing of these parameters by Bangor's laboratory staff. It is proposed to set up such a program. This would allow monthly billing to Hampden as soon as the monthly reports are issued.

For demonstration purposes, the following table shows the annual cost to Hampden based on the presumption that the Hampden portion of BOD and TSS is the same as the flow portion (.0889)

| PARAMETER | HAMPDEN PORTION | UNIT COST | HAMPDEN FY 1994 COST |
|-----------|-----------------|-----------|----------------------|
| FLOW (MG) | 250.95 | \$211.41 | \$53,054.48 |
| BOD (LBS) | 231620 | \$0.21 | \$49,738.57 |
| TSS (LBS) | 330643 | \$0.19 | \$63,002.19 |
| TOTAL | | | \$165,795.24 |

The advantage to this method of calculation is that the charges to Hampden would be based on actual rather than presumed pounds of BOD and TSS. Also, monthly billing might be more acceptable than quarterly billing.

This report is based upon the latest available FY 1994 figures. For FY 1995, it might be appropriate to use budgeted costs, with a final billing to Hampden based on actual year-end costs.

DEFINITIONS

As used in the Agreement attached hereto, the following terms have the meanings stated:

(1) Average Daily BOD is the arithmetic average of the daily organic load received for a continuous 12 month period.

(2) Average Daily Flow is the arithmetic average of the daily volumes received for a continuous 12 month period.

(3) Average Daily TSS is the arithmetic average of the daily solids load received for a continuous 12 month period.

(4) Maximum 30 Day BOD is the highest average of daily organic load received over a calendar month.

(5) Maximum 30 Day Flow is the highest average of daily volumes received over a calendar month.

(6) Maximum 30 Day TSS is the highest average of daily solids load received over a calendar month.

(7) Peak Hydraulic Flow is the largest total volume of flow during a continuous 24 hour period.

(8) Primary Wastewater Treatment Plant refers to the City of Bangor's Wastewater Treatment Plant and related facilities existing prior to commencement of construction of the Secondary Wastewater Treatment Plant.

(9) Wastewater Treatment Plant Complex (also Complex) refers to the combined Primary Wastewater Treatment Plant and Secondary Wastewater Treatment Plant as the same shall exist following final completion and operational certification of the Secondary Wastewater Treatment Plant.

