

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

3
4 SAN DIEGO COASTKEEPER,
5 Plaintiff,

6 vs.

7 U.S. DEPARTMENT OF DEFENSE,
8 ET AL.,
9 Defendants

) Case No.: 3:11-CV-0816 LAB
(BLM)

) **CONSENT DECREE**

10
11 WHEREAS on December 23, 2010, pursuant to Section
12 505(b) of the Federal Water Pollution Control Act, 33
13 U.S.C. § 1365(b), San Diego Coastkeeper ("Plaintiff")
14 provided notice of its intent to sue the United States
15 Department of Defense, the United States Navy, the
16 United States Marine Corps, the Secretary of Defense,
17 the Secretary of the Navy, the Commandant of the Marine
18 Corps, and the Commanding General of Camp Pendleton
19 (collectively, "Defendants") for alleged violations of
20 the Federal Water Pollution Control Act, 33 U.S.C. §§
21 1251 et seq. ("CWA" or "Act");

22 WHEREAS on April 18, 2011, Plaintiff filed the
23 complaint in this action;

24 WHEREAS Plaintiff and Defendants (collectively,
25 "Parties") wish to resolve this action without further
26 litigation;

27 WHEREAS Defendants intend to meet the Sanitary
28 Sewer Overflow ("SSO") Reduction Performance Standards
and other requirements set forth in this Consent Decree

1 regarding operations and maintenance related to the
2 Sanitary Sewer System at Camp Pendleton;

3 WHEREAS the Parties desire to continue to develop a
4 long-term relationship that will allow for informal
5 collaboration and information-sharing aimed at the
6 mutual goal of reducing Sanitary Sewer Overflows on
7 Camp Pendleton;

8 WHEREAS, Defendants intend to implement the Spill
9 Reduction Plan attached hereto as Appendix 1; and,

10 WHEREAS this Court finds that this Consent Decree
11 is a reasonable and fair settlement and that it
12 adequately protects the public interest in accordance
13 with the Act;

14 NOW THEREFORE, it is hereby ORDERED ADJUDGED AND
15 DECREED as follows:

16 I.

17 **JURISDICTION**

18 This Court has jurisdiction over the subject matter
19 herein and the Parties pursuant to Section 505(a) of
20 the Act, 33 U.S.C. § 1365(a), and pursuant to 28 U.S.C.
21 § 1331. Plaintiff's complaint states claims upon which
22 injunctive relief may be granted against Defendants
23 under Section 505 of the Act, 33 U.S.C. § 1365.
24 Authority to bring Plaintiff's suit is provided in
25 Section 505(a) (1) of the Act, 33 U.S.C. § 1365(a) (1).
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1 "Day" means a calendar day. In computing any
2 period of time under this Consent Decree where the last
3 day of such period is a Saturday, Sunday, or Federal or
4 State Holiday, the period runs until the close of
5 business on the next day that is not a Saturday,
6 Sunday, or Federal or State Holiday.

7 "Effective Date" means the date on which this
8 Consent Decree is entered as an order and reflected on
9 the docket of the Court.

10 "FOG" means fats, oil, and grease.

11 "FOTW" means the Federally Owned Treatment Works
12 that are the wastewater treatment plants on Camp
13 Pendleton.

14 "Gravity Sewer" means pipes within the Sanitary
15 Sewer System, excluding Laterals, that convey
16 wastewater by gravity flow.

17 "Lateral" means the sanitary sewer pipes or lines
18 connecting any structure to the main lines owned and
19 operated by the United States at Camp Pendleton.

20 "MILCON" means the Military Construction Program at
21 Camp Pendleton.

22 "NPDES" means National Pollutant Discharge
23 Elimination System.

24 "NPDES Permit" refers to Regional Board Order R9-
25 2008-0096 or Regional Board NPDES Permit no. CA0109347;
26 and any successor Order or Permit thereto.

27 "Pipeline Assessment Condition Protocol" and "PACP"
28 mean condition assessment protocol established by the
National Association of Sewer Service Companies.

1 "Regional Board" means the State of California,
2 Regional Water Quality Control Board, San Diego Region.

3 "Sewer Line Segment" means any section of Gravity
4 Sewer line or pipe, within the Sanitary Sewer System,
5 located between: (i) two manholes/maintenance holes;
6 (ii) a pump station and a manhole/maintenance hole;
7 (iii) a pump station or a manhole/maintenance hole or
8 headworks structure; and (iv) a sewer line or pipe
9 otherwise identifiable as a discrete section.

10 "Sanitary Sewer Overflow," "overflow," or "SSO"
11 means any overflow, spill, release, discharge or
12 diversion of untreated or partially treated wastewater
13 from the Sanitary Sewer System. SSOs include: (i)
14 Overflows or releases of untreated or partially treated
15 wastewater that reach waters of the United States; (ii)
16 Overflows or releases of untreated or partially treated
17 wastewater that do not reach waters of the United
18 States; and (iii) Wastewater backups into buildings and
19 on private property that are caused by blockages or
20 flow conditions within the Sanitary Sewer System. For
21 purposes of this definition, "Waters of the United
22 States" has the meaning as set forth in 40 C.F.R. §
23 122.2.

