

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
) **Civ. Action No. _____**
 v.)
)
 MARYLAND AVIATION ADMINISTRATION)
 A UNIT OF THE MARYLAND DEPARTMENT)
 OF TRANSPORTATION, AN AGENCY OF)
 THE STATE OF MARYLAND)
)
 Defendant.)
 _____)

NATURAL RESOURCES DEFENSE COUNCIL,)
 INC.,)
 AIRPORT ENVIRONMENTAL COALITION,)
 HUMANE SOCIETY OF THE UNITED STATES,)
 AND,)
 US CITIZENS AVIATION WATCH,)
) **Civ. Action No. WMN-98-784**
 Plaintiffs,)
)
 v.)
)
 DAVID L. BLACKSHEAR, in his official)
 capacity as Executive Director of)
 the Maryland Aviation Administration)
)
 Defendant.)
 _____)

CONSENT DECREE

WHEREAS, the United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("EPA"), has, concurrently with the lodging of

this Consent Decree, filed a civil complaint pursuant to Section 309(b) and (d) of the Federal Water Pollution Control Act, as amended (the "Clean Water Act" or the "CWA" or the "Act"), 33 U.S.C. § 1319 (b) and (d) ("United States' Complaint");

WHEREAS, the United States' Complaint alleges that Defendant, the Maryland Aviation Administration (hereinafter "MAA" or "Defendant") violated the Act and the terms, conditions and limitations of National Pollutant Discharge Elimination System ("NPDES") permits at the Baltimore Washington International Airport ("the BWI Airport") located in Anne Arundel County, Maryland (hereinafter the "Facility");

WHEREAS, on January 7, 1998, the Natural Resources Defense Council, Inc. ("NRDC"), the Airport Environmental Coalition, the Humane Society of the United States, and US Citizen Aviation Watch (hereinafter collectively referred to as the "Citizen Plaintiffs") sent a notice of violation to MAA alleging that MAA was in violation of the requirements of the Clean Water Act (CWA), 33 U.S.C. §§ 1251 et seq., as set forth in MAA's NPDES Permit No. MD0063371 issued on May 9, 1994, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9603, and the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11004, as applied to operations at BWI Airport;

WHEREAS, the Citizen Plaintiffs filed a complaint in this Court on March 16, 1998, that incorporated the allegations in the notice letter ("Citizen Plaintiffs' Complaint");

WHEREAS, on November 3, 1988, the Maryland Department of Environment issued NPDES Permit No. MD0063371 to MAA permitting the discharge of wastewater from the Facility (the "1988 Permit"). The 1988 Permit expired on November 3, 1993 and was reissued

on May 9, 1994 (the "1994 Permit"), and the 1994 Permit remains in effect, having been extended pursuant to Section II.C.3 of the 1994 Permit, beyond its five year term while the MAA's application to renew the 1994 Permit is pending;

WHEREAS, both the 1988 Permit and the 1994 Permit contain effluent limitations, monitoring requirements and special conditions which regulate certain of the operations at the Facility, although only the 1994 Permit contains provisions concerning deicing fluids;

WHEREAS, MAA is an agency of the State of Maryland within the Maryland Department of Transportation, and, MAA is a person within the meaning of Section 502(5) of the Clean Water Act, 33 U.S.C. § 1362(5);

WHEREAS, MAA denies the allegations of violation in both the United States' Complaint and the Citizen Plaintiffs' Complaint, and contends that MAA has been and is in full compliance with the discharge requirements of the 1994 Permit, but agrees that this Court has jurisdiction to enter this Consent Decree;

WHEREAS, the 1994 Permit provides for the phased development and implementation of a Best Management Plan designed to reduce the discharge of deicing fluids, and, before any allegations were formally made by the United States or the Citizen Plaintiffs, MAA, in cooperation with the Maryland Department of the Environment, had planned new facilities and procedures to enhance the collection of deicing fluids used at BWI Airport;

WHEREAS, since 1994 MAA asserts it has spent more than \$28 million on facilities designed to enhance the collection of deicing fluids;

WHEREAS, the parties have agreed that, to facilitate the settlement of this matter,

consolidation of the two actions is appropriate;

WHEREAS, nothing in this Consent Decree shall constitute an admission or inference of liability in either action and , MAA's agreement to the measures specified in this Consent Decree cannot be construed as an admission that these measures constitute best management practices under its or any other NPDES permit; and,

WHEREAS, the parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated and consented to by the parties in good faith and will avoid litigation between the parties; and, that this Consent Decree is in the public interest.

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

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action and the parties pursuant to Sections 309(b) and 505(a) of CWA, 33 U.S.C. §§ 1319(b) and 1365(a), and 28 U.S.C. §§ 1331, 1345, and 1355. Venue is proper in this district pursuant to Sections 309(b) and 505(c)(1) of CWA, 33 U.S.C. § 1319(b) and 1365(c)(1),and 28 U.S.C. §§ 1391(b)and 1395(a). The complaints allege claims upon which relief may be granted against Defendant.

