

Consent Decree Overview

July 9, 2008

Overview of CD

- **What is a Consent Decree?**
 - Settlement agreement
 - 1995 Administrative Order
 - 1996 Administrative Order
 - 2001 Notice of Violation
 - 2003 Administrative Order
 - 2007 Complaint
 - Approved by Federal Court
 - Legally enforceable
 - Reflects agency approval of Fort Wayne's CSO LTCP, CSSOP, and CMOM
 - Reflects Fort Wayne's implementation of:
 - 1994 EPA CSO Control Policy
 - 1995 LTCP Guidance
 - 1995 NMC Guidance
- **Why do we have a Consent Decree?**

Background

- Fort Wayne is not alone
 - 105 CSO Communities in Indiana
 - More than 700 nation-wide
- Consent Decree process has enabled Fort Wayne to resolve past water quality exceedences
- Also is a road map for sewer system improvements in the future
- Agreement reached after more than 7 years of active negotiations and more than 12 years of work with EPA

Background

- About 1/3 of Fort Wayne is served by combined sewers
- Sewers discharge to rivers about 71 days per year
- Bacteria from raw sewage overflows has caused exceedences of water quality standards
- Clean Water Act currently requires that City meet water quality standards at all times

General Timeline

- 1937 Sewage treatment plant and interceptors with CSOs
- 1969 City sewer master plan
- 1972 Clean Water Act enacted (over Nixon veto)
- 1974 Ponds constructed
- 1975 NPDES Permit issued by EPA
- 1980 Replacement NPDES Permit issued by Indiana
- 1990 First Indiana CSO strategy issued
- 1993 City created a new sewer master plan
- 1994 EPA issues National CSO Control Policy
- 1994 City formed a CSO Task Force to begin implementing the 1993 master plan recommendations and assess EPA CSO policy
- 1995 EPA issues LTCP Guidance and NMC Guidance
- 1995 EPA issues first AO to City requiring LTCP development, CSSOP development and SSO elimination
- 1996 EPA updates 1995 AO
- 1996 City submits CSSOP and SSO Elimination Plan
- 1996 IDEM issues its CSO Control Strategy
- 1997 City begins extensive additional sampling/characterization programs

General Timeline (cont.)

- 1998 City submits draft partial LTCP
- 1999 Negotiations begin on amended AO; frequent meetings between the City and agencies began
- 2001 City submits complete draft LTCP
- 2001 EPA refers case to DOJ who issued a NOV
- 2002 First tolling agreement signed
- 2002-2008 Even more frequent meetings with agencies and City
 - Receiving waters characterization
 - System characterization (resulted in 2003 Administrative Order)
 - Sensitive Areas/Recreational Uses
 - NPDES Permit limitations
 - Alternatives analysis
 - Financial Capability/Affordability
 - Level of Control
 - CSO Control Measures
 - Performance Measures
 - UAA Framework
- 2007 Text of CD negotiated and signed by City and agencies
- 2008 CD lodged with Federal District Court for public comment and finally entered on 4/1/08

Primary CD Requirements

- Reduce Combined Sewer Overflows (CSOs)
 - Combined Sewer System Operational Plan (Nine Minimum Controls)
 - Long Term Control Plan for capital projects (CSO Control Measures)
 - Eliminate CSOs from locations other than in NPDES permit
- Eliminate Sanitary Sewer Discharges
 - Capacity Management, Operation & Maintenance (CMOM) Program
 - SSD elimination projects
- Reporting & Monitoring
- Administrative
- NPDES Compliance
- Pay Penalty
- Implement SEPs

Administrative Requirements

“... 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 Fort Wayne’s performance of its obligations under Sections VII and VIII.”

CSSOP Updates

The CD requires the CSSOP to be updated:

- When required by NPDES Permit
- By April 1, 2011 to reflect any combined sewers acquired by the City
- Within 3 years of the City's acquisition of other new combined sewers

All updates must be submitted to EPA and IDEM for comment.