24 "Sanitary Sewer System" means any system of pipes,
25 pump stations, sewer lines, or other conveyances,
26 upstream of a wastewater treatment plant headworks used
27 to collect and convey wastewater to a wastewater
28 treatment facility. Temporary storage and conveyance
facilities (such as vaults, temporary piping,

1 construction trenches, wet wells, impoundments, tanks,
2 etc.) are considered to be part of the Sanitary Sewer
3 System, and discharges into these temporary storage
4 facilities are not considered to be SSOs. This
5 definition includes sanitary sewer system components
6 that are normally considered part of a public
7 municipality's sanitary sewer system. Therefore, the
8 "Sanitary Sewer System" does not include Laterals or
9 septic systems.

10 "SOPs" mean Standard Operating Procedures.

11 "Surface Waters" are the Pacific Ocean and those
12 perennial or intermittent streams, rivers, ponds or
13 lakes on the U.S. Geological Survey's National
14 Hydrography Dataset (NHD) [geospatial database]. High
15 Resolution (1:24,000). NHD Pre-Staged Subregion 1807
16 Dataset (NHDH1807_92v2000.zip) [computer files].

17 Place of Publication:

18 ftp://nhdftp.usgs.gov/DataSets/Staged/SubRegions/Person
19 alGDB/HighResolution/ USGS, 09/28/2011. Using: ArcMap
20 GIS [GIS software]. Version 9.3.1. Redlands, CA:
21 Environmental Systems Research Institute, Inc., 1999-
22 2009.

23
24 **IV.**

25 **EFFECT OF CONSENT DECREE**

26 A. The provisions of this Consent Decree shall
27 apply to and be binding upon the Parties, including
28 their officials, directors, employees, agents,
successors, and assigns.

1 B. From the Effective Date until the termination
2 of this Consent Decree, Defendants shall (i) give
3 written notice of this Consent Decree to any successors
4 in interest prior to transfer of ownership, management,
5 operation or maintenance of any portion of the FOTW
6 and/or Sanitary Sewer System and (ii) provide a copy of
7 this Consent Decree to any successor in interest.
8 Defendants shall notify Plaintiff in writing as
9 specified in Section XII (Form of Notice) of any
10 successor in interest at least twenty-one (21) days
11 prior to any such transfer.

12 C. In the event that the Court does not enter this
13 Consent Decree, the agreement set forth herein shall be
14 null and void.

15
16 **V.**

17 **COMPLIANCE ACTIONS**

18 A. SSO Reduction Performance Standards. It is the
19 goal of the Parties to reduce SSOs within
20 CPEN's Sanitary Sewer System. CPEN also
21 strives to reduce the volume of SSOs to the
22 maximum extent feasible. While CPEN aspires to
23 prevent any SSOs from occurring, the mechanical
24 nature and complexities of its systems make
25 total elimination of SSOs an unrealistic
26 standard. Nevertheless, CPEN will reduce its
27 SSOs to comply with the following SSO Reduction
28

Performance Standards:

Calendar Year	Maximum Number of SSOs
2013	23
2014	20
2015	17
2016	15
2017	10

Calendar Year	Maximum Number of SSOs Reaching Surface Waters
2013	4
2014	3
2015	3
2016	2
2017	2

Failure to achieve Compliance with the SSO Reduction Performance Standards shall not be a violation of this Consent Decree.

B. SSOs caused by a blocked Lateral, a criminal or tortious act, a severe natural condition (such as a rainstorm event exceeding a 10-Year 24-Hour storm), new equipment that is found to be defective, and any other SSOs, the cause of which is beyond CPEN's reasonable control, shall not be counted for purposes of paragraph V.A above. Additionally, SSOs originating from undocumented pipes shall not be counted.

C. Attaining the SSO Reduction Performance Standard. For each calendar year 2013 through 2017, if Defendants achieve the SSO Reduction Performance Standards, they shall provide to Plaintiff a Notice of

1 Compliance ("Compliance Notice") and the data used to
2 support the Compliance Notice. If Defendants do not
3 achieve the SSO Reduction Performance Standards, they
4 shall provide to Plaintiff a Notice of Non-Compliance
5 ("Non-Compliance Notice") and the data used to support
6 the Non-Compliance Notice. Each Compliance Notice or
7 Non-Compliance Notice shall be furnished to Plaintiff
8 in writing by February 15 of the year immediately
9 following the year for which it is submitted.

10 Additionally, within 30 days after furnishing the
11 Compliance or Non-Compliance Notice, Defendants shall
12 schedule an annual meeting with Plaintiff to discuss
13 Defendants' performance during the previous year and
14 the strategy to address SSOs in the current year.

