

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

UNITED STATES OF AMERICA,	)	
	)	
and	)	
	)	
THE STATE OF WEST VIRGINIA,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 2:11cv61
	)	
	)	
CITY OF ELKINS, WEST VIRGINIA,	)	Judge Bailey
	)	
	)	
Defendant.	)	
	)	

**CONSENT DECREE**

**TABLE OF CONTENTS**

**I. BACKGROUND .....-1-**

**II. JURISDICTION AND VENUE .....-2-**

**III. PARTIES BOUND .....-3-**

**IV. PURPOSE .....-4-**

**V. DEFINITIONS .....-5-**

**VI. CLEAN WATER ACT REMEDIAL CONTROLS & REMEDIAL  
ACTIVITIES .....-9-**

**VII. SUPPLEMENTAL ENVIRONMENTAL PROJECT .....-21-**

**VIII. REPORTING REQUIREMENTS .....-24-**

**IX. CIVIL PENALTIES .....-28-**

**X. STIPULATED PENALTIES .....-29-**

**XI. FORCE MAJEURE.....-35-**

**XII. DISPUTE RESOLUTION.....-37-**

**XIII. INFORMATION COLLECTION AND RETENTION.....-40-**

**XIV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS.....-42-**

**XV. COSTS.....-44-**

**XVI. NOTICES.....-45-**

**XVII. EFFECTIVE DATE .....-45-**

**XVIII. RETENTION OF JURISDICTION .....-46-**

**XIX. MODIFICATION .....-46-**

**XX. TERMINATION .....-46-**

**XXI. PUBLIC PARTICIPATION .....-47-**

**XXII. SIGNATORIES/SERVICE .....-47-**

**XXIII. INTEGRATION/APPENDICES .....-48-**  
**XXIV. FINAL JUDGMENT .....-48-**

## I. BACKGROUND

A. Concurrent with the lodging of this Consent Decree, Plaintiffs the United States of America (“the United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), and the State of West Virginia (the “State”), by and through Secretary of the West Virginia Department of Environmental Protection (“WVDEP” or “State”) (collectively, the “Plaintiffs”) have filed a Complaint in this matter seeking civil penalties and injunctive relief relating to the municipal wastewater treatment facilities and collection system (“Elkins Collection System” or “Collection System”) operated by the Defendant, the City of Elkins, West Virginia (“City” or “Elkins”).

B. The State is a party to this action pursuant to Section 309(e) of the Act, 33 U.S.C. § 1319(e).

C. The Complaint alleges that Elkins has violated and continues to violate the Clean Water Act, 33 U.S.C. § 1251 et seq. (the “CWA”), and its National Pollutant Discharge Elimination System permit (the “NPDES Permit,” as defined below), issued pursuant to the CWA by, inter alia, (i) having continuously occurring Combined Sewer Overflows (“CSOs”) during dry weather in violation of Section 402(q) of the CWA, 33 U.S.C. Section 1342(q); (ii) failing to implement the Nine Minimum Controls (NMCs) as required by the City’s NPDES Permit; (iii) failing to submit an adequate Long Term Control Plan (“LTCP”) as required by the City’s NPDES Permit; and (iv) discharging pollutants from the Wastewater Treatment Plant at levels exceeding limits established by the NPDES Permit;

D. The United States, the State and Elkins (collectively, the “Parties”) recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable and in the public interest.

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

## **II. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and CWA Section 309(b), 33 U.S.C. § 1319(b). This Court has supplemental jurisdiction over the State law claims asserted by the State of West Virginia pursuant to 28 U.S.C. § 1367. This Court also has personal jurisdiction over Elkins. Venue is proper in this District pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and 1395(a) because the violations alleged in the Complaint are alleged to have occurred in this judicial district.

2. For purposes of this Consent Decree, Elkins waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Elkins shall not challenge the terms of this Consent Decree or this Court’s jurisdiction to enter and enforce this Consent Decree.

3. For purposes of this Consent Decree, Elkins agrees that the Complaint states claims upon which relief may be granted pursuant to Section 309 of the Act, 33 U.S.C. § 1319 and Section 22 of the WPCA, W.Va. Code § 22-11-22.

### **III. PARTIES BOUND**

4. This Consent Decree applies to and is binding upon the United States, the State and Elkins, acting through its officers, directors, employees and agents acting in their capacities as such, and upon Elkins' successors and assigns. To the extent provided by Fed. R. Civ. P. 65(d) the injunctive relief provisions of this Consent Decree are binding upon Elkins' officers, agents, servants, and employees, and are binding upon those parties in active concert or participation with Elkins and its officers, agents, servants or employees who receive actual notice of this Consent Decree with respect to all matters related to the performance of this Consent Decree. In any action to enforce the terms of this Consent Decree, Elkins shall not raise as a defense the failure of its officers, directors, agents, servants, contractors, or employees or any other persons or entities provided for by Fed. R. Civ. P. 65(d) to take any actions necessary to comply with the provisions of this Consent Decree.

5. No transfer of ownership or operation of the Facility or the Collection System, in whole or in part and whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Elkins of its obligation to ensure that the terms of this Consent Decree are implemented. At least 60 Days prior to any such transfer, Elkins shall provide a copy of this Consent Decree to the proposed transferee and simultaneously shall provide the Parties, in accordance with Section XVI of this Consent Decree (Notices), with written notice of the prospective transfer, together with a copy of

the proposed transfer agreement and confirmation that a copy of this Consent Decree was given to the proposed transferee. Any attempt to transfer ownership or operation of any portion of the Facility or Collection System without complying with this Paragraph constitutes a violation of this Consent Decree.

6. Elkins shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Consent Decree, as well as to any contractor retained to perform work required under this Consent Decree. Elkins shall also provide a copy to each engineering, consulting, and/or contracting firm already retained to perform such work no later than thirty (30) Days after the Effective Date of this Consent Decree. Elkins shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

#### **IV. PURPOSE**

7. The purpose of the Parties entering into this Consent Decree is to ensure that Elkins undertakes measures necessary to comply with the Clean Water Act, including, but not limited to, 33 U.S.C. § 1342(q), and the regulations promulgated thereunder. The obligations in this Consent Decree, or resulting from the activities required by this Consent Decree, have the objective of causing Elkins to achieve, and thereafter maintain, full compliance with the terms and conditions of its NPDES Permit, the Clean Water Act, and the West Virginia Water Pollution Control Act as these terms are defined in Section V (Definitions) of this Consent Decree.

## V. DEFINITIONS

8. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined by the CWA, by regulations promulgated pursuant to the CWA, or by the NPDES Permit shall have the meanings assigned to them by the CWA, by such regulations, or by the NPDES Permit. Whenever the following terms are used in this Consent Decree, the following definitions shall apply:

a. “Calendar Quarter” shall mean the three month periods ending on March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup> of each year.

b. “Collection System” or “Elkins Collection System” shall mean the collection and conveyance system including all pipes, force mains, overflow structures, regulators, pump stations, manholes and components thereto owned and operated by Elkins that collect and convey wastewater and stormwater to the Facility; the Elkins Collection System includes the 18 identified combined sewer outlets which discharge via Outlets C002-C020 to the Tygart Valley River and Leading Creek identified in Appendix A (List of Existing CSO Discharge Outfalls).

c. “Combined Sewer Outfall” shall mean an outfall that conveys wastewater and storm water through a single pipe.

d. “Combined Sewer Overflow Discharge” or “CSO Discharge” shall mean any discharge from any Outfall identified in Appendix A.

e. “1994 Combined Sewer Overflow Control Policy” or “1994 CSO Policy” shall mean the policy issued by EPA regarding combined sewer overflows, entitled “Combined Sewer Overflows (CSO) Control Policy,” 59 Fed. Reg. 18,688 (April 19, 1994), and incorporated by reference into the CWA at 33 U.S.C. § 1342(q).



f. “Combined Sewer System” (“CSS”) shall mean the portion of Elkins’ Collection System designed to convey municipal sewage (domestic, commercial and industrial wastewaters) and stormwater to the WWTP or to a Combined Sewer Outfall.

g. “Complaint” shall mean the complaint filed by the Plaintiffs in this action.

h. “Consent Decree” or “Decree” shall mean this Consent Decree and all Appendices attached hereto (listed in Section XXIII), and any plans incorporated into this Consent Decree.

i. “Date of Lodging” shall mean the date on which the United States and the State of West Virginia file this Consent Decree with the United States District Court for the Northern District of West Virginia.