CMOM Updates

The CD requires the CMOM to be updated:

- By April 1, 2011 to reflect sanitary sewers acquired from AqualIndiana or a contract customer
- Within 3 years after other sanitary sewers are added

All updates must be submitted to EPA and IDEM for comment.

CSO Control Measures

- The CD requires the City to design, bid, and construct “CSO Control Measures” by certain dates.
- CSO Control Measures are designed to meet performance criteria of 4 annual overflows per typical year for the St. Mary’s and Maumee and to 1 per year for the St. Joseph.
- The CD contains a detailed Post-Construction Monitoring Plan which will assess whether the CSO Control Measures accomplish the performance criteria.

CSO Control Measures

Consent Decree Exhibit 3 (LTCP Table 4.2.4.1)

1. WPCP Primaries – 2008
2. WPCP Phase III – 2015
3. Early Floatables Control (pilot) – 2009
4. CSSIP Partial Separations – 2010 & 2013
5. CSO Pond Dewatering – 2008 & 2013
6. CSSIP Partial Separations – 2018
7. St. Joseph Satellite Storage – 2019
8. St. Joseph Satellite Disinfection – 2014

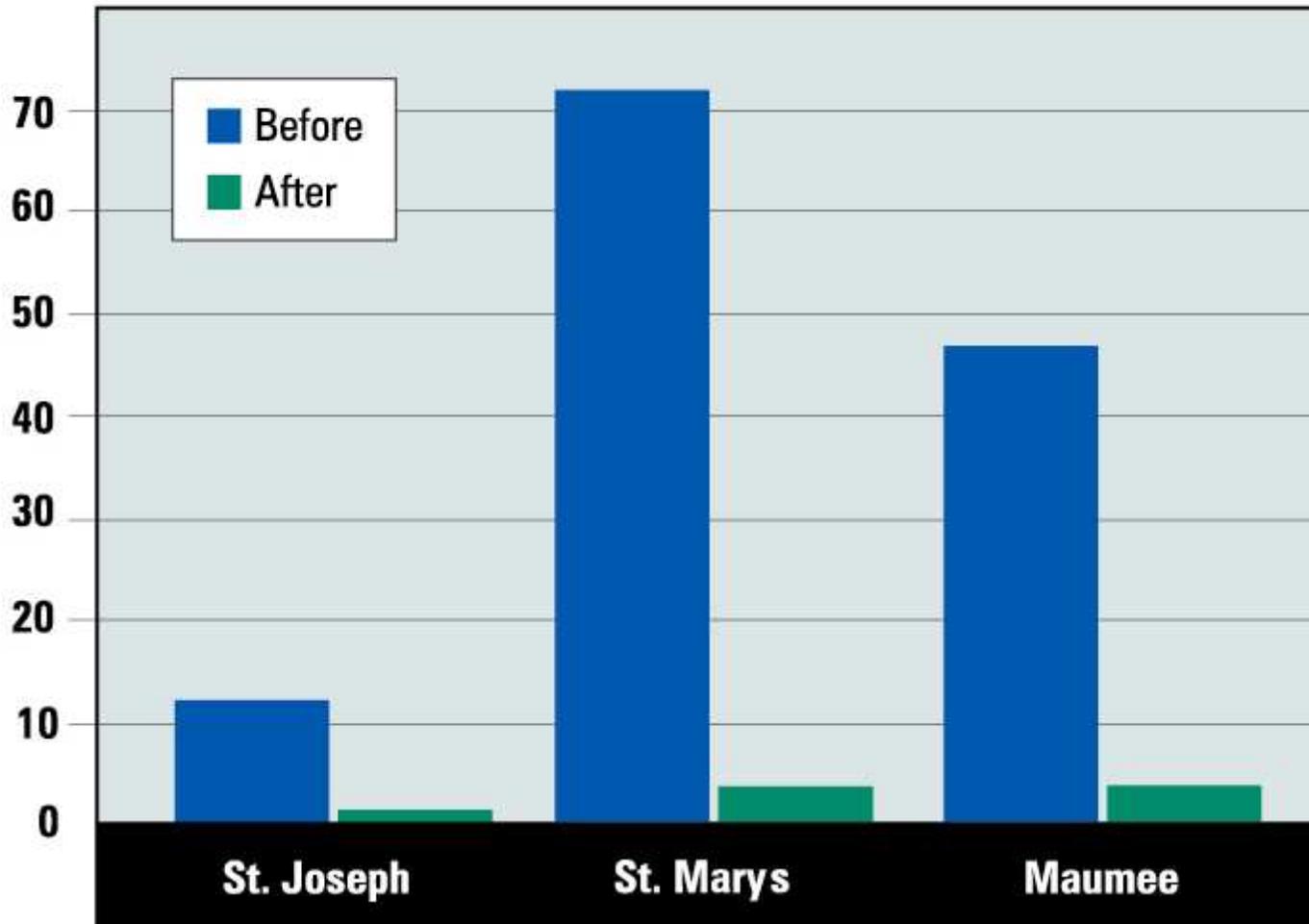
CSO Control Measures

Consent Decree Exhibit 3 (LTCP Table 4.2.4.1)

9. St. Joseph Satellite Disinfection – 2021
10. Morton St. Reroute - 2019
11. Wayne Street Parallel Interceptor – 2022
12. St. Mary's Parallel Interceptor – 2025
13. Late Floatables Control – 2025
14. Maumee Satellite Storage – 2025
15. CSO EHRT (if necessary) – TBD