15 D. SSO Reduction Performance Standard Non-
16 Compliance. If Defendants submit a Non-Compliance
17 Notice for any calendar year between 2013 and 2017,
18 Defendants shall submit a Spill Corrective Action Plan
19 ("SCAP") to Plaintiff. The SCAP shall be submitted in
20 writing by March 31 of the year immediately following
21 the year for which the SSO Reduction Performance
22 Standards were not achieved. The SCAP shall identify
23 measures expected to achieve Compliance with the SSO
24 Reduction Performance Standards for the year in which
25 the SCAP is provided, and shall contain a good-faith
26 estimate of the time and funding required to achieve
27 that Compliance. Plaintiff shall submit any comments
28 on the SCAP to Defendants in writing within thirty (30)
days of receiving the SCAP. If the Parties agree on

1 the SCAP's adequacy, they shall confirm the same in
2 writing and implementation of the SCAP shall commence
3 within thirty (30) days after the date of their written
4 confirmation. If the Parties do not agree on the
5 SCAP's adequacy, any Party may invoke dispute
6 resolution in accordance with Section VII (Dispute
7 Resolution) of this Consent Decree to determine whether
8 the SCAP is adequate to achieve the SSO Reduction
9 Performance Standards as soon as practicable.

10 E. Remedy for Prolonged Failure to Achieve
11 Compliance with the 2017 SSO Performance Reduction
12 Standards. If Defendants fail to achieve Compliance
13 with the SSO Performance Reduction Standards for 2017
14 by December 31, 2018, the Parties shall meet and confer
15 within ninety (90) days to review the adequacy of the
16 SCAP and, to the extent necessary, the reasonableness
17 of the SSO Reduction Performance Standards. If the
18 Parties cannot reach agreement, then any Party may
19 invoke dispute resolution in accordance with Section
20 VII (Dispute Resolution) of this Consent Decree.

21 F. Notification to Plaintiff for Certain SSOs.
22 Defendants shall orally or via email notify Plaintiff
23 of any SSOs that, after recovery efforts, exceed 50,000
24 gallons. Additionally, Defendants shall orally or via
25 email notify Plaintiff of any SSOs that result in the
26 posting of warning signs at any of Camp Pendleton's
27 beaches. This notification protocol shall be followed
28 even for those SSOs that are not counted per Paragraph
V.B. above, to include spills caused by blocked

1 Laterals or spills originating from septic systems.
2 Additionally, these notifications shall be made as soon
3 as practicable, but no later than 24 hours after
4 Defendants become aware of either of these
5 circumstances. Finally, Defendants are expected to
6 make the notifications required by this Paragraph
7 immediately after the regulator is notified.

8
9 **VI.**

10 **FORCE MAJEURE**

11 A. For purposes of this Consent Decree, a Force
12 Majeure event is any occurrence outside the reasonable
13 control of Defendants, or of any entity employed by
14 Defendants, including, but not limited to, their
15 consultants and contractors, that delays or prevents
16 compliance with this Decree despite Defendants' best
17 efforts to fulfill their obligations. Defendants'
18 exercise of their "best efforts to fulfill their
19 obligations" includes using best efforts to anticipate
20 and to address the effects of any potential Force
21 Majeure event (i) as it is occurring and (ii) following
22 the potential Force Majeure event, such that delay or
23 non-compliance is minimized.

24 B. If circumstances are occurring or have occurred
25 that may delay the completion of any requirement of
26 this Consent Decree due to a Force Majeure event,
27 Defendants shall so notify Plaintiff, in writing,
28 within fifteen (15) days after Defendants learn of the
Force Majeure event. The notice shall describe the

1 basis for Defendants' contention that Defendants
2 experienced a Force Majeure event; the anticipated
3 Force Majeure event effects; the cause or causes of the
4 Force Majeure event; the measures taken or to be taken
5 to prevent or minimize the Force Majeure negative
6 effects; and the timetable by which those measures will
7 be implemented.

8 C. If Plaintiff, after consultation with
9 Defendants, agrees either a non-compliant event or a
10 delay in performance is, or was, caused by a Force
11 Majeure event, the Parties shall extend the time for
12 performance, in writing with notice to this Court, by
13 the amount of time of the delay caused by the Force
14 Majeure event. If other forms of relief may be
15 appropriate, the Parties may so agree and provide
16 notice to this Court. If the Parties cannot agree on
17 the appropriateness of other forms of relief, then
18 either Party may invoke dispute resolution in
19 accordance with Section VII of this Consent Decree.

20 D. In proceedings on any dispute regarding a delay
21 in performance or other relief sought due to a Force
22 Majeure event, the dispute resolution provisions of
23 Section VII (Dispute Resolution) shall apply, and
24 Defendants shall have the burden of proving that the
25 delay or non-compliance is, or was, caused by a Force
26 Majeure event, and that the amount of additional time
27 or other relief requested by Defendants is necessary to
28 compensate for that event. If the Court finds that a
delay in performance or non-compliance is or was caused

1 by a Force Majeure event, the Court shall extend the
2 time for performance by the amount of time of the delay
3 caused by the Force Majeure event, and/or provide other
4 appropriate relief, as determined by the Court.
5
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7 **VII.**

8 **DISPUTE RESOLUTION**

9 A. The dispute-resolution procedure set forth in
10 this Section shall be the exclusive mechanism for
11 resolving disputes between the Parties with regard to
12 any aspect of this Consent Decree.

13 B. A Party shall invoke the dispute-resolution
14 procedures of this Section by notifying the other Party
15 in writing of the matter(s) in dispute and of the
16 Party's intention to resolve the dispute under this
17 Section. The Parties shall meet and confer in person,
18 unless the Parties agree otherwise, and attempt to
19 resolve the dispute informally for a period of thirty
20 (30) days after the date of the notice.