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

k. “Discharge” shall mean any “discharge of a pollutant” as defined in 40 C.F.R. § 122.2, and/or any “discharge of a pollutant” as defined in Section 2.13 of Title 47, Series 10 of the West Virginia Code of State Rules.

l. “Dry Weather Discharge” shall mean a Discharge that occurs during any period of time during which the Collection System and/or Facility has not been influenced by rainfall or snowmelt.

m. “Effluent Limit” shall mean a numerical effluent limit imposed

by the NPDES Permit.

n. “Elkins’ 2011 LTCP” shall mean the April 2011 Long Term Control Plan – City of Elkins, West Virginia, prepared for Elkins by Burgess & Niple, April, 2011.

o. “EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

p. “Facility” shall mean Elkins’ wastewater treatment facility which consists generally of primary treatment units (consisting of screening, grit removal and flow measuring devices), an oxidation ditch, ultraviolet disinfection units, secondary clarifiers, sludge dewatering units (consisting of belt filter presses and pumps), a post-lime sludge stabilization unit, a dewatered sludge storage building, a septage receiving facility, and other appurtenances, and located in the City of Elkins, Randolph County, West Virginia. The Facility discharges treated and disinfected wastewater to the Tygart Valley River through Outlet 001 at milepoint 66.5. A map of the Facility is attached hereto at Appendix B.

q. “Infiltration” shall mean the water entering the Sewer System from the ground through means that include, but are not limited to, defective pipes and sewer walls, pipe and sewer joints, connections, and manhole walls.

r. “Inflow” shall mean water introduced into the Sewer System from sources including, but not limited to, roof leaders, cellars, basement sump pumps, area drains in yards and driveways, foundation drains, cooling water discharges, drains from springs and swampy areas, cracked or broken manhole covers, cross connections from separate storm sewers, catch basins, storm water, surface run-off, and street wash waters.

- s. “Infiltration/Inflow” and “I/I” mean infiltration and/or inflow.
- t. “NPDES Permit” shall mean Elkins’ National Pollutant Discharge Elimination System Permit No. WV0020028 which was issued by the West Virginia Department of Environmental Protection pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and W. Va. Code § 22-11-8 on November 15, 2006, and took effect December 15, 2006, and Modification No. 2 approved on July 29, 2009 and all future extensions, modifications, amendments, renewals or reissuances of this permit.
- u. “Nine Minimum Controls” shall mean the Nine Minimum Controls to address combined sewer overflows set forth in EPA’s “Combined Sewer Overflow (CSO) Control Policy,” 59 Fed. Reg. 18688 (April 19, 1994), and further described in EPA’s May 1995 “Combined Sewer Overflows; Guide for Nine Minimum Controls.”
- v. “Outfall” followed by an Arabic numeral shall mean the outfall assigned to that numerical outfall designation in the NPDES Permit.
- w. “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral.
- x. “Parties” shall mean the United States, the State of West Virginia and the City of Elkins.
- y. “Plaintiffs” shall mean the United States and the State of West Virginia.
- z. “Quarterly” shall mean each “calendar quarter” as defined above.
- aa. “Semi-Annual Report” shall mean the written status report that Elkins shall submit on its progress implementing the Consent Decree for semi-annual

review by April 30 and October 31 of each year, which report will incorporate the format set out in Appendix C to this Consent Decree.

bb. “Section” shall mean a portion of this Consent Decree identified by a Roman numeral, unless the Consent Decree states that the “Section” referred to is a Section of the Clean Water Act or LTCP.

cc. “Sensitive Areas” shall mean Outstanding National Resource Waters, National Marine Sanctuaries, waters with threatened or endangered species and their habitat, waters with primary contact recreation, public drinking water intakes or their designated protection areas, shellfish beds, and all other areas designated as sensitive by WVDEP in coordination with other State and Federal agencies.

dd. “State” shall mean the State of West Virginia.

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

ff. “West Virginia Department of Environmental Protection” or “WVDEP” shall mean the West Virginia Department of Environmental Protection and any successor departments, agencies, or instrumentalities of the State of West Virginia.

## **VI. CLEAN WATER ACT REMEDIAL CONTROLS AND REMEDIAL ACTIVITIES**

9. **Implement Nine Minimum Controls (“NMC”) Plan.** By July 30, 2011, Elkins shall have implemented the Nine Minimum Controls in compliance with the NMCs as described in Section II.B. of the CSO Policy. Elkins’ implementation of the NMCs shall include the following:

a. **Conduct Proper Operation and Regular Maintenance.** Elkins shall prepare and implement a proper Operation and Maintenance Program (“O&M

Program”) for its CSS by July 30, 2011. Elkins shall prepare, maintain, and implement a Combined Sewer Overflow (“CSO”) Operation and Maintenance Manual (“OMM”) describing routine operation, inspection, maintenance, and training activities by July 30, 2011 as part of its O&M Program. The OMM shall be submitted to EPA and WVDEP for review and comment. The OMM shall be reviewed and updated at least one (1) time per year to ensure the OMM's accuracy. The OMM shall include, but is not limited to, the following listed elements.

i. Municipal ordinances to prevent illicit CSS connections and to prevent dumping of illicit materials into the CSS.

ii. Identification of available training programs pertaining to CSO activities for the staff.

iii. Regularly scheduled outfall inspections with procedures that can accurately detect and document wet and dry weather CSO discharge events.

iv. A list of critical CSO equipment including but not limited to additional personnel and regular access to use a closed circuit television (“CCTV”) truck.

v. A routine preventative maintenance schedule for the following specific activities described and listed below. There may be need to do some of these activities at times by necessity, however, an established schedule to routinely complete these activities shall be put in place:

1. Routine inspection and cleaning of catch basins and manholes;

2. Routine inspection, cleaning and maintenance of lift stations including pumps;
3. Routine vacuum cleaning and/or jet flushing of the CSS;
4. Routine street cleaning;
5. Routine inspections of portions of the combined collection system;
6. Semi-annual inspections of grease traps from restaurants, schools, and other facilities with food services shall be conducted and documented. Semi-annual inspections of businesses and /or other customers that may be contributing waste streams other than domestic sewage shall be conducted and documented; and
7. An annual review of appropriate staffing needs for proper operation including CSO monitoring and regular maintenance of the collection system.

b. **Maximize Use of Storage in Collection System.** Upon identification of bottlenecks, Elkins shall take steps to increase flows in the collection system.

c. **Maximization of Flow to POTW for Treatment.** Elkins shall maximize the combined wastewater flow to the POTW during wet weather events and deliver as much of the combined wastewater flow as possible to the treatment plant within the treatment plant's hydraulic capacity and the treatment plant's constraints as imposed by the permit effluent limitations. Elkins shall evaluate annually and document

any maximization procedures implemented including the following:

- i. The performance of critical CSO equipment in the CSS and POTW.
- ii. The potential of adjusting CSO diversion weirs or other devices to reduce CSO activity.
- iii. The capacities of major interceptors and pumping stations delivering flows to the POTW.
- iv. Wet weather flow rates to the POTW compared to typical dry weather flows.
- v. The status of any excessive inflow and infiltration (I&I) correction projects.

d. **Elimination of CSOs During Dry Weather.** Dry Weather Discharges from CSOs are prohibited and shall be reported to the WVDEP's emergency spill line as soon as possible but no later than within 24 hours of their detection. The Dry Weather Discharges shall be reported annually as part of the CSO Summary Report ("Annual CSR") which is submitted to WVDEP by March 31<sup>st</sup> of each year. The Annual CSR shall describe the following:

- i. The number of reported Dry Weather Discharge events that have occurred during the past year.
- ii. The causes of Dry Weather Discharges, and the actions that Elkins has taken and will take in the future to prevent recurrence.
- iii. The existing methods of detecting Dry Weather Discharges

and their efficacy.

iv. The remediation procedures for the treatment, removal, or flushing of objectionable materials deposited in receiving streams or the stream bank after a Dry Weather Discharge.

v. The potential environmental impacts of Dry Weather Discharge events.

e. **Control of Solids and Floatable Material.** Elkins shall control solid and floatable materials discharging from all CSO discharges and shall have these objectionable materials removed should a visible accumulation of these materials be deposited in the receiving stream or on the stream bank. Elkins shall conduct annual evaluations of past performance and recommend corrective actions to reduce the presence of solids and floatable materials in CSO discharges and the receiving stream. The process of making these evaluations shall be documented in the OMM. Actions taken to control solid and floatable materials shall be documented in the Annual CSR. Elkins shall consider the following actions:

i. Implementing control technologies at each outfall to control solids and floatable materials, and maintaining and documenting these technologies.

ii. Installing screens at catch basins and/or outfall structures prior to discharging to receiving streams.

iii. Having annual leaf pickups as a preventative measure.

iv. Installing outfall booms, netting, etc. for control of



floatable materials.

f. **Pollution Prevention.** Elkins shall summarize any pollution prevention activity in the Annual CSR, and conduct an annual evaluation and recommend corrective actions. The following items should be evaluated:

i. The need for source control measures at the government level for pollution prevention.

ii. Educational opportunities for the general public concerning the need for their assistance in reducing pollution reaching the CSS.

iii. Organizing the collection and disposal of household hazardous waste materials.

iv. A community recycling program as a preventative measure.

v. A street cleaning program.

g. **Public Notification.** Elkins shall document public notification procedures in the Annual CSR, including the following items:

i. Elkins shall install adequate warning signs at each CSO outfall that notify and alert the public to avoid contact with waters near or downstream of discharging CSO outfalls.

ii. Elkins shall install adequate warning signs at public stream access points (e.g. marinas and boat launches) that notify and alert the public to avoid recreational contact with waters during or just after any wet weather event.

iii. Elkins shall develop and document procedures to provide the public with information concerning CSO discharge occurrences and their impacts on

water quality in the receiving stream(s) (e.g. newspaper public notifications, newspaper advertisements, public service announcements on radio and/or television, or website notifications).

iv. Elkins shall develop and document procedures for public notification in circumstances where public notification concerning CSO discharge activity is critical and immediate.

v. Elkins shall make available CSO pamphlets for distribution and education of the general public.

vi. Elkins shall ensure and document the availability of a logbook of CSO discharges and activities that is readily available for public review (e.g. payment offices, town halls, community centers).

vii. Elkins shall evaluate and document any CSO public education programs and the community's response to such programs and any follow-up plans addressing public education based on public response.

viii. Elkins shall record, document and investigate any public involvement including any comments or suggestions made by the public concerning CSOs, and take any corrective measures if necessary.

h. **Monitoring to Characterize CSO Impacts to Receiving Streams and the Efficiency of CSO Controls.** Elkins shall monitor CSO Outfall Discharges and the receiving waters into which these CSOs discharge and shall characterize their impacts and characterize how well CSO controls are improving water quality in the receiving stream(s) by doing the following:

i. Elkins shall inspect CSO outfalls within 24 hours of each precipitation event and each subsequent day, if a discharge has occurred, in order to identify wet weather overflows and record the date, time, location, duration, cause and corrective action, if any was taken, for each wet weather overflow occurrence.

ii. Elkins shall ensure and document that it has installed and is maintaining a rain gauge(s) to measure precipitation within the CSS drainage areas.

iii. Elkins shall determine and document the specific location and receiving stream of each CSO outfall in the CSS and shall investigate and determine if any CSO outfalls discharge to sensitive and/or priority areas. Elkins shall give a high priority to minimizing or eliminating CSO outfalls that discharge to sensitive and/or priority areas (i.e. near water intakes; near parks, schools, or marinas; water recreation areas or areas where there exists a high possibility of human contact and exposure; and areas likely to affect threatened or endangered animal species), and to outfalls that have the highest frequency of discharge or that discharge the greatest volume of wastewater.

iv. Elkins shall document the procedures that it uses to collect and summarize data concerning the total number of CSO overflow events (both wet and dry weather) and the frequency and duration of CSO activities for at least a representative number of CSO outfalls. Elkins shall monitor and maintain a record of CSO activity, including duration and estimated volume for all overflow events that occur at CSO outlets in Elkins' combined collection system. Elkins shall also record rainfall data during these CSO overflow events. The CSO flow monitoring data and rainfall data shall be submitted to the Plaintiffs as a portion of the Semi-Annual Progress Reports required below.

v. Elkins shall implement and document the procedures used to correlate the precipitation data and the CSO activity data in order to predict what measured amount and intensity of rainfall/snowmelt events will trigger CSO activity.

vi. Elkins shall implement and document the procedures utilized to collect water quality data and other information on chemical, physical, and biological impacts resulting from CSO discharges (e.g. swimming area closings, excessive floatable materials in streams, fish kills, sludge banks, impaired habitat for aquatic life).

vii. Elkins shall implement and document the procedures utilized for the completion of a CSO control project in order to evaluate any improvements made to water quality from said control projects.

10. **NPDES Permit Compliance.** Elkins shall at all times comply with the effluent limitations and all other terms and conditions of its NPDES Permit.

11. **Elkins Long Term Control Plan.**

a. **Elkins LTCP Implementation and Schedule**

i. Elkins submitted a Long Term Control Plan to EPA in March 2009 (“Elkins March 2009 LTCP”). EPA and WVDEP reviewed the Elkins March 2009 LTCP and provided written comments on February 26, 2010. Elkins submitted a revised Long Term Control Plan to EPA and WVDEP on September 30, 2010 (“Elkins 2010 LTCP”). EPA and WVDEP provided Elkins with comments on the Elkins 2010 LTCP in a letter on December 1, 2010.

ii. Elkins submitted a revised LTCP in April 2011 (Elkins 2011 LTCP). Elkins shall implement the Elkins 2011 LTCP, by no later than May 20, 2023.

b. **Current CSO Controls.** Elkins shall implement and effectively operate and maintain the current CSO controls and any completed CSO abatement projects.

c. **Staffing.** Within 30 days of the Effective Date, Elkins shall evaluate its staffing of the Collection System and Facility, including, at a minimum, identifying any staffing level increases necessary to ensure operation of the Collection System. Elkins shall hire any additional staff necessary to ensure operation of the Collection System and Facility is compliant with all applicable legal requirements.

d. **Elkins Compliance Milestones.** Elkins shall complete the two phases of improvements to the Collection System within the Elkins 2011 LTCP as follows:

i. **Phase 1** (College Street Sewer Separation Project, Barron Avenue Sewer Rehabilitation Project, Kerens Avenue Sewer Separation Project, and Wilson Street Sewer Separation Project) – Elkins shall complete the following items on or before the dates set forth:

1. Complete design of Phase 1 projects no later than February 28, 2013.
2. Complete construction of Phase 1 projects no later than October 31, 2015.
3. Submit post construction monitoring evaluation following completion of construction of Phase 1 no later than January 31, 2017.

ii. **Phase 2** (Lavalette Sewer Separation Project and the Elm Street Sewer Separation Project along with

purchase of a new Jetter/Vactor truck) – Elkins shall complete the following items on or before the dates set forth:

1. Complete design of Phase 2 projects no later than April 30, 2019.
2. Complete construction of Phase 2 projects no later than December 31, 2021.
3. Submit post construction monitoring report following completion of construction of Phase 2 no later than March 31, 2023.