II. PARTIES BOUND

2. The provisions of this Consent Decree shall apply to and be binding upon the United States, the Citizen Plaintiffs and their successors and assigns, and the Defendants and their successors and assigns. Wherever the term "Defendant" appears in this Consent Decree, it refers to the Maryland Aviation Administration and subsumes the MAA Executive Director to the

extent he is named the Defendant in the Citizen Plaintiffs' Complaint. The parties recognize that Theodore Mathison retired as MAA Executive Director effective June 30, 1999, that Mr. Mathison was named as the Defendant in the Citizen Plaintiffs' Complaint in his official capacity only, that Mr. Mathison automatically ceased to be a party on the effective date of his retirement, and that Mr. Mathison has no individual obligations, financial or otherwise, under this Consent Decree. Pursuant to Fed. R. Civ P. 25(d)(1), the new Executive Director, David L. Blackshear, has substituted automatically as the Defendant in the Citizen Plaintiffs' Complaint.

3. Work performed by the Defendant, its successors and assigns, officers, directors, employees, agents, independent contractors, contractors, subcontractors, and its consultants, shall be carried out in accordance with the requirements of this Consent Decree.

4. Defendant shall provide one copy of this Consent Decree and all attachments hereto to each principal contractor and laboratory retained to perform and/or monitor any portion of the work required by this Consent Decree, and shall do so within thirty (30) calendar days of the date of entry of this Consent Decree or date the contractor or laboratory is retained, whichever is later. All contracts, agreements, or other arrangements with such persons shall require such persons to conduct and/or monitor the work in accordance with the requirements of this Consent Decree. Notwithstanding the terms of any such contract, agreement or arrangement, Defendant is responsible for complying with this Consent Decree and for ensuring that all such persons perform such work in accordance with this Consent Decree.

III. OBJECTIVE

5. It is the express purpose of the parties in entering into this Consent Decree to further the goals of the CWA, 33 U.S.C. § 1251 et seq. All obligations under this Decree shall

be interpreted in a manner consistent with causing Defendant to maintain full compliance with the Act, its NPDES Permit and all applicable regulations at all times.

IV. DEFINITIONS

6. Unless otherwise defined herein, terms used in this Consent Decree shall have the meaning given to those terms in the CWA, 33 U.S.C. §§ 1251 et seq., and the regulations promulgated thereunder.

V. PAYMENT TO THE UNITED STATES

7. Within thirty (30) days of the entry of this Consent Decree, Defendant shall pay \$50,000 to the United States, as a civil penalty in compromise of the United States' claims as set forth in the Complaint. Such disbursement shall be made by check payable to "Treasurer, United States of America", and referencing the United States Attorney ("USAO") File Number 1998V00294 and DOJ Case Number 90-5-1-1-4543. Payment shall be made in accordance with instructions provided by the United States upon execution of this Consent Decree.

8. Within seven (7) days after payment, Defendant shall mail a cover letter specifying the amount and date of payment, civil docket number and reason for payment, to the U.S. Attorney for the District of Maryland at the following address:

United States Attorney
District of Maryland
Northern Division
6625 United States Courthouse
101 West Lombard Street
Baltimore, Maryland 21201-2692

Copies of the cover letter shall be sent to:

Chief, Environmental Enforcement Section
Environmental Enforcement Division
United States Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Reference Case No. 90-5-1-1-4543

Deane H. Bartlett (3RC20)
Office of Regional Counsel
United States EPA Region III
1650 Arch St.
Philadelphia, PA 19103

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

If the payment required to be made pursuant to this Section of this Consent Decree is not paid when due, the amount due shall accrue interest at the rate established by the Secretary of the Treasury under 31 U.S.C. § 3717, beginning thirty 30 days after the due date. Defendant is also subject to any other available sanctions for untimely payment.

VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT

9. Defendant shall undertake a Supplemental Environmental Project ("SEP"), which the United States and Defendant agree is intended to secure significant environmental or public health protection and improvement, and is in accordance with EPA's 1998 Supplemental Environmental Projects Policy. This SEP, more fully described in Exhibit A hereto, shall consist of a Fish Survey/Management Plan. Under this SEP, MAA shall fund a full-time fisheries biologist in the Maryland Department of Natural Resources ("DNR") for a period of three years

to perform anadromous fish surveys of the main stem river and adjacent tributaries of the Lower Patapsco River, including the Sawmill Creek and Stoney Run/Kitten Branch watershed. The work shall include all surveys and testing necessary to allow the DNR to assess more fully the effects of fish stocking and fish passage projects that have taken place over the last several years in this watershed. Outputs will include an annual report on sampling techniques and results after the first and second years and a final summary report of the sampling results for the three-year period and describing potential relevancy of those findings to the efforts by DNR to prepare a Regional Migratory Fish Plan. The fisheries biologist's work will also contribute to preparation by DNR of a Regional Migratory Fish Management Plan intended to include an evaluation of the success of past fish passage projects and recommendations for future fish passage projects. That Plan is separate from this SEP and is not specifically required under this Consent Decree. If the fisheries biologist does not complete the three-year period of employment for any reason, Defendant will continue to make funding available so that the fisheries biologist is replaced as quickly as possible. If any interruption in the period of employment results in a substantial inability to gather study data, the three-year term of the SEP may be extended as necessary to perform all work required under this SEP.