21 C. If the Parties cannot resolve a dispute by the
22 end of the period of informal negotiations described in
23 the preceding Paragraph, the Party invoking the
24 dispute-resolution provision shall provide its
25 position(s) on the issues in dispute and the reasons
26 therefor in writing to the other Party. Not later than
27 thirty (30) days after receiving the written position
28 statement, the opposing Party shall provide its
position(s) on the issues in dispute and the reasons

1 therefor in writing to the other Party. The Party
2 invoking the dispute-resolution provision may then file
3 a motion for this Court to resolve the dispute. At the
4 request of either Party, the Parties agree that they
5 will jointly apply to this Court for an expedited
6 hearing on the motion. Unless the Parties agree
7 otherwise, any opposition to the motion (which
8 opposition may also include an alternative proposal for
9 a resolution of the dispute) shall be filed with the
10 clerk not later than twenty (20) days after receipt of
11 the motion; and any reply memorandum in support of the
12 motion must be filed with the clerk not later than ten
13 (10) days after receipt of the opposition.

14 D. Any motion submitted to the Court pursuant to
15 this paragraph VII will be heard and adjudicated in the
16 first instance by the Magistrate Judge.

17
18 **VIII.**

19 **NO ADMISSION OF LIABILITY**

20 This Consent Decree was negotiated, mutually
21 drafted, and executed by the Parties in good faith to
22 avoid further litigation and is a settlement of all
23 claims made in the complaint. Neither the execution of
24 this Consent Decree nor any action taken hereunder is
25 an admission of any fact, liability, or wrongdoing of
26 any kind regarding any of the matters addressed in this
27 Consent Decree.

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IX.

RELEASE BY PLAINTIFF

Plaintiff releases, discharges, and covenants not to assert (by way of commencement of any action, or the joinder of Defendants in an existing action, or in any other fashion) any, and all contentions, claims, causes of action, suits or demands of any kind whatsoever, in law or in equity, which Plaintiff has had, may now have, or may have in the future against the United States, including Defendants, based upon matters that were asserted, or could have been asserted, under the Act in this Civil Action.

X.

RESERVATIONS BY PLAINTIFF

A. Notwithstanding any other provision of this Consent Decree, Plaintiff reserves all its rights against Defendants with regard to matters not specifically released in Section IX above.

B. Nothing in this Consent Decree affects Plaintiff's right to address and take any position that it may desire in any formal or informal proceeding before the Regional Board or any other governmental body on any matter relating to Camp Pendleton, including but not limited to any NPDES Permit or the Oceanside Outfall so long as it does not conflict with the provisions of this Consent Decree.

XI.

COSTS OF SUIT

1
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3 A. The Parties agree that Plaintiff is a
4 prevailing or substantially prevailing party within the
5 meaning of Section 505(d) of the CWA, 33 U.S.C. §
6 1365(d), and that Defendants shall pay Plaintiff's
7 reasonable attorneys' fees and costs (including expert
8 fees) with respect to this Civil Action and Consent
9 Decree. The Parties will attempt to reach agreement as
10 to the appropriate amount to be paid. If they are
11 unable to do so, Plaintiff may file an application with
12 this Court for the recovery of reasonable fees and
13 costs within ninety (90) days after the Effective Date,
14 or by such later date as set by the Court upon motion
15 or otherwise.

16 B. The Parties agree that Plaintiff is entitled to
17 reasonable attorneys' fees and costs (including expert
18 fees) for reviewing and commenting on the Compliance
19 and Non-Compliance Notices described in Section V.C. of
20 this Consent Decree. If the Parties are unable to
21 agree on the amount, their dispute shall be resolved in
22 accordance with Section VII of this Consent Decree.

23 C. Defendants shall bear their own attorneys' fees
24 and costs.

25 D. Nothing in this Consent Decree restricts or
26 otherwise compromises Plaintiff's right to request
27 reimbursement for attorneys' fees and costs (including
28 expert fees) incurred to monitor and/or enforce

1 Defendants' compliance with this Consent Decree.
2 Defendants reserve any and all defenses to such claims.

3
4 **XII.**

5 **FORM OF NOTICE**

6 Unless otherwise specified, or as may be changed
7 from time to time, all reports, notices or any other
8 written communications required to be submitted under
9 this Consent Decree shall be sent to the respective
10 Parties, or their successor, at the following
11 addresses:

12
13 As to the United States:

14 Office of Counsel Commandant of the Marine Corps
15 (CL)
16 Headquarters, U.S. Marine Corps
17 2 Navy Annex
18 Pentagon, RM 4E475 Washington, D.C. 20380-1775
19 Facsimile: (703) 693.4453

20 Commanding Officer
21 (Attn: AC/S, Facilities)
22 Marine Corps Base
23 Box 555013
24 Camp Pendleton, California 92055-5013

25 Counsel, Western Bases
26 Box 555231
27 Camp Pendleton, California 92055-5231
28 Facsimile: (760) 725.5132
Email: ralph.pearcy@usmc.mil

Navy Litigation Office
(Attn: Page Turney)
Office of the General Counsel of the Navy