12. **Approval of Deliverables.** After review of any plan, report, or other item that is required to be submitted pursuant to this Consent Decree and its attachments, Plaintiffs may provide a response as listed in 12(a)(i)-(iv).

- a. Plaintiffs shall respond in writing in one of the following ways:
  - i. approve the submission;
  - ii. approve the submission upon specified conditions;
  - iii. approve part of the submission and disapprove the remainder; or
  - iv. disapprove the submission.

b. If the submission is approved pursuant to Paragraph 12(a)(i), Elkins shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part, pursuant to Paragraph

12(a)(ii) or (iii), Elkins shall, upon written direction from Plaintiffs, take all actions required by the approved plan, report, or other item that Plaintiffs determine are technically severable from any disapproved portions, subject to Elkins' right to dispute only the specified conditions or the disapproved portions, under Section XII of this Decree (Dispute Resolution). If the submission is disapproved in whole or in part pursuant to Paragraph 12(a)(iii) or (iv), Elkins shall, within 45 Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, Elkins shall proceed in accordance with the preceding Paragraph.

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

d. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, Plaintiffs

i. may require Defendant to correct any deficiencies, in accordance with the preceding Paragraphs, or

ii. may itself correct any deficiencies, subject to Defendant's right to invoke Dispute Resolution and the right of EPA and the WVDEP to seek stipulated penalties as provided in the preceding Paragraphs.

13. **Permits.** Where any compliance obligation under this Section requires Defendant to obtain a Federal, State, or local permit or approval, Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendant may seek relief under the provisions of Section XI of this Consent Decree (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation if Defendant has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

## **VII. SUPPLEMENTAL ENVIRONMENTAL PROJECT**

14. Defendant shall implement a Supplemental Environmental Project ("SEP") for yard waste management pick-up and recycling program, as described in the SEP Proposal, Appendix D to this Consent Decree. The SEP shall be established within 6 months after the Effective Date of this Decree, and shall continue for no less than 5 years. The SEP shall establish a program for Elkins to operate a yard waste pick-up and recycling program for municipal waste customers. The program will consist of curbside pickup of segregated yard waste as part of the city's regularly scheduled municipal solid waste management and disposal program. The yard waste will be taken to composting facilities in Clarksburg, West Virginia for processing and recycling. The finished compost will be returned to Elkins for use in municipal land areas and will be made



available to the public. The recycled material will be used by Elkins as a substitute for commercial chemical fertilizers. The goal of the program is to reduce overall pollution and impact of yard waste on storm water runoff and the city's waste water collection system. It will also conserve landfill space, promote community recycling, improve operations of the city's wastewater collection system, and improve overall water quality.

15. With regard to the SEP, Defendant certifies the truth and accuracy of each of the following:

a. that all cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate and that Defendant in good faith estimates that the cost to implement the SEP (exclusive of initial investment costs of \$115,500) is \$56,736;

b. that, as of the date of executing this Decree, Defendant is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

c. that the SEP is not a project that Defendant was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;

d. that Defendant has not received and will not receive credit for the SEP in any other enforcement action; and

e. that Defendant will not receive any reimbursement for any portion of the SEP from any other person.

16. **SEP Completion Report**

a. Defendant shall report semi-annually as required in Section VIII in the implementation of the SEP. In addition, on November 30, 2017, Defendant shall submit a SEP Completion Report to the United States and the State in accordance with Section XVI of this Consent Decree (Notices). The SEP Completion Report shall contain the following information:

- i. a detailed description of the SEP as implemented;
- ii. a description of any problems encountered in completing the SEP and the solutions thereto;
- iii. an itemized list of all eligible SEP costs expended;
- iv. certification that the SEP has been fully implemented pursuant to the provisions of this Decree; and
- v. a description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

17. EPA may, in its sole discretion, require information in addition to that described in the preceding Paragraph, in order to evaluate Defendant's completion report.

18. After receiving the SEP Completion Report, the United States shall notify Defendant whether or not Defendant has satisfactorily completed the SEP. If Defendant has not completed the SEP in accordance with this Consent Decree, stipulated penalties may be assessed under Section X of this Consent Decree.

19. Disputes concerning the satisfactory performance of the SEP and the amount of eligible SEP costs may be resolved under Section XII of this Decree (Dispute

Resolution). No other disputes arising under this Section shall be subject to Dispute Resolution.

20. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 25.

21. Any public statement, oral or written, in print, film, or other media, made by Defendant making reference to the SEP under this Decree shall include the following language: “This project was undertaken in connection with the settlement of an enforcement action, United States and the State of West Virginia v. City of Elkins, taken on behalf of the U.S. Environmental Protection Agency and the West Virginia Department of Environmental Protection under the Clean Water Act.”

22. For federal income tax purposes, Defendant agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

## **VIII. REPORTING REQUIREMENTS**

23. **Semi-Annual Reports**. On a semi-annual basis of each calendar year and commencing on the first quarter after the Effective Date of this Consent Decree and continuing until termination of this Consent Decree pursuant to Section XX (Termination), Elkins shall submit written status reports on its progress in implementing the Consent Decree to Plaintiffs (“Semi-Annual Reports”). The Semi-Annual Reports shall be postmarked no later than 15 days or shall be received no later than 20 days following the end of the six (6) month period. The Semi-Annual Reports shall be addressed and submitted to the following:

CSO Coordinator  
West Virginia Department of Environmental Protection  
Division of Water and Waste Management  
601 57th Street SE  
Charleston, WV 253404

and

NPDES Enforcement Branch  
U.S. Environmental Protection Agency  
1650 Arch Street, 3WP42  
Philadelphia, PA 19103

A sample format for the Semi-Annual Report is attached as Appendix C. In each report, Elkins shall provide the following:

- a. A description of the projects and activities conducted during the reporting period to comply with the requirements of this Decree;
- b. A discussion of Elkins' progress in satisfying its obligations in connection with the yard waste collection and recycling program SEP under Section VII of this Decree including, at a minimum, a narrative description of activities undertaken; status of any construction or compliance measures, including the completion of any milestones set forth in the SEP Proposal attached as Appendix D to this Decree, and a summary of costs incurred since the previous report.
- c. A summary of all the problems or potential problems encountered during the reporting period, and the actions taken to rectify the problems;
- d. A record of all CSO discharges that took place during the reporting period, including
  - i. the date, time and duration of each CSO discharge;
  - ii. the volume and nature of each CSO discharge;

iii. the influent and effluent flow rate at the Facility at the time of the CSO discharge;

iv. precipitation events that occurred before and during the CSO discharge, including the date and time that the precipitation began and ended;

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

f. disclosure of any non-compliance with the requirements of this Decree, including;

i. an explanation of the likely cause of the non-compliance, or, if the likely cause of the non-compliance cannot be determined at the time the Semi-Annual Report is due, an explanation as to why the likely cause cannot be determined at that time,

ii. a description of the remedial steps taken, or to be taken, to prevent or minimize such non-compliance in the future, and

iii. a projection of work to be performed pursuant to this Consent Decree during the next or succeeding reporting period. Notification to Plaintiffs of any anticipated delay shall not, by itself, excuse the delay.

24. **Reports of an Immediate Threat.** Whenever any event occurs which may pose an imminent threat to the public health or welfare or the environment (such as an event described in W. Va. Code St. R. § 47-10-5, Section 5.12.e and W. Va. Code St. R. § 47-11-2), Elkins shall notify EPA and the State orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after Elkins first became

aware of the event. This reporting requirement is in addition to the requirements set forth in the preceding Paragraph.

25. **Certification.** Each report submitted under this Section shall be signed by an official of the submitting party and include the following certification:

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

26. The reporting requirements of this Consent Decree do not relieve Elkins of any reporting obligations required by the CWA or implementing regulations, or by any other Federal, State, or local law, regulation, permit, or other requirement.

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

28. Nothing in this Section relieves Elkins of its obligation to provide the notice required by Section XI of this Consent Decree (Force Majeure).