10. Defendant will implement the SEP pursuant to the description, work plan and time schedule set forth in Exhibit A hereto. The Completion Date for the SEP shall be November 30, 2003. The failure to meet any interim date provided in Exhibit A before the Completion Date for the SEP shall not be subject to any enforcement action under this Consent Decree. Enforcement action under this Consent Decree with respect to timely action on a SEP may be initiated only upon a failure to meet the Completion Date provided in this Paragraph.

The Completion Date shall be extended if an interruption in the employment of the fisheries biologist results in extension of the term of the SEP, as provided in Paragraph 9 above, and depends on recruitment and the first date of employment of the fisheries biologist. MAA will make a reasonable effort to ensure that DNR recruits and hires the fisheries biologist as soon as practically possible, within the parameters of Maryland State procurement and personnel statutes and procedures. However, should there be an interruption in the employment of the biologist, MAA shall make every good faith effort to ensure that interruption is as limited as possible and the time shall be extended only to the extent that the period of interruption actually occurred. Moreover, regardless of the occurrence of the interruption, MAA is obligated to perform funding for DNR to hire the fisheries biologist to perform all the tasks set forth in the description of the SEP and in Exhibit A hereto.

11. The total expenditure for the SEP shall not be less than ninety-five thousand dollars (\$95,000). The total expenditure for the SEP is related to the estimate provided in Exhibit A hereto, but no enforcement action under this Consent Decree may be based on failure to meet any cost estimate except as set forth in Paragraph 20 of this Consent Decree.

12. The computation of total expenditures for the SEP shall be limited to the salary and other compensation costs (including Worker's Compensation insurance premiums, Unemployment insurance premiums, holidays, personal leave, and sick leave) of the fisheries biologist hired to perform this SEP and any other incidental costs paid to third party contractors or suppliers for any equipment purchased to perform the SEP. The total expenditures shall be limited to work performing the necessary design and survey work and contributions toward creating the management plan. The United States recognizes that the fisheries biologist will be

hired by DNR and that MAA will be required to reimburse the DNR for those costs. No other payment to any other agency or employee of the State of Maryland shall be included in this computation. Moreover, the biologist is being retained solely for the purposes of performing this SEP, and the State of Maryland may not use this biologist to perform other projects until the SEP has been completed.

13. Defendant shall submit to EPA an annual report within thirty (30) days after the first and second employment anniversaries of the fisheries biologist to be hired. Each of these two annual reports shall include a general description of the sampling techniques employed, the areas and time periods during which sampling was conducted, and a summary of the fish species composition, population and location found. The annual report shall also discuss whether the work on the project is proceeding in accordance with the work plan and schedule described in Exhibit A to this Decree and, if not, identify any problems encountered in performing the work, discuss any actual or potential delays in the work, and describe any actions taken or to be taken to prevent or mitigate such delays; and include an itemized accounting of costs expended for the SEP as of the reporting date.

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

(a) a description of the SEP as fully implemented, including a statement whether the work required by this Consent Decree for the SEP has been completed;

(b) a description of the entire three years of work, a map of the entire area surveyed, a summary report of the fish population, species composition and location in the study

area;

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

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

(e) a certification that the SEP has been fully implemented pursuant to the provisions of this Consent Decree. MAA's certification under sub-paragraphs (d) and (e) may be based in significant part on information provided by DNR.

15. Defendant shall maintain legible copies of documentation of the underlying data for any and all documents or reports submitted to EPA pursuant to this Consent Decree for a period of not less than three years after completion of the SEP, and Defendant shall provide the documentation of any such underlying data to EPA within twenty-one (21) days of a written request for such information. All documents or reports, including without limitation, the SEP Status and Completion Reports, submitted to EPA pursuant to this Consent Decree shall be certified in accordance with Section XII of this Decree. This paragraph applies to all documentation maintained by MAA and does not apply to underlying detailed documentation maintained by DNR unless copies of such documentation are in MAA's possession, custody or control.

16. Promptly following receipt of the SEP Report described in Paragraph 14 above, EPA will either (1) accept the Report and notify Defendant in writing of that acceptance or (2) reject the Report and notify Defendant, in writing, of deficiencies in the Report and any additional actions and/or information which it contends is required to be taken or supplied by

Defendant in order to comply with the SEP provisions of this Decree. If Defendant attempts to satisfy any deficiencies or additional actions identified by EPA, defendant shall notify EPA in writing when such efforts have been completed, and EPA shall thereafter promptly notify Defendant in writing whether or not it then accepts the SEP as completed.