1 720 Kennon St., S.E.
2 Washington Navy Yard, DC 20374-5013
3 Facsimile: (202) 685.7036

4 and

5 Chief Environmental Defense Section
6 Environment & Natural Resources Division
7 United States Department of Justice
8 P.O. Box 7611
9 Washington, D.C. 20044
10 Facsimile: (202) 514.8865

11 As to Plaintiff:

12 Jill Witkowski, Attorney for San Diego Coastkeeper
13 San Diego Coastkeeper
14 2825 Dewey Road, Suite 200
15 San Diego, CA 9210
16 Facsimile: (619) 224.4638
17 Email: jill@sdcoastkeeper.org

18 Notifications of communications shall be deemed
19 submitted on the date they are postmarked and sent by
20 certified mail, return receipt requested, or deposited
21 with an overnight mail/delivery service. In the case
22 of email, notifications of communications shall be
23 deemed submitted on the date the email is transmitted
24 to the email addressee designated in this paragraph.

25 **XIII.**

26 **MODIFICATION**

27
28 A. This Consent Decree contains the entire
agreement of the Parties and shall not be modified by

1 any prior oral or written agreement, representation or
2 understanding. Except as set forth in Paragraph XIII.B
3 immediately below, this Consent Decree may be modified
4 by written agreement of the Parties and approval by the
5 Court.

6 B. Any dates set forth in this Consent Decree may
7 be extended by written agreement of the Parties and
8 notice to the Court. To the extent the Parties are not
9 able to agree to an extension, Defendants may seek a
10 modification of this Consent Decree. If the Court
11 denies a motion by Defendants to modify a date
12 established by this Consent Decree, then the date for
13 performance for which modification had been requested
14 shall be such date as the Court shall specify.

15 C. Any motion to modify the schedule established
16 in this Consent Decree shall be accompanied by a motion
17 for expedited consideration. The Parties shall join in
18 any such motion for expedited consideration.

19
20 **XIV.**

21 **CONTINUING JURISDICTION OF THE COURT**

22 The Court shall retain jurisdiction to enforce the
23 terms and conditions of this Consent Decree and to
24 resolve disputes arising hereunder as may be necessary
25 or appropriate for the construction, modification,
26 implementation, or execution of this Consent Decree.

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XV.

TERMINATION

Unless Defendants seek early termination under this Section, this Consent Decree will automatically and unconditionally terminate upon Defendants' submission of the Compliance Notice for calendar year 2017. This case shall then be dismissed with prejudice. If Defendants do not achieve the 2017 SSO Reduction Performance Standards in 2017, but attain the 2017 standards in a later year, this Consent Decree will automatically and unconditionally terminate and this case shall be dismissed with prejudice upon Defendants' submission of the Compliance Notice for that later year. Early termination may be sought by either Party upon motion that Defendants have met the 2017 SSO Reduction Performance Standards for two consecutive years. If Defendants have met the 2017 SSO Reduction Performance Standards for two consecutive years, have not had any SSOs exceeding 1 million gallons during these consecutive years and in the then current calendar year, and Defendants have moved for early termination, this Consent Decree will terminate and this case will be dismissed with prejudice six months after Defendants' submission of the Compliance Notice for the second consecutive year in which the 2017 SSO Reduction Performance Standards are met, unless Plaintiff opposes the termination as specified below. The six-month period between the second consecutive Compliance Notice and dismissal of this case is

1 intended to provide Plaintiff with an opportunity to
2 further evaluate sustained SSO reduction performance.
3 If Defendants' number of SSOs indicates that the 2017
4 SSO Reduction Performance Standards will not be
5 sustained through the then current calendar year,
6 Plaintiff may move the Court to defer the early
7 termination and dismissal until the next compliance
8 notice demonstrates sustained performance. If
9 Plaintiff so moves, the Parties will have the
10 opportunity to be heard by the Court before the Court
11 determines whether the decree will be terminated early.

12
13
14 **XVI.**

15 **SIGNATORIES**

16 The signatories for the Parties certify that they
17 are fully authorized to enter into the terms and
18 conditions of this Consent Decree and to execute and
19 legally bind such Parties to this document.

20
21 **XVII.**

22 **COUNTERPARTS**

23 This Consent Decree may be executed in any number
24 of counterpart originals, each of which shall be deemed
25 to constitute an original agreement, and all of which
26 shall constitute one agreement. The execution of one
27 counterpart by any Party shall have the same force and
28 effect as if that Party had signed all other
counterparts.

1 **XVIII.**

2 **COMPLIANCE WITH OTHER LAWS**

3 No provision of this Consent Decree shall be
4 interpreted as or constitute a commitment or
5 requirement that Defendants obligate or pay funds in
6 contravention of the Anti-Deficiency Act, 31 U.S.C. §
7 1341, or take actions in contravention of the
8 Administrative Procedure Act, 5 U.S.C. §§ 551-559, 701-
9 706, the Clean Water Act, or any other law or
10 regulation, either substantive or procedural.