## IX. CIVIL PENALTIES

29. **Civil Penalty Payable to the United States.** Elkins shall pay a total civil penalty to the United States of \$32,400 in two installment payments. No later than 30 Days after the Effective Date, Elkins shall pay a civil penalty in the amount of \$16,200 to the United States. No later than 13 months after the Effective Date of the Consent Decree, Elkins shall pay the second civil penalty installment payment in the amount of \$16,200 to the United States, plus interest at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961, from the Effective Date to the date of payment of the penalty. Elkins shall pay both payments by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with instructions to be provided to Elkins following lodging of the Consent Decree by the Financial Litigation Unit of the U.S. Attorney’s Office for the Northern District of West Virginia. At the time of payment, Elkins shall provide written notice of payment and a copy of any transmittal documentation (which should reference the above-captioned case name and civil action number as well as DOJ case number 90-5-1-1-09043) to the United States in accordance with Section XVI (Notices) and by email to [acctsreceivable.CINWD@epa.gov](mailto:acctsreceivable.CINWD@epa.gov) and to:

Docket Clerk (3RC00)  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2020

30. **Civil Penalty Payable to the State.** Elkins shall pay a total penalty to the State of \$32,400 in two installment payments. No later than 30 Days after the Effective Date, Elkins shall pay a civil penalty in the amount of \$16,200 to the State. No later than 13 months after the Effective Date, Elkins shall pay a civil penalty in the amount of \$16,200 to the State, plus interest at the rate established pursuant to West Virginia Code

Section 56-6-31 from the Effective Date to the date of payment of the penalty. Payments shall be made by a check payable to West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund and delivered to Chief Inspector, Office of Environmental Enforcement, WVDEP, 601 57<sup>th</sup> Street SE, Charleston, WV, 25304. At the time of payment, Elkins shall provide written notice of payment and a copy of any transmittal documentation (which should reference the above-captioned case name and civil action number as well as DOJ case number 90-5-1-1-09043) to the State in accordance with Section XVI (Notices).

31. Elkins shall not deduct any penalties paid under this Decree pursuant to this Section or Section X (Stipulated Penalties) in calculating its federal and state income tax.

32. **Interest.** If Elkins fails to tender all or any portion of the civil penalty payments as required by this Section (Civil Penalties), interest on the unpaid amount shall accrue in accordance with the provisions of 28 U.S.C. § 1961 and Elkins shall pay such interest from the date that a payment is due until the full amount owed is paid.

#### **X. STIPULATED PENALTIES**

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



34. **Noncompliance with Payment of Civil Penalties.** If Elkins fails to pay the civil penalties required to be paid under Paragraph 29 (Civil Penalty Payable to United States) and/or Paragraph 30 (Civil Penalty Payable to the State) when due, Elkins shall pay a stipulated penalty of \$2,500.00 per Day for each Day that a payment is late.

35. **NMCs Compliance Deadline.** The following stipulated penalties shall accrue per violation per Day for each violation of the requirements of Section VI, paragraph 9 above:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$150	1st through 14th Day
\$250	15th through 30th Day
\$350	31st Day through 90 <sup>th</sup> Day
\$1000	91 <sup>st</sup> Day and beyond

36. **Elkins 2011 LTCP Compliance Milestones.** The following stipulated penalties shall accrue per violation per Day for each violation of the compliance deadlines included in Paragraph 11.d. (Elkins Compliance Milestones):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$200	1 <sup>st</sup> through 30 <sup>th</sup> Day
\$300	31 <sup>st</sup> through 60 <sup>th</sup> Day
\$400	61 <sup>st</sup> through 90 <sup>th</sup> Day
\$600	91 <sup>st</sup> Day and beyond

37. **Noncompliance with Dry Weather Discharge Prohibitions.** Elkins shall pay stipulated penalties in the amount of \$2,000 per day for each prohibited Dry Weather Discharge pursuant to paragraph 9(d).

38. **SEP Compliance.** If Defendant fails to implement the SEP, or halts or abandons work on the SEP, Defendant shall pay a stipulated penalty of \$42,800. The penalty under this subparagraph shall accrue as of the date specified for completing the SEP or the date performance ceases, whichever is earlier.

39. **Noncompliance with Reporting Requirements.** Stipulated penalties shall accrue for each Day of noncompliance with the reporting requirements set forth in Paragraph 9, Annual CSRs, and Paragraph 23, Semi-Annual Reports as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$150	1st through 14th Day
\$250	15th through 30th Day
\$350	31st Day and beyond

40. **Noncompliance with all other Provisions of the Consent Decree.** Stipulated penalties shall accrue for each Day of noncompliance with any requirements not otherwise provided for by the Stipulated Penalty Provisions in Paragraph 34 through Paragraph 39 as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$200	1 <sup>st</sup> through 30 <sup>th</sup> Day
\$300	31 <sup>st</sup> through 60 <sup>th</sup> Day
\$400	61 <sup>st</sup> through 90 <sup>th</sup> Day
\$600	91 <sup>st</sup> Day and beyond

41. **Accrual of Stipulated Penalties.** Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

42. In the event that a stipulated penalty is not paid when due, the stipulated penalty shall be payable 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(a).

43. Subject to Elkins' right to invoke dispute resolution pursuant to Section XII (Dispute Resolution), Elkins shall pay stipulated penalties to the United States and the State within 30 Days of a written demand by EPA or WVDEP as follows:

44. a. Elkins shall pay fifty percent (50%) of the total stipulated penalty amount due to the United States by submitting a cashier's or certified check payable to "Treasurer of the United States" and will reference USAO File Number 2007V0080, DOJ Case Number 90-5-1-1-09043, and the civil action case number and case name of this action assigned to this matter by the United States District Court for the Northern District of West Virginia. Checks will be tendered to the United States Attorney's Office, Financial Litigation Unit, Federal Building, Room 327, 300 3<sup>rd</sup> St., Elkins, WV 26241-0190, and will be accompanied by a letter specifying the specific stipulated penalty provision involved, and a description of the violation(s) of this Decree for which the stipulated penalties are being tendered. Elkins shall send a copy of the check and of the transmittal letter to:

Docket Clerk (3RC00)  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2020

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

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington DC 20044  
DOJ# 90-5-1-1-09043

b. Elkins shall pay fifty percent (50%) of the stipulated penalty amount due to the State by submitting a cashier's or certified check payable to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund and delivered to Chief Inspector, Office of Environmental Enforcement, WVDEP, 601 57th Street SE, Charleston, WV 25304. A transmittal letter shall accompany the check, and the letter shall state that the payment is for stipulated penalties owed pursuant to the Consent Decree in United States and the State of West Virginia v. City of Elkins and shall reference the civil action number. The transmittal letter shall also specify the violation(s) for which the penalties are being paid.

45. **Discretion to Reduce or Waive Stipulated Penalties.** Either EPA or WVDEP may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree. If one Plaintiff reduces or waives stipulated penalties, the Plaintiff not offering a waiver or reduction maintains its authority to require payment of stipulated penalties.

46. **Penalty Accrual during Dispute Resolution.** Stipulated penalties shall continue to accrue as provided in this Section during any dispute resolution, with interest

calculated as provided in Paragraph 32 [Interest], but need not be paid until the following:

- a. If the dispute is resolved by agreement of the Parties, or
- b. If the dispute is resolved by a decision by EPA and/or WVDEP

that is not appealed to the Northern District Court of West Virginia, Elkins shall pay accrued penalties, together with interest, to EPA and the WVDEP within 30 Days of the effective date of the agreement or within 30 Days of Elkins' receipt of the decision or order.

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

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

47. If Elkins fails to pay stipulated penalties according to the terms of this Consent Decree, Elkins shall be liable for interest on such penalties as provided for in Paragraph 32 [Interest]. Nothing in this Paragraph shall be construed to limit the United States or the State from seeking any remedy otherwise provided by law for Elkins' failure to pay any stipulated penalties.