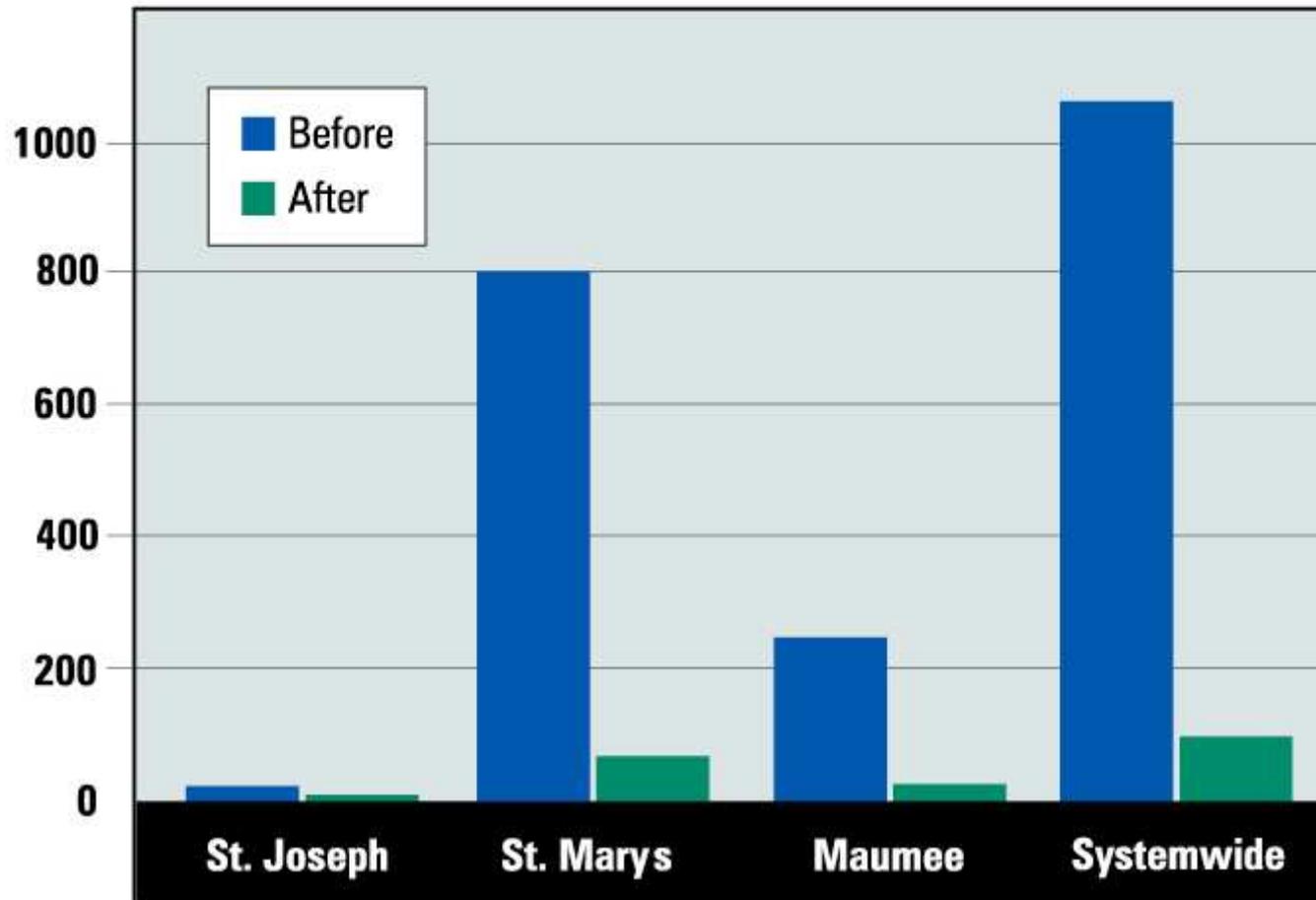
Benefits: Reduced Overflow Frequency

Annual Overflow Frequency in a Typical Year



Benefits: Reduced Overflow Volume

Annual Overflow Volume in a Typical Year
(million gallons)



Outcomes of LTCP

- Reduced odors, untreated sewage and trash in our rivers and streams
- Reduces sewer overflow volume by 91 percent
- Reduces overflow frequency from 71 times in a typical year to:
 - 1 storm per year causing overflows to St. Joseph River*
 - 4 storms per year causing overflows to St. Mary's and Maumee rivers*
- Reduced bacteria in our waterways



*Predictions based on a year with average rainfall

Use Attainability Analysis

- All Indiana waters are currently required to meet bacteria water quality criteria at all times.
- LTCP predicated upon later IDEM, EPA and Indiana Water Pollution Control Board approval of alternate water quality criteria for City rivers during and after wet weather event.
- LTCP would need to be changed if the alternate water quality criteria are not issued.
- Many other communities (e.g. Chicago, Indianapolis, Columbus) are also working towards similar water quality criteria changes.
- EPA recently expressed a need for performance measures in UAAs

SSD Elimination

- SSDs vs. SSOs
- Capital improvements required to eliminate SSDs from 3 known SSD systems
 - Warfield (2011)
 - Rothman (2011)
 - North Maumee (2020)
- Devonshire SSD system previously addressed
- Any other SSDs must be eliminated once identified

Civil Penalty

- A civil penalty is a standard part of a CD
- City paid pay a total of approximately \$296,000 as its civil penalty at the end of April 2008
- Indianapolis penalty was approx. \$648,000
- Nashville, TN penalty was approx. \$564,000
- Lexington, KY penalty was approx. \$425,000
- Approximately \$27,000 of the City's civil penalty was paid to IDEM, the rest went to the U.S.
- The amount of the civil penalty was significantly reduced by the SEPs

What is a SEP?

- SEP – An environmentally beneficial project which a defendant/respondent agrees to undertake in settlement of an enforcement action.
- Undertaken by violators of environmental laws, in which EPA may mitigate a portion of the penalty that could have otherwise been imposed
- Furthers EPA's goal to protect and enhance public health and the environment.

SEP CRITERIA

- Must be a relationship between the underlying violation and the human health or environmental benefits that will result from the SEP.
- Must improve, protect, or reduce risks to public health or the environment.
- Must be undertaken in settlement of an enforcement action as a project that the defendant is not otherwise legally required to perform.