11

12 **XIX.**

13 **APPLICABLE LAW**

14 This Consent Decree shall be governed and construed
15 under federal laws.

16

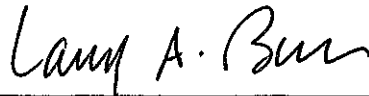
17 **XX.**

18 **THIRD-PARTY BENEFICIARIES**

19 Nothing in this Decree shall be construed to make
20 any other person or entity not executing this Consent
21 Decree a third-party beneficiary to this Consent
22 Decree.

1 NOW, THEREFORE, it is ORDERED, ADJUDGED, AND
2 DECREED as follows:

3 JUDGMENT DATED AND ENTERED THIS 8 DAY OF MARCH,
4 2013.



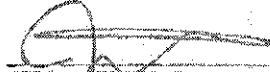
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6 HON. LARRY ALAN BURNS
7 United States District Judge

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1 FOR PLAINTIFF:

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3 DATE: 2/6/13



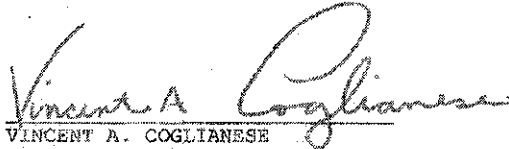
JILL WITROWSKI
San Diego Coastkeeper
2825 Sewey Road, Suite 200
San Diego, CA 9210

6 FOR DEFENDANTS:

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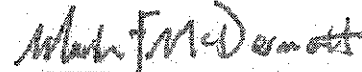
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9 DATE: 2/13/13



VINCENT A. COGLIANESE
Brigadier General, U.S. Marine Corps
Commanding General
Marine Corps Installations West -
Marine Corps Base Camp Pendleton
Camp Pendleton, California

14 DATE: 2/15/13



MARTIN F. McDERMOTT, Attorney
United States Department of Justice
Environment and Natural Resources Division
Environmental Defense Section
P.O. Box 7611
Washington, DC 20044

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APPENDIX 1
(SPILL REDUCTION PLAN)

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APPENDIX 1
SPILL REDUCTION PLAN

This Appendix outlines action components of Marine Corps Base, Camp Pendleton's (CPEN) Sewer System Overflow reduction plan to minimize spill frequency and volume; protect water quality; and, facilitate compliance with the Clean Water Act (CWA).

1. **Sewer Condition**

Assessment/Rehabilitation/Replacement

A. Within five (5) years of the Effective Date, CPEN shall perform CCTV inspection and condition assessment of all of its gravity mains that are at least ten (10) years old.

B. CPEN shall complete cleaning, CCTV inspection and condition assessment, and mapping of all Laterals by July 31, 2016. Beginning in 2013, CPEN shall complete cleaning, CCTV inspection and condition assessment, and mapping of no less than 15 miles of Laterals during the twelve (12) months between August 1 of a given year and July 31 of the following year.

C. CPEN shall continue to employ the PACP rating system to assess the results of its CCTV inspections.

D. CPEN shall maintain the results of its CCTV inspections in its computerized information management system. Based on the analysis of these results, CPEN shall maintain an annual list of prioritized sewer line repair projects and prioritized sewer line rehabilitation/replacement projects. CPEN shall maintain records of (i) the miles of main Gravity Sewer

1 Line Segments inspected by CCTV and assessed; (ii) the
2 miles of Laterals inspected by CCTV, assessed, and
3 mapped; and (iii) CPEN's list of prioritized sewer line
4 repair and rehabilitation/replacement projects.

5 E. Any main Gravity Sewer Line Segment or Lateral
6 where the passage of the CCTV camera was blocked by the
7 condition of the pipe shall result in the segment being
8 defined as having failed the inspection. The repair
9 process addressing the cause for the Gravity Sewer or
10 Lateral inspection failure shall be initiated within
11 ninety (90) days of the failed attempt to inspect that
12 line. After repair is completed, the line segment will
13 be re-inspected.

14 F. Based on the PACP scores derived during CCTV
15 inspections and the SSO risk assessment, CPEN shall
16 initiate actions to correct observed defects in the
17 main Gravity Sewer Line Segments and Laterals in
18 accordance with the time frames specified in Table 1
19 below.

20 **TABLE 1: SSO RISK, PACP AND REQUIRED ACTIONS**

PACP SCORE (1-5)	Sanitary Sewer Overflow Risk		
	MINIMAL	POSSIBLE	PROBABLE
21 22 23 24 25 26 27 28 1 (No Pipe Deficiencies)	Routine cleaning, 5 Yr CCTV/Condition Assess.	1. Initiate corrective repair within 180 days. 2. Routine cleaning, 5 Yr CCTV/Condition Assess.	1. Initiate corrective repair within 90 days. 2. Routine Cleaning, 5 Yr CCTV/Condition Assess.
2 (Minimal Pipe Deficiencies)	Routine cleaning, 5 Yr	1. Initiate corrective repair within	1. Initiate corrective repair within