48. Subject to the provisions of Section XIV of this Consent Decree (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the

United States for Defendant's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the CWA, Defendant shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

## **XI. FORCE MAJEURE**

49. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Elkins, of any entity controlled by Elkins, or of Elkins' contractors that delays or prevents the performance of any obligation under this Consent Decree despite Elkins' best efforts to fulfill the obligation. The requirement that Elkins exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event as it is occurring, and after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Elkins' financial inability to perform any obligation under this Consent Decree.

50. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Elkins shall provide notice orally or by electronic or facsimile transmission within 72 hours to EPA and WVDEP of when Elkins first knew that the event might cause a delay. Within seven days thereafter Elkins shall provide in writing to EPA and the WVDEP an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Elkins' rationale for attributing such delay to a force majeure event if it

intends to assert such a claim; and a statement as to whether, in the opinion of Elkins, such event may cause or contribute to an endangerment to public health, welfare or the environment. Elkins shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Elkins from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Elkins shall be deemed to know of any circumstance of which Elkins, any entity controlled by Elkins, or Elkins' contractors knew or should have known.

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

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

53. If Elkins elects to invoke the dispute resolution procedures set forth in Section XII (Dispute Resolution), it shall do so no later than 15 days after receipt of

EPA's notice. In any such proceeding, Elkins shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Elkins complied with the requirements of Paragraphs 49 and 50, above.

## **XII. DISPUTE RESOLUTION**

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

55. **Informal Dispute Resolution.** Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Elkins sends the United States and the State a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 30 Days after the conclusion of the informal negotiation period, Elkins invokes formal dispute resolution procedures as set forth below.



56. **Formal Dispute Resolution.** Elkins shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States and the State a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, and opinion supporting Elkins' position and any supporting documentation relied upon by Defendant.

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

58. Elkins may seek judicial review of the dispute by filing with the Court and serving on the United States and the State, in accordance with Section XVI of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 10 Days of receipt of the United States and the State's Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Elkins' position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

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

60. **Standard of Review**

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 56 [Formal Dispute Resolution] pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Elkins shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 56 [Formal Dispute Resolution], Elkins shall bear the burden of demonstrating that its position better furthers the objectives of the Consent Decree.

61. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Elkins under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 46 [Penalty Accrual During Dispute Resolution]. If Elkins does

not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section X (Stipulated Penalties).

### **XIII. INFORMATION COLLECTION AND RETENTION**

62. The United States, the State, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of identification, to:

- a. Monitor the progress of activities required under this Consent Decree;
- b. Verify any data or information submitted to the United States or the State in accordance with the terms of this Consent Decree;
- c. Obtain samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants;
- d. Obtain documentary evidence, including photographs and similar data; and
- e. Assess Elkins' compliance with this Consent Decree.

Upon request, Elkins shall provide EPA and the WVDEP or their authorized representatives, splits of any samples taken by Defendant. Upon request, EPA and the WVDEP shall provide Elkins splits of any samples taken by EPA or the WVDEP.

63. Until five years after the termination of this Consent Decree, Elkins shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control,

or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Elkins' performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or the State, Elkins shall provide copies of any documents, records, or other information required to be maintained under this Paragraph. At the conclusion of the information-retention period provided in the preceding Paragraph, Elkins shall notify the United States and the State at least 90 days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or the State, Elkins shall deliver any such documents, records, or other information to EPA or the State. Elkins may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Elkins asserts such a privilege, it shall provide the following:

- a. The title of the document, record, or information;
- b. The date of the document, record, or information;
- c. The name and title of each author of the document, record, or information;
- d. The name and title of each addressee and recipient;
- e. A description of the subject of the document, record, or information; and

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

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

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

#### **XIV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

66. **Resolution of Claims.** This Consent Decree resolves the civil claims of the United States and the State for the violations alleged in the Complaint filed in this action through the date of lodging.

67. The United States and the State reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 66 [Resolution of Claims]. This Consent Decree shall not be construed to limit the rights of the United States or the State to obtain penalties or injunctive relief under the CWA or implementing regulations, or under other Federal or State laws, regulations, or permit conditions, except as expressly specified in Paragraph 66 [Resolution of Claims]. The United States and the State further reserve all legal and

equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Elkins' Collection System or Facility, whether related to the violations addressed in this Consent Decree or otherwise.

68. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, civil penalties, other appropriate relief relating to the Collection System or Facility, Elkins shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 66.

69. This Consent Decree is not a permit, or a modification of any permit, under any Federal, State, or local laws or regulations. Elkins is responsible for achieving and maintaining complete compliance with all applicable Federal, State, and local laws, regulations, and permits; and Elkins' compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and the State do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Elkins' compliance with any aspect of this Consent Decree will result in compliance with provisions of the CWA or with any other provisions of Federal, State, or local laws, regulations, or permits.

70. This Consent Decree does not limit or affect the rights of Elkins or of the United States or the State against any third parties, not party to this Consent Decree, nor

does it limit the rights of third parties, not party to this Consent Decree, against Elkins, except as otherwise provided by law.

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

#### **XV. COSTS**

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

#### **XVI. NOTICES**

73. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:  
Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Box 7611 Ben Franklin Station  
Washington, D.C. 20044-7611  
Re: DOJ No. 90-5-1-1-09043

and

TO EPA:  
Branch Chief, NPDES Enforcement (3WP42)  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

Yvette Roundtree  
Regional Counsel  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

To the State:

Jennifer L. Hughes  
Senior Counsel  
West Virginia Department of Environmental Protection  
601 57th Street SE  
Charleston, West Virginia 25304  
(304) 926-0460

Chief Inspector  
Office of Environmental Enforcement  
West Virginia Department of Environmental Protection  
601 57th Street SE  
Charleston, West Virginia 25304  
(304) 926-0470

To Elkins:

Bob Pingley  
Operations Manager  
401 Davis Avenue  
Elkins, WV 26241

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

75. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

**XVII. EFFECTIVE DATE**

76. The Effective Date shall be the date of entry of this Consent Decree by the Court after satisfaction of the public notice and comment procedures of 28 C.F.R. § 50.7.



### **XVIII. RETENTION OF JURISDICTION**

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

### **XIX. MODIFICATION**

78. The Consent Decree may be modified by written consent of all the Parties. With the exception of modifications pertaining to scheduling and other matters deemed minor by the Plaintiffs, any modification of this Consent Decree by the Parties shall be in writing and filed with the Court before it will be deemed effective.

### **XX. TERMINATION**

79. After Elkins has completed the requirements of Section VI (Clean Water Act Remedial Controls and Remedial Activities), maintained satisfactory compliance with this Consent Decree and the NPDES Permit for a period of at least one year, and paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, and has complied with other requirements of this Consent Decree including those relating to the SEP and the requirement to maintain the SEP for no less than 5 years under Section VII of this Consent Decree, Elkins may serve upon the United States and the State a Request for Termination, stating that Elkins has satisfied those requirements. Elkins shall attach documentation demonstrating that Elkins has successfully completed all requirements of the Consent Decree.

80. Following receipt by the United States and the State of Elkins' Request for Termination, the Parties shall confer informally concerning the Request and any

disagreement that the Parties may have as to whether Elkins has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States, after consultation with the State, agrees that the Consent Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

81. If the United States, after consultation with the State, does not agree that the Consent Decree may be terminated, Elkins may invoke Dispute Resolution under Section XII of this Decree. However, Defendant shall not seek Dispute Resolution under Paragraph 56 [Formal Dispute Resolution] of any dispute regarding termination until after service of its Request for Termination.

#### **XXI. PUBLIC PARTICIPATION**

82. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7 and W. Va. Code St. R. § 47-10-16.2.c. The United States and the State reserve the right to withdraw or withhold consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Elkins consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States and the State have notified Elkins in writing that they no longer support entry of the Decree.