17. Defendant hereby certifies that, as of the date of signing this Consent Decree, Defendant is not required, by virtue of any local, state, or federal statute, regulation, order, consent decree or other law or voluntary agreement, to develop or implement any of the SEPs described above. Defendant further certifies that it has not received, nor is presently negotiating to receive, credit in any other enforcement action for any of the SEPs. In addition, Defendant certifies that none of the actions required by this Section of the Decree or Exhibit A hereto had been started, nor funds committed thereto, prior to commencement of settlement discussions in this matter, and that all projects are being performed in settlement of this litigation. In addition, Defendant recognizes that, except as noted in Paragraph 12 above, payments to any other employee or agency of the State of Maryland shall not be used in the computation of any costs incurred. Nothing in this Consent Decree shall prohibit Defendant transferring funds to other State agencies for the purpose of accomplishing work through contractors retained by those other agencies.

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

19. The determination of whether the SEP has been satisfactorily completed and

whether the Defendant has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

20. In the event that Defendant fails to complete the SEP as set forth in this Consent Decree or that the actual expenditures for the SEP do not equal or exceed the amount specified in Paragraph 11 above, Defendant shall be liable for stipulated penalties according to the provisions set forth below:

- (a) Except as provided in subparagraph (b) immediately below, if the SEP is not completed, and EPA determines that Defendant has not made a good faith effort to complete the SEP, Defendant shall pay a stipulated penalty for the SEP to the United States in the amount of sixty-six thousand five hundred dollars (\$66,500);
- (b) If the SEP is not completed but (i) EPA determines that the Defendant has made a good faith effort to complete the SEP, and (ii) Defendant certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Defendant will not be liable for any stipulated penalty related to the SEP.
- (c) If the SEP is completed, but Defendant spends less than 90 percent of the amount stated in Paragraph 11 above for the SEP, Defendant shall pay a stipulated penalty to the United States in the amount of sixteen thousand dollars (\$16,000).
- (d) If the SEP is completed, and Defendant spends at least 90 percent of the amount stated in Paragraph 11 above for the SEP, Defendant shall not pay any stipulated penalty with respect to the SEP.

(e) For failure to submit the SEP Completions Report required by Paragraph 14, above, Defendant shall pay a stipulated penalty in the amount of \$150 for each day after the Report was due until the Report is submitted, up to a maximum stipulated penalty of \$7,500.

(f) For failure to submit the SEP Annual Report required by Paragraph 13 above, Defendant shall pay a stipulated penalty in the amount of \$150 for each day after the Report was originally due until the Report is submitted, up to a maximum stipulated penalty for any single Report of \$5,000.

(g) Defendant shall pay any stipulated penalty due under this Paragraph within thirty (30) days after receipt of written demand by EPA for such penalty, in accordance with the method specified in Paragraph 52, below. Interest shall be paid on any stipulated penalty not paid when due, in accordance with Paragraph 56, below.

21. Any public statement, oral or written, made by Defendant in reference to the SEP shall include a statement that this project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency for alleged violations of the Clean Water Act as amended, 33 U.S.C. § 1251, et seq., and its implementing regulations. The parties recognize that MAA is a public entity. As a result, a statement will not be construed as a public statement within the meaning of this Paragraph merely because it was made by a State employee or because the public has access to a document pursuant to the Maryland Public Information Act.

22. EPA's acceptance of the SEP specified in this Consent Decree shall not be

construed as EPA's endorsement or approval of any particular brand of equipment or technology utilized by Defendant or any non-parties in implementing the SEP. The SEP must be implemented in compliance with any and all applicable federal, state, and local laws and regulations.

23. Unless addressed specifically within this Section, issues involving stipulated penalties for any violations of this Section of the Decree are governed by Section XIV of this Decree.

VII. PAYMENT OF CITIZEN PLAINTIFFS' ATTORNEYS' FEES AND COSTS

24. Within thirty (30) days of the entry of this Consent Decree, Defendant shall pay to the Natural Resources Defense Council, Inc. Fifty thousand dollars (\$50,000) in compromise of Citizen Plaintiffs' claim for attorneys' fees and expenses. Payment shall be made by check payable to The Natural Resources Defense Council, Inc. and mailed to counsel for NRDC in accordance with Section XVIII (Form of Notice).

VIII. INJUNCTIVE RELIEF

25. In compromise of the claims of the United States and the Citizen Plaintiffs, MAA agrees to undertake the measures provided in this section.

A. Runway 28 Deicing Pad

26. Defendant has begun construction of, and pursuant to this Consent Decree shall complete construction of, the Runway 28 deicing pad and supporting systems by completing the construction of (a) site utilities, pumps and automated controls, at the Runway 28 deicing pad, (b) a force main from the Runway 28 deicing pad to the existing lift stations located near Runway 15R, and (c) a new 600,000 gallon storage tank at the existing fuel farm area. The

planned construction described in this Paragraph is already in progress and is depicted on Exhibit B hereto.

27. Defendant shall complete the construction described in Paragraph 26 no later than October 1, 2001. Completion of this work shall mean that MAA has completed construction and the systems are operational (subject to any work that must await testing during actual operating conditions.)