1		CCTV/Condition Assess.	180 days.	90 days.
2			2. Routine Cleaning, 5 Yr CCTV/Condition Assess.	2. Routine Cleaning, 5 Yr CCTV/Condition Assess.
3				
4				
5	3 (Moderate Pipe Deficiencies)	Routine cleaning, 5 Yr CCTV/Condition Assess.	1. Initiate corrective repair within 180 days.	1. Initiate corrective repair within 90 days.
6				
7				
8			2. Routine Cleaning, 5 Yr CCTV/Condition Assess.	2. Routine Cleaning, 5 Yr CCTV/Condition Assess.
9				
10	4 (Moderate/Severe Pipe Deficiencies)	1. Initiate corrective repair within 1 year. 2. Biennial cleaning and CCTV until sewer segment repaired or replaced.	1. Initiate corrective repair within 180 days.	1. Initiate corrective repair within 90 days.
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17	5 (Severe Pipe Deficiencies)	1. Initiate corrective repair within 1 year. 2. Annual cleaning and CCTV until sewer segment repaired or replaced.	1. Initiate corrective repair within 180 days.	1. Initiate corrective repair within 90 days.
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24 G. If CPEN determines that the cause of an SSO in
 25 a main line was roots or debris entering the main line
 26 through defects in a Lateral, CPEN shall initiate the
 27 repair process of the Lateral within ninety (90) days
 28 of the SSO. In addition, to prevent the recurrence of

1 an SSO, CPEN will clean and condition assess the
2 Lateral every ninety (90) days until the Lateral repair
3 is complete.
4

5 **2. Sewer Cleaning and Hot Spots Programs**

6 A. CPEN shall clean all of its Gravity Sewers once
7 every two (2) years. CPEN may change the cleaning
8 frequency of that Sewer Line Segment to a frequency
9 that CPEN determines will be adequate to prevent SSOs
10 as described in Table 2.

11 B. CPEN shall expand and improve its current Hot
12 Spot Cleaning Program as follows: any main Sewer Line
13 Segment not in CPEN's Hot Spot Cleaning Program that
14 experiences an SSO due to blockage caused by roots,
15 debris, FOG, or pipe condition shall be added to CPEN's
16 Hot Spot Cleaning Program at an annual cleaning
17 frequency. It shall remain on the annual cleaning
18 frequency until the structural defect that caused the
19 blockage is repaired. Any main Sewer Line Segment not
20 in CPEN's Hot Spot Cleaning Program receiving a PACP
21 maintenance grade of five (5) during condition
22 assessments shall be included in CPEN's Hot Spot
23 Cleaning Program at an annual cleaning frequency. Any
24 main Sewer Line Segment not in CPEN's Hot Spot Cleaning
25 Program that receives an SSO risk of "probable" during
26 routine cleaning as described in Table 1 shall be added
27 to the Hot Spot Cleaning Program at an annual cleaning
28 frequency. Additionally, any main Sewer Line Segment
not in CPEN's Hot Spot Cleaning Program that receives a

1 Cleaning Assessment of "Moderate" or "Heavy" during
 2 routine cleaning as described in Table 2 shall be added
 3 to the Hot Spot Cleaning Program at an annual cleaning
 4 frequency. Initiation of corrective action will be
 5 made within ninety (90) days of an SSO or assessment.

6 C. CPEN shall collect all observations made by its
 7 sewer cleaning crews regarding the extent and nature of
 8 materials removed during the cleaning process. The
 9 observations shall be recorded in CPEN's computerized
 10 information management system. CPEN shall maintain or
 11 change the frequency of its Hot Spot Cleaning Program
 12 for a Sewer Line Segment based on Table 2, Sewer
 13 Cleaning Frequency Matrix.

14
 15 **TABLE 2: SEWER CLEANING FREQUENCY MATRIX FOR HOT SPOT
 16 CLEANING PROGRAM**

Cleaning Assessment	Observations				Cleaning Frequency ¹
	Particulate Debris	Grease	Roots	Solid Debris	
Clear	No debris.	No grease.	No roots.	No solid debris.	Decrease frequency after 3 consecutive "Clear" results, e.g., 3-month to 6-month
Light	Minimal.	Minimal.	Minimal root growth.	Minimal solid debris accumulation . Record solid types.	Maintain frequency
Moderate	Moderate amount, or 2-3 cleaning passes.	Small chunks, or 2-3 cleaning passes.	Thin, stringy roots, or 2-3 cleaning passes.	Moderate amount of solid debris accumulation . Record solid types.	Increase frequency (e.g., 1-year to 9-months)

Heavy	Significant accumulation, more than 3 cleaning passes, or concern about future blockage.	Big grease chunks, grease logs, more than 3 cleaning passes, or concern about future blockage	Thick roots, large root growths, more than 3 cleaning passes, or concern about future blockage	Significant accumulation, or concern about future blockage. Record solid types.	Increase frequency (e.g., 1-year to 9-months)
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¹Cleaning frequencies are 3-month, 6-month, 9-month, 1-year, 2-years, 3-years, and 4-years. Changes in cleaning frequency are made in increments of one (e.g. 3-month to 6-month, or 2-year to 3-year).

No reduction in cleaning frequency shall be made in a Sewer Line Segment with a previous history of SSOs without the approval of the Sanitary Sewer / Wastewater Maintenance Supervisor.