#### **XXII. SIGNATORIES/SERVICE**

83. The undersigned representative of Elkins and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice and the Senior Counsel for the West Virginia Department of Environmental

Protection certify that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

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

### **XXIII. INTEGRATION/APPENDICES**

85. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree:

- “Appendix A” is a list of Existing CSO Discharge outfalls
- “Appendix B” is a map of the facilities
- “Appendix C” is a format for the Semi-Annual Report
- “Appendix D” is the SEP Proposal

### **XXIV. FINAL JUDGMENT**

86. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, the

State, and Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

Dated and entered this \_\_\_ day of \_\_\_\_\_, \_\_\_\_.

---

HONORABLE JOHN PRESTON BAILEY  
CHIEF UNITED STATES DISTRICT JUDGE  
Northern District of West Virginia

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States and West Virginia v. the City of Elkins*.

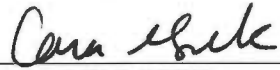
FOR THE UNITED STATES OF AMERICA, UNITED STATES DEPARTMENT OF JUSTICE:

Date: 8/8/11



IGNACIA S. MORENO  
Assistant Attorney General  
Environment and Natural Resources  
Division


Date: 7-22-11



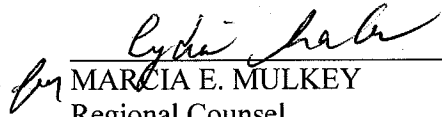
CARA M. MROCZEK  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
United States Department of Justice  
Post Office Box 7611  
Washington, D.C. 20044  
(202) 514-1447 (phone)

FOR THE UNITED STATES OF AMERICA, THE ENVIRONMENTAL PROTECTION AGENCY:

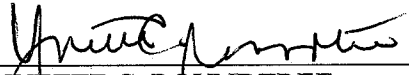
Date: JUN 28 2011

  
\_\_\_\_\_  
SHAWN M. GARVIN  
Regional Administrator  
U.S. Environmental Protection Agency,  
Region III  
1650 Arch Street  
Philadelphia, PA 19103

Date: 6/9/11


  
\_\_\_\_\_  
MARCIA E. MULKEY  
Regional Counsel  
U.S. Environmental Protection Agency,  
Region III  
1650 Arch Street  
Philadelphia, PA 19103

Date: 5-25-11


  
\_\_\_\_\_  
YVETTE C. ROUNDTREE  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency,  
Region III  
1650 Arch Street  
Philadelphia, PA 19103

WE HEREBY CONSENT to the entry of the Consent Decree in the United States v. City of Elkins, Civil Action No. 2:11-cv-00000, subject to the public notice and comment requirements of 28 C.F.R. §50.7.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

  
\_\_\_\_\_  
MARK POLJINS  
Division Director  
Water Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

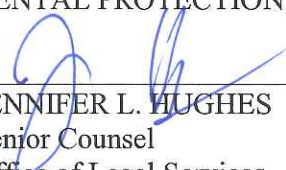
Dated: 7.15.11

  
\_\_\_\_\_  
ROBERT G. KLEPP  
Attorney  
Water Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Dated: 7/13/11

FOR THE STATE OF WEST VIRGINIA, BY AND THROUGH THE WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Date: 7/21/11

  
\_\_\_\_\_  
JENNIFER L. HUGHES  
Senior Counsel  
Office of Legal Services  
West Virginia Department of  
Environmental Protection  
601 57th Street SE  
Charleston, West Virginia 25304  
(304) 926-0460



FOR DEFENDANT CITY OF ELKINS, WEST VIRGINIA:

Date: 6-17-11



DUKE TALBOTT, PH.D.

Mayor

City of Elkins

401 Davis Avenue

Elkins, WV 26241

# **Appendix A**

## Appendix A

### City of Elkins Permitted Outfalls

<b>Inspectable Unit</b>	<b>Latitude</b>	<b>Longitude</b>	<b>Receiving Stream</b>	<b>Milepost</b>
001	38°55'12"	79°51'52"	Tygart Valley River	66.5
002	38°55'12"	79°51'52"	Tygart Valley River	N/A
C002	38°55'00"	79°50'46"	Tygart Valley River	65.7
C003	38°56'04"	79°50'29"	Tygart Valley River	65.8
C004	38°55'23"	79°50'49"	Tygart Valley River	65.9
C005	38°55'25"	79°50'54"	Tygart Valley River	N/A
C006	38°55'28"	79°50'59"	Tygart Valley River	66.1
C007	38°55'28"	79°51'06"	Tygart Valley River	66.2
C008	38°55'32"	79°51'28"	Tygart Valley River	66.3
C009	38°56'38"	79°51'36"	Leading Creek	N/A
C011	38°55'35"	79°52'20"	Tygart Valley River	66.8
C012	38°55'27"	79°51'59"	Tygart Valley River	66.7
C013	38°54'23"	79°51'35"	Tygart Valley River	65.3
C014	38°54'46"	79°50'58"	Tygart Valley River	65.6
C015	38°55'13"	79°51'27"	Tygart Valley River	66.4
C016	38°55'23"	79°51'02"	Tygart Valley River	66.2
C017	38°55'22"	79°50'57"	Tygart Valley River	66.2
C018	38°55'22"	79°50'52"	Tygart Valley River	66.0
C019	38°55'20"	79°50'48"	Tygart Valley River	65.9
C020	38°55'27"	79°51'59"	Tygart Valley River	66.7
S01	38°55'12"	79°51'52"	Discharges into 001	N/A

C = Combined Sewer Outfall

S = Stormwater Outfall

## **Appendix B**



# **Appendix C**

**Appendix C**  
Semi-Annual Progress Report  
City of Elkins, WV

On a semi-annual basis on March 31 and September 30, for each six-month period commencing with the first full six-month period after entry of this Consent Decree and continuing until termination, Elkins will submit to U.S. EPA and the WVDEP a progress report (“Semi-annual Progress Report”) regarding the implementation of the requirements of this Decree in the previous Six-month period. The Semi-Annual Progress Report will include at a minimum:

- a. A statement setting forth the deadlines and other terms that Elkins is required by this Consent Decree to meet since the date of the last Semi-annual Progress Report, whether and to what extent Elkins has met these requirements, the reasons for any noncompliance, and steps that are being taken to get back on schedule;
- b. A general description of the work completed within the Six-month period, and a projection of work to be performed pursuant to this Consent Decree during the next or succeeding Six-month Period. This description of work completed should include Nine Minimum Controls activity during the past Six-month period. Notification to U.S. EPA and the WVDEP of any anticipated delay shall not, by itself, excuse the delay;
- c. A statement of any exceedances of NPDES Permit;
- d. A summary of all Sanitary Sewer Overflows (SSOs) and other unpermitted discharges occurring within the Six-month period including the actual or estimated frequency, duration, and volume of each SSO; and
- e. A summary of all Combined Sewer Overflows (CSOs) within the Six-month period including the following information;
  1. Type of overflow, wet or dry;
  2. Outfall number;
  3. Date of overflow;
  4. Cause of overflow;
  5. Estimated amount of rain fall, if applicable;
  6. Estimated duration of overflow;
  7. Total volume (gallons) of overflow;
  8. Date and estimated time the discharged started;
  9. Date and estimated time the discharge ended;
  10. Any corrective action taken; and
  11. Initial of the inspector.

# **Appendix D**



## **ELKINS SUPPLEMENTAL ENVIRONMENTAL PROJECT**

The city of Elkins proposes the following supplemental environmental project (SEP) which may be used as a credit against the assessment of civil penalties related to certain civil enforcement activities being undertaken by the West Virginia Department of Environmental Protection and the United States Environmental Protection Agency for alleged violations of the Clean Water Act.

A SEP may be used as a credit for 40% of the finally negotiated civil penalty assessment. The ratio of SEP dollars spent to civil penalty assessment credit is 2:1.

### **A. CURRENT STATUS OF YARD WASTE MANAGEMENT IN ELKINS.**

The city of Elkins (city) provides waste management services to municipal residents and commercial facilities. The city operates a municipal solid waste landfill and further provides a curbside pickup service for municipal solid waste. As part of these services, the city employs approximately 20 persons to operate equipment and provide administrative support and further owns, maintains and operates 8 solid waste management vehicles along with 5 pieces of heavy equipment in order to provide services.