B. *Passive Collection Drain System*

28. As part of its expansion of Pier B of the Main Terminal at BWI Airport, Defendant has begun construction of, and pursuant to this Consent Decree shall complete construction of, a system of passive collection drains designed to recover deicing fluids applied at ten (10) gate locations around Pier B. Exhibit C hereto identifies the ultimate location of the passive trench drains around Pier B. The pavements in the "collection area" designated on Exhibit C will be designed so that fluid on the surface within the collection area will flow into one of the passive collection drains. The collection system for the ten (10) gates at Pier B shall include site utilities, pumps, automated controls, and all piping and structures necessary to direct collected fluids, when the system is in collection mode, to storage tanks which allow ultimate controlled discharge of the collected fluids to a publicly owned treatment works or to another facility providing for treatment of the fluid. When completed, the Pier B passive collection drain system shall include ten (10) gate locations on Pier B, as extended.

29. Defendant shall complete the ten-gate Pier B collection drain system no later than October 1, 2002. Completion of this work shall mean that MAA has completed construction and the systems are operational (subject to any work that must await testing during actual operating

condition).

In conjunction with the expansion of Pier B, MAA has plans to renovate the remaining six (6) gates at Pier B, and add one (1) gate location to Pier A. Exhibit C hereto also identifies the planned modifications and renovations to Piers A and B. If that full renovation and expansion of Piers A and B proceeds as planned, MAA shall construct a passive collection drain system serving all gate locations at Piers A and B. MAA retains full discretion to decide whether to proceed with the full renovation and expansion of Piers A and B or to proceed only with minor interior modifications of the Piers A and B terminal building.

C. *Reporting on Runway 28 Deicing Pad and Pier B Collection Drain Projects*

30. On the first day of each calendar quarter beginning at least ninety (90) days after entry of this Consent Decree and continuing until completion of both the Runway 28 deicing pad and the Pier B passive collection drain system, Defendant shall submit to the United States and to the Citizen Plaintiffs, in accordance with Paragraph 72 below, a progress report concerning those two projects summarizing (i) the status and progress of the construction work; (ii) a projection of the construction work to be performed during the next quarter; and (iii) if the construction work is not on schedule, any reasons for delay and a plan to address the delay.

31. For both (a) the Runway 28 deicing pad and (b) the Pier B passive collection drain system separately, when the construction work has been completed, Defendant shall deliver to the United States and to the Citizen Plaintiffs a separate certification, in the form required by Paragraph 50 below, signed by a Responsible Official and containing (i) a statement that the relevant construction work has been completed in accordance with contract specifications; and (ii) the date of such completion.

D. *Availability of Collection Facilities*

32. Defendant shall not use any of the BWI runways for departures for more than two hours without sufficient positions on the associated deicing pads being made available except in extreme weather conditions. The parties understand that deicing occurs in adverse weather conditions, and MAA agrees that such adverse conditions generally will not qualify as “extreme weather conditions” permitting deviation from the terms of the first sentence of this Paragraph. Defendant will use its best efforts to make the pads available as soon as possible in such “extreme weather conditions.”

33. Defendant shall use its best efforts to repair mechanical failures in the deicing fluid collection and monitoring systems as promptly as possible, allowing for applicable procurement statutes, regulations, rules and procedures. When feasible, Defendant will operate deicing fluid collection and monitoring systems in a manual mode to promote collection of fluids or continued monitoring pending completion of repairs.

34. During the deicing season, Defendant shall maintain records of times, during deicing operations, when the deicing collection systems are unavailable, completely or partially, due to mechanical, operational, or other failure, the reasons for that unavailability, and the repairs or other measures taken to address the unavailability. No later than July 15 following the end of each deicing season during the term of this Consent Decree, Defendant shall provide these records or a summary of them for each deicing season to NRDC . If Defendant elects to provide a summary of records, NRDC shall have the right to review the supporting documents.

35. Defendant shall amend the current Tenant Directive applicable to deicing operations:

a. to clarify that Type II and Type IV deicing fluids may be applied to aircraft at a gate location for anti-icing purposes only when it will reduce the need to apply other deicing fluids, except that this provision shall not apply if anti-icing is performed at a gate with passive collection drains being used in collection mode; and

b. to add the phrase “consistent with the gate restrictions provided in Section IV.D” to the end of Section IV.C.1.

Nothing in this Consent Decree shall prevent Defendant from making other changes in this and other Tenant Directives not inconsistent with the terms of this Consent Decree.

36. Defendant shall ensure that GRVs are used to collect deicing fluid applied to defrost aircraft.

E. *Monitoring and Fluid Tracking*

37. Defendant shall maintain records of observed violations, other than *de minimis* violations, of the Tenant Directive applicable to deicing operations and of steps taken to address those violations. No later than July 15 following the end of each deicing season during the term of this Consent Decree, Defendant shall provide these records or a summary of them for each deicing season to NRDC. If Defendant elects to provide a summary of records, NRDC shall have the right to review the supporting documents.