D. CPEN shall institute and maintain a quality assurance/quality control program ("QA/QC Program") adequate to ensure proper cleaning of sewers. The QA/QC Program shall consist of spot-checking the cleaning quality in a minimum of two (2) Sewer Line Segments of the cleaned sewers on a monthly basis using CCTV to ensure adequate cleaning. If the cleaning is found to be inadequate, the Sewer Line Segment will be re-cleaned within thirty (30) days. If any of the spot-checked Sewer Line Segments require re-cleaning in any given month, spot-checking of the system shall be increased to five (5) Sewer Line Segments of the cleaned sewers on a monthly basis. Where spot-checking

1 of the system has increased to five (5) Sewer Line
2 Segments pursuant to this Section, such spot checking
3 will not be reduced to two (2) Sewer Line Segments
4 until three (3) consecutive months show none of the
5 pipes inspected require re-cleaning.

6 E. If routine or Hot Spot cleaning of a Sewer
7 Line Segment cannot be properly accomplished due to
8 pipe condition or access limitations, the process to
9 address the access or pipe limitation shall be
10 initiated within one-hundred-twenty (120) days.

11 12 **4. Sewage Lift Stations**

13 CPEN will install pump station backup power
14 generators and alarm systems at sewage lift stations.
15 The installation of twenty-one backup power and alarm
16 systems is currently programmed for Fiscal Year 2012
17 and 2013 execution. The remaining sewage lift stations
18 without backup power are programmed for Fiscal Year
19 2015 execution. The Sewage Lift Stations rated in the
20 poorest condition will be funded and repaired at the
21 earliest opportunity.

22 23 **5. Air Relief Valves**

24 A. Within one-hundred-twenty (120) days of the
25 Effective Date, CPEN shall locate and map all air
26 relief valves on its force mains.

27 B. CPEN shall conduct a monthly inspection of all
28 force main air relief valves.

1 C. No later than the end of Consent Decree Year 1,
2 CPEN shall have completed outfitting all air relief
3 valves with catchment containers to reduce the risk of
4 small SSOs.

5 D. No later than the end of Consent Decree Year 1,
6 CPEN shall replace all older style air relief valves in
7 their Sanitary Sewer System with epoxy coated air
8 relief valves, or similar corrosion-resistant valve.

9 E. Within sixty (60) days of the Effective Date,
10 CPEN shall develop a routine training program for
11 government employees responsible for the maintenance of
12 force mains. This training program shall be focused on
13 proper service and maintenance of air relief valves,
14 which includes flushing and inspection procedures.
15 Initial training shall be completed within one-hundred-
16 twenty (120) days of the Effective Date of this Consent
17 Decree. Personnel newly assigned to force main
18 maintenance shall be trained within thirty (30) days of
19 assignment.

20
21 **6. Sludge Spills**

22 A. CPEN shall continue its Standard Operating
23 Procedure prohibiting untrained personnel from
24 operating solids handling systems valves that could
25 potentially release sludge.

26 B. No later than the end of Consent Decree Year 1,
27 CPEN shall complete sludge removal and digester
28 cleaning at Sewage Treatment Plants 1, 2, 3, and 13.

1 C. No later than 1 year after completion of MILCON
2 Project P1043, Northern Regional Tertiary Treatment
3 Plant, CPEN shall complete sludge removal and digester
4 cleaning at Sewage Treatment Plants 11 and 12.

5 D. No later than 1 year after completion of MILCON
6 Project P1046, CPEN shall complete sludge removal and
7 digester cleaning at Sewage Treatment Plant 9.

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9 **7. Manholes**

10 CPEN shall assess the SSO risk of all sewer
11 manholes by the end of Consent Decree Year 2 and
12 shall develop and execute a work plan to address SSO
13 risk.

14
15 **8. Standard Operating Procedures**

16 A. By the end of the first Consent Decree Year,
17 CPEN shall develop SOPs for construction activities
18 that have the potential to cause SSOs, pump station
19 operations, and Sanitary Sewer System bypass
20 operations.

21 B. Within two-hundred-forty (240) days, CPEN shall
22 develop an SOP training program for all government
23 employees who are assigned to sewer system operation
24 and maintenance, and those employees who supervise,
25 oversee or manage construction activities that pose a
26 risk of causing an SSO. Training shall include
27 classroom and hands-on field training sessions. Formal
28 written lesson plans, approved by appropriate CPEN
personnel, shall be prepared for each training session.

1 C. Within one (1) year of the Effective Date, CPEN
2 shall conduct SOP training for all government employees
3 who are assigned to sewer system operation and
4 maintenance, and those employees who supervise, oversee
5 or manage construction activities that pose a risk of
6 causing an SSO. Within thirty (30) days of assignment,
7 all new employees who are assigned to sewer system
8 operation and maintenance, or those employees who
9 supervise construction activities that pose a risk of
10 causing an SSO shall be trained on the appropriate SOPs
11 required by Paragraph 8.A. above.
12

13 9. **Sampling/Monitoring Contracts**

14 Within ninety (90) days of the Effective Date, CPEN
15 shall obtain one (1) automatic sampler and all
16 appurtenances to be used as a backup unit in case of
17 failure of the existing automatic samplers at the
18 Southern Region Tertiary Treatment Plant.
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20 10. **Hydraulic Modeling**

21 CPEN will continue to use best engineering
22 practices and engineering tools to analyze its sewer
23 system for future repair and upgrades.
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