The city has maintained a long-standing policy/ordinance which does not allow for the disposal of yard waste at the city's landfill. To further this policy, the city does not accept yard waste for disposal as part of its curbside pickup service. The purpose of this policy is two-fold; 1) to maximize the life expectancy of the city's existing landfill by avoiding the disposal of products which may be recycled and re-used and 2) to provide an incentive for customers to re-use and recycle yard waste.

While many customers have found alternative means of managing their yard waste. Many also dispose of yard waste by comingling the yard waste with their regular municipal solid waste. Further other customers simply do not capture their yard waste, allowing for a percentage of the waste to find its way to the city's storm water and combined sewer collection system. Once in the collection system, the material impacts the mechanical operation of the system by filling and sometimes clogging catch basins and generally impacting the ability of the collection system to perform its primary function – the capture and delivery of wastewater to the city's wastewater treatment facility.

### **B. SUPPLEMENTAL ENVIRONMENTAL PROJECT.**

The City of Elkins proposes to establish and operate a yard waste pick-up and recycling program which will be available to all its municipal waste management customers. The program will consist of curbside pickup of segregated yard waste. The service will be provided as part of the city's regularly scheduled municipal solid waste management and disposal program.

On a monthly basis between May and October, the city will pick up yard waste from its regular waste collection customers. Upon pick-up, the material would be transported to a central wood waste handling facility tentatively agreed to be located upon the site of the city's old wastewater treatment facility on Jones Drive within the city limits. The site is large enough to allow for construction of an approximately 1500 square foot enclosed structure to house the yard waste program and maintains the available infrastructure for easy access for city trucks delivering yard waste. As the site is already owned by the city, it avoids the additional cost of purchasing property.

The facility would store equipment and roll-off containers which will be used to store the yard waste. The city further proposes to purchase a chipper/shredder capable of compacting the yard waste and other equipment needed to operate the program which will all be located at the facility.

Once the material is prepared for commencement of composting activities, the city will transport the material to the City of Clarksburg (Clarksburg), which owns and operates a permitted composting facility west of the city. The city and Clarksburg commenced discussions regarding the use of its compost facility as planning for this proposed SEP began. Those discussions revealed that Clarksburg's compost facility was under-utilized and that it would in fact welcome the opportunity to partner with the city in recycling yard waste and distributing finished compost in Elkins.<sup>1</sup> It is anticipated that the material would be delivered to Clarksburg on a monthly basis.

Once the raw yard waste material is delivered to Clarksburg, the vehicles will be re-loaded with finished compost to be brought back to the city. The city will pay a nominal fee to Clarksburg for the processing of the yard waste based upon the loads provided. The recycled material will be used by the city as a substitute for commercial fertilizers laden with various chemicals and nutrients at the various city green spaces including city-maintained flower beds, tree boxes, and park areas. Further, the city anticipates to offer the recycled yard waste as a fertilizer/soil amendment to the general public at no cost, providing an incentive to using the recycled yard waste as opposed to commercial fertilizers on residential lawns.

The city anticipates that the proposed yard waste program will have substantial labor and capital costs. A copy of the anticipated costs, including potential capital costs for equipment is attached hereto as Attachment A. A schedule for implementation of the program is further attached to this document as Attachment B.

---

<sup>1</sup> In late September of 2010, the city performed a one-time, trial run of a yard waste pick-up in order to judge the viability of such a program which would include the collection and processing of yard waste within the city, the transport of yard waste from the city to Clarksburg, and the transport of finished compost from the Clarksburg facility back to Elkins. Notification was given to all residents that curbside pickup would be available on a one-time basis for these materials. City crews collected the yard waste and further consolidated the material into large roll-off containers. Once the roll-offs were full, they were taken to the Clarksburg composting facility for recycling. After unloading the raw materials, the roll-offs were then loaded with finished compost material and brought back to a city facility where it was utilized as anticipated in city parks and properties.

### **C. ENVIRONMENTAL BENEFITS/GOALS FURTHERED.**

By controlling and providing a means of handling yard waste, the city hopes to reduce overall pollution or impacts of yard waste on storm water runoff and the city's wastewater collection system. The policy will conserve landfill space, promote community recycling, improve operation of the city's wastewater collection system, and improve overall water quality.

By providing curbside service for yard waste handling, the city removes the incentive to commingle yard waste with other regular municipal solid waste which is then placed into the landfill. This will therefore conserve landfill space and result in less overall volumes being landfilled which improves overall water quality through the generation of less leachate.

Also important to water quality, the use of the recycled yard waste as a soil amendment/fertilizer by the city will result in less use of commercial fertilizers which contain chemicals and other nutrients. It is generally accepted that commercial fertilizer is a major source of storm water runoff contamination and greatly impacts overall water quality in our streams.

Further, by making the yard waste compost product available to the general public at a very minimal cost, the city hopes to provide an incentive to city residents to use the material as a substitute for commercial fertilizer which will again have a positive impact on overall water quality as it is a generally known that the use of commercial fertilizers on residential lawns is a major source of nutrients in our surface waters.

Finally, the use of compost generally provides benefits to the environment. Compost promotes a healthy soil and binds heavy materials preventing migration of those metals to surface and groundwater. Further, the use of compost lessens the need for commercial fertilizers which are generally acknowledge to be a major contributor to storm water pollution.

### **D. CONCLUSIONS.**

Clearly, the establishment of a yard waste collection and recycling program will provide significant environmental benefits to the community and specifically further the goals of the Clean Water Act and the Resource Recovery and Conservation Act.

The value of the project as set forth in the attachment includes an investment of \$116,000.00 for initial capitol outlays and a yearly ongoing cost of approximately \$63,000.00. The overall value of the project qualifies it for consideration of up to 40% of the overall civil penalty assessed against the city as part of the civil enforcement action referenced above.

# City of Elkins SEP Attachment A

## Yard Waste Recycling Program Estimated Cost Structure

Costs are based on six monthly yard waste collections annually.

### Capital Investment Requirements

#### Equipment

Roll-off containers	\$10,000
Wood chipper	\$32,000
Misc. equipment	\$ 4,500

#### Facilities

Construction of Waste Handling facility	
Site improvements	\$21,000
Building construction	\$48,000

### Labor requirements

Monthly pickup	144 man/hours x 6 (months per year) = 864 m/h x \$21/hr =	\$18,144
Roll-off transport	1 truck x 16 hours x 6 months = 96 annual hours x \$ 40/hr =	\$ 3,840
Material processing	32 m/h monthly x 6 months x \$21/hr =	\$ 4,032

### Equipment usage

Monthly pickup	3 trucks x 72 hours x 6 months = 432 annual hours x \$ 40/hr =	\$17,280
Roll-off transport	130 mi/trip x 4 trips monthly x 6 months x \$2.00/mi =	\$ 6,240

### Tonnage Fees

Dumping fees	\$10/ton x 30 tons/month x 6 months =	\$ 1,800
Compost cost	\$30/ton x 30 tons/month x 6 months =	\$ 5,400

### Summary

Capital Investment	\$115,500
Recurring costs	
Annual labor costs	\$ 26,016
Annual equipment costs	\$ 23,520
Annual tonnage fees	<u>\$ 7,200</u>
Total annual recurring costs	\$ 56,736

## **City of Elkins Proposed SEP Attachment B**

### Yard Waste Recycling Program Implementation Schedule

<b><u>Phase</u></b>	<b><u>Duration</u></b>	<b><u>Start date</u></b>	<b><u>Completion date</u></b>
Site work	60 days	01 July 2011	30 Aug 2011
Building construction	90 days	01 August 2011	28 Nov 2011
Equipment acquisition	45 days	03 Oct 2011	17 Nov 2011

#### **Program schedule**

The City proposes to schedule a curbside yard waste pickup for late November 2011 with full implementation of regular yard waste pickup in the spring of 2012. The program would provide for pickup from May through October.