38. In consultation with the airlines and fixed base operators (“FBOs”) engaged in application of deicing fluids at BWI Airport, Defendant shall develop quality assurance/quality control (“QA/QC”) measures designed to promote the accuracy of the airlines’ and FBOs’ reports of the quantity of deicing fluids applied. These QA/QC measures shall include either (a) the installation and reading of flow meters on the deicing fluid storage facilities of the airlines or

FBOs or (b) a requirement that the airlines and FBOs conduct a materials balance analysis each year to verify the quantity of deicing fluids used. These QA/QC measures shall be developed and required beginning with the 2000/2001 deicing season.

39. Defendant disputes whether section 103(f) of CERCLA, 42 U.S.C. § 9603(f), and section 313 of EPCRA, 42 U.S.C. § 1023, require Defendant to aggregate all uses of ethylene glycol-based deicing fluids at BWI Airport for purposes of reporting under those statutes. Notwithstanding that dispute and without conceding any construction of those statutes, Defendant shall report the aggregate use of ethylene glycol-based deicing fluids at BWI Airport in accordance with those sections of CERCLA and EPCRA. Defendant will provide the Citizen Plaintiffs with copies of all reports filed pursuant to this Paragraph within fourteen (14) working days after submitting the reports.

40. Beginning with the first full quarter following the lodging of this Decree and continuing as long as the 1994 Permit remains in effect, Defendant shall submit to the United States and to NRDC, in accordance with Paragraph 72 below, copies of all of MAA's discharge monitoring reports (DMRs) required by the 1994 Permit from that date forward. Copies of those DMRs shall be submitted to the United States and to NRDC promptly after they are due to the Maryland Department of the Environment, and, if MDE extends or alters the due date for any DMR, that DMR shall not be required to be submitted to the United States and to NRDC until it is due to MDE.

41. No later than July 15, 2000, Defendant shall submit to the United States and to NRDC a summary of all data collected as a result of any monitoring performed to comply with the 1994 Permit during the 1999/2000 deicing season. If Defendant obtains from the Maryland

Department of the Environment an extension for submitting to MDE the annual report on monitoring due to MDE for the 1999/2000 deicing season, the same extension shall apply to Defendant's obligation to provide the information required under this Paragraph. The report shall include, but not be limited to, the following data from the 1999/2000 deicing season:

- a. Any foam observations and measurements;
- b. Any data obtained from groundwater monitoring performed to determine the presence or absence of glycol, including the amount of total glycol, ethylene glycol and propylene glycol detected;
- c. Daily monitoring taken at Outfalls 003 and 007 including flow rate and the amount of total glycol, ethylene glycol and propylene glycol detected; and,
- d. Amount of total glycol, ethylene glycol and propylene glycol applied during the deicing season, including any available breakdown of that data by shorter periods of time.

42. Defendant shall submit to the United States and to NRDC the results of the annual toxicity tests for 1999 and 2000 as required by the 1994 Permit. Defendant shall provide the results of the 1999 tests within thirty (30) days after the entry of this Consent Decree and shall provide the results of the 2000 tests at the time they are due to the Maryland Department of the Environment.

43. The reports required by this Consent Decree shall be in addition to and shall not be a substitute for any reports required by the 1994 Permit and/or other applicable law or regulation. Whenever the information required in any report required by this Consent Decree is contained in a report or other document required by the 1994 Permit or any other law or regulation, Defendant may submit a copy of the report or other document containing the

information to the United States and to NRDC in full satisfaction of the reporting requirements of this Consent Decree.

IX. NOT A PERMIT

44. This Decree is neither a permit nor a modification of any existing permit under any federal, state, or local law, and in no way relieves Defendant of its obligations to comply with all federal, state, and local laws and regulations.

X. EFFECT

45. This Consent Decree resolves all civil claims against Defendant for the alleged violations at the Facility set forth in the complaint filed by the United States up through the date of lodging of this Consent Decree. This Consent Decree does not resolve any potential permit violations for the 2000/2001 deicing seasons. Both the United States and the Citizen Plaintiffs agree that the Maryland Department of the Environment (“MDE”) has determined that Defendant’s future compliance with the provisions of the 1994 Permit, which Plaintiffs allege prohibits the discharge of more than fifty percent (50%) of the deicing fluid applied at BWI Airport, shall be measured using actual daily measurements for glycol in discharges during deicing activities, as provided in a letter dated August 26, 1999, from J.L. Hearne, Director of the MDE Water Management Administration, to Joanne Brooks, MAA Environmental Program Manager. As a result, Plaintiffs agree that future compliance, beginning with the 1999/2000 deicing season, shall be measured in accordance with those requirements as opposed to using any prior models or assumptions absent a change in the monitoring requirements required by MDE.