FORT WAYNE SEPs

- Septic Tank Elimination
 - Cost-share program will be adopted & administered by City
 - Federal
 - Invest \$400,000 that will eliminate 133 existing septic tanks by December 31, 2011
 - State
 - Invest \$126,000 that will eliminate 42 existing septic tanks by December 31, 2011

FORT WAYNE SEPs (cont.)

- Rain Garden Demonstration and Incentive Program
 - Invest \$240,000 in demonstration rain gardens
 - Install 20 demonstration rain gardens where they would have the greatest impact on water quality and quantity
 - Develop education module for schools where rain gardens are located
 - \$100 incentive to homeowners who install a rain garden on private residential property
 - First demo garden planted at WPC Maintenance on April 26

Reporting Requirements

- Two reports each year to EPA and IDEM until CD is terminated
- First report due 9/30/08
- Thereafter reports will be due by each 3/31 and 9/30
- Post-Construction Monitoring reports
- SEP milestone and completion reports
- 6-Year Reports (starting in 2013)

Semiannual Reports

Semiannual reports must include:

- a statement of any deadlines or requirements that became due since the period addressed by the prior semiannual report (or, in the case of the first semiannual report, since the CD's lodging), whether the City met those deadlines/requirements and the reasons for any non-compliance
- a general description of work completed within the prior period;
- to the extent known, a statement whether the work completed during the prior period meets the design criteria;
- a projection of work to be accomplished during the next period;
- a statement presenting the City's understanding regarding the status of IDEM's response to the City's request for a UAA;
- a description of any "notice to proceed" revoked by the City under Paragraph 101 during the prior period, all corresponding Notice to Proceed Plans required by Paragraph 101, and a description of the City's progress towards the issuance of a new notice to proceed;
- any information generated in accordance with the Post-Construction Monitoring Program; and
- copies (to EPA only) of all MROs and other reports submitted to IDEM concerning SSDs, CSOs or bypasses during the prior period.

SEP Reports

- Status reports to EPA annually by each April 1 until Federal SEP completed
- Completion report to EPA regarding 2011 completion of Federal SEP by April 28, of 2012
- Status reports to IDEM annually by each April 1 until both parts of State SEP are completed
- Completion reports to IDEM regarding 2011 and 2014 completions of State SEP portions by January 30th of, respectively, 2012 and 2015.

Other Required Submissions

- Disputes
- Desired or required changes to CD requirements
- Failure to meet a CSO Control Measure deadline
- Change in design of a CSO Control Measure by more than 90%
- Force Majeure
- Changes in a Notice to Proceed
- Post-Construction Monitoring Reports

Reporting Our Progress

- 18-year schedule to complete (12 years in St. Joe basin)
- Progress reports to the public during implementation
- Milestone reports on each watershed as work is completed
- Final report documenting all projects
 - Are new facilities performing as expected?
 - How frequently do overflows occur?
 - How have we improved the rivers' water quality?



Additional Terms

- Under certain limited circumstances some CD terms can or must be modified.
 - CSO Control Measures
 - Deadlines for CSO Control Measures
 - Performance criteria
 - Performance criteria deadlines
- Most disputes are to be resolved through CD dispute resolution mechanism
- Termination, at the earliest, will occur 1 year after performance criteria met (ideally 2026 or 2027).

CD Compliance

- The CD requires the City to comply with its NPDES Permit, the Clean Water Act and the CD's requirements, including doing what is required by the CSSOP, CMOM and LTCP.
- Failures to comply are likely to result in additional penalties and enforcement
 - Stipulated penalties
 - Additional civil penalties
 - Requirements for additional improvements/activities
 - Criminal enforcement is always possible for knowing or intentional violations

Legal Importance

Stipulated Penalties

- Set fines a CD imposes under certain circumstances

The CD's stipulated penalties could result in fines of thousands of \$\$\$\$ per day

- Examples of failures that could result in penalties

Questions?