XI. NON-WAIVER PROVISIONS

46. This Decree does not limit any rights or remedies available to the United States

for any violation by Defendant of the Clean Water Act and associated regulations or permit conditions, except that it resolves all claims for judicial or administrative civil penalties and for injunctive relief pursuant to Sections 309(d) or (g) of the Act, 33 U.S.C. §§ 1319(d) or (g), for those violations specifically covered by the United States' Complaint in this action through the date of lodging of this Decree. The United States expressly reserves all rights and remedies available to it for all violations of the Act other than those alleged in the United States'

Complaint, and the United States reserves all remedies available to enforce the provisions of this Decree. Nothing herein shall be construed to limit the power of the United States, consistent with its authority, to undertake any action against any person in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

✓ ~~H~~ 47. This Consent Decree shall not affect Defendant's obligation to comply with all applicable federal, state and local laws, regulations and permits. The United States, by consent to the entry of this Consent Decree, does not warrant or aver in any manner that Defendant's compliance with this Consent Decree will constitute or result in compliance with the Clean Water Act, its NPDES permit, CERCLA, EPCRA, or any other applicable law or regulation. Notwithstanding any EPA review that may occur, Defendant shall remain fully responsible for its compliance with the terms of this Decree, the Clean Water Act, regulations promulgated thereunder, its NPDES permit, CERCLA, EPCRA, and any other requirement of federal, state or local law.

48. Nothing herein shall be construed to limit the rights of the United States to undertake any criminal enforcement activity against any person, including the Defendant.

XII. RELEASE BY CITIZEN PLAINTIFFS

49. In consideration of all of the actions described above which Defendant agrees to undertake and the payment provided in Paragraph 24 above, the Citizen Plaintiffs and their respective successors, assigns, officers, employees, and agents hereby release the State of Maryland, its agencies (including specifically but not limited to the Maryland Department of Transportation, the Maryland Aviation Administration, the Maryland Department of the Environment, and the Maryland Environmental Service), and its current and former officials, employees, agents, and assigns (including specifically but not limited to Theodore Mathison and David L. Blackshear) from any and all claims or causes of action relating to the claims in the January 7, 1998 notice letter and in the Citizen Plaintiffs' Complaint and for similar claims during the period from January 7, 1998, to the date of lodging of this Consent Decree. Except as provided in Paragraph 24, the Citizen Plaintiffs waive any and all claims for attorneys' fees or expenses up to and including the date of lodging of this Consent Decree. The Citizen Plaintiffs waive any and all claims for attorneys' fees or expenses in connection with the monitoring, but not the enforcement, of this Consent Decree after the date of lodging.

XIII. CERTIFICATION

50. Any notice, report, certification, data or other document required to be submitted by Defendant under this Consent Decree, which discusses, describes, demonstrates, supports any finding, or makes any representation concerning Defendant's compliance or non-compliance with this Consent Decree, shall be signed and certified by a responsible official, as defined in 40 C.F.R. § 270.11. The certification of the responsible official shall be in the following form:

I certify under penalty of law that this document and all attachments were prepared under

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

(Signature)
(Name Typed or Printed)
(Title)

However, this certification need not be made as to any discharge monitoring report required to be submitted by Defendant so long as any such report as all certifications otherwise required by law.

XIV. STIPULATED PENALTIES

51. Stipulated Penalty Amounts. If Defendant fails to comply with any of the requirements of this Consent Decree, specified below, payments shall be made, without demand, within thirty (30) days after the date of violation unless Defendant invokes the procedures under Section XV below (Dispute Resolution). Defendant shall pay stipulated penalties as set forth below and in the manner set forth in Paragraph 52.

| VIOLATION | STIPULATED PENALTY |
|---|--|
| Failure to complete Runway 28 Deicing Pad Work as required by Paragraphs 26 and 27 of this Consent Decree by October 1, 2001. | \$4,500/month, or portion thereof. However, the total stipulated penalty for this violation shall not exceed \$54,500. |
| Failure to complete Pier B Passive Collection Drain System by October 1, 2002 as required by Paragraphs 28 and 29 of this Consent Decree. | \$5,000/month or portion thereof. However, the total stipulated penalty for this violation shall not exceed \$60,000. |
| Failure to share data as set forth in paragraphs 40,41 and 42 of this Consent Decree. | \$150/day. However, the total stipulated penalty for any individual violation shall not exceed \$7,500. |

| | |
|---|--|
| Failure to submit Reports in a timely manner. | \$150/day. However, the total stipulated penalty for any individual violation shall not exceed \$7,500. |
|---|--|

For the purposes of these penalties, all discharge monitoring reports which are due on the same date shall be considered together to constitute a single report.

52. Payments. All payments of stipulated penalties shall be made by check to the United States Department of Justice referencing DOJ case number 90-5-1-1-4543 and the United States Attorney General's Office file number 1998V00294. Payment shall be made in accordance with written instructions provided by the United States upon entry of this Consent Decree. After payment, the Defendant shall mail a cover letter specifying the amount and date of payment, civil docket number and reason for payment, to the United States in accordance with Paragraph 11 and to the Regional Docket Clerk at the following address:

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

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

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

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

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

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

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

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

57. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Decree. The United States expressly reserves the right to seek any other relief it deems appropriate, including but not limited to, action for

statutory penalties, contempt, or injunctive relief against the Defendant. However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

XV. DISPUTE RESOLUTION

58. Unless otherwise expressly provided for in this Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States or the Citizen Plaintiffs to enforce obligations of Defendant that have not been otherwise disputed in accordance with this Section. On a showing of good cause requiring immediate resort to the court to resolve any dispute, a party may apply to the court to present a dispute for resolution without complying with these dispute resolution procedures .

59. The dispute resolution procedures of this Section shall be a mechanism available to all parties to this Consent Decree for resolving all disputes that arise under or with respect to this Consent Decree. However, the Citizen Plaintiffs shall have no right under this Section, or this Consent Decree, to dispute or enforce Defendant's obligations that arise under Section V (Payment to The United States) or Section VI (Supplemental Environmental Projects). Also, as provided in Paragraph 78 below, the Citizens Plaintiffs may not act to enforce any provision of this Consent Decree including involving the dispute resolution procedures of this Section, unless the NRDC is participating directly and actively in that enforcement effort.

60. A party to this Consent Decree shall invoke the dispute resolution procedures of

this Section by providing all other parties a written Notice of Dispute which shall identify the matters in dispute. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the Consent Decree. The period for informal negotiations shall not exceed thirty (30) calendar days from the time the dispute arises, unless it is modified by written agreement of the parties. The dispute shall be considered to have arisen when one party sends the other parties the written Notice of Dispute.

61. If the parties cannot resolve their dispute within thirty (30) calendar days of the date the dispute arises, Defendant shall follow the position of the United States, or the Citizen Plaintiffs if the dispute is exclusively with them, unless Defendant files a petition with this Court for resolution of the dispute within twenty (20) days of receipt in writing of a document from the United States (or the Citizen Plaintiffs, if the dispute is with them) entitled "Final Position". Any petition shall set out the nature of the dispute and the relief requested and shall specifically refer to this paragraph of this Consent Decree. The United States (or the Citizen Plaintiffs, if the dispute is with them) shall have thirty (30) days to file a response to any petition. Any other party to this Consent Decree, who did not file the initial petition, shall then have ten (10) days to file a response to the petition. Defendant shall bear the burden of proving that its actions are in accordance with the terms of this Consent Decree in any dispute resolution proceeding under this Consent Decree.

62. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of Defendant under this Consent Decree, unless the parties to the dispute so agree or the Court so orders. Stipulated penalties with

respect to the disputed matter shall continue to accrue but payment to the United States shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XIV (Stipulated Penalties).

XVI. FORCE MAJEURE

63. If any event occurs which causes or may cause Defendant to violate any requirement of this Decree, Defendant shall, as soon as practicable (but in no event later than thirty (30) days after Defendant knew, or should have known, of such event) notify the United States Attorney for the District of Maryland, EPA, the Department of Justice, and the Citizen Plaintiffs, in writing. In such notification, Defendant shall report the anticipated length of the delay, the precise cause or causes of delay, the measures taken and to be taken by Defendant to prevent or minimize the delay and the timetable by which those measures will be implemented. Defendant will adopt all reasonable measures to avoid or minimize any such delay.

64. If the United States agrees that a delay has been or will be caused entirely by circumstances beyond the control of Defendant or any of its agents, contractors or consultants, and that Defendant and its agents, contractors and consultants could not, despite the exercise of their best efforts, have foreseen or prevented such violation, the time for performance of such requirement shall be extended for a period not to exceed the actual delay resulting from such circumstance, and stipulated penalties shall not be due for such period. In the event the United States does not agree, Defendant shall submit the matter to this Court for resolution pursuant to the dispute resolution procedures established in Section XV of this Decree. If Defendant submits

the matter to the Court for resolution and the Court determines that a violation was caused entirely by circumstances beyond the control of the Defendant or any agent, contractor or consultant of the Defendant, Defendant shall be excused as to the violation, but only for the period of time the violation continued due to such circumstances. If Defendant submits the matter to the Court for resolution and the Court determines that a violation was not caused entirely by circumstances beyond the control of Defendant or its agents, contractors and consultants, Defendant shall pay all costs and expenses incurred by the United States, including attorney's fees, incurred in responding to Defendant's petition to the Court, as well as applicable stipulated penalties. Unanticipated or increased costs associated with the implementation of actions called for by this Decree, or changed financial circumstances, shall not constitute circumstances beyond the control of Defendant.

65. Failure by Defendant to comply with the notice requirements in this Section shall render Paragraphs 64, above, void and of no force or effect as to the particular incident involved and constitute a waiver of Defendant's right to request an extension of its obligations under this Decree.

66. An extension of one compliance date based on a particular incident shall not result in an extension of a subsequent compliance date or dates unless specifically authorized by the United States, which authorization shall not be unreasonably denied. Defendant must make an individual showing of proof regarding each delayed incremental step or other requirement for which an extension is sought.

67. Compliance with any requirement of this Decree, by itself, shall not constitute compliance with any other requirement. Defendant shall bear the burden of proving that any

delay or violation of any requirement of this Decree was caused entirely by circumstances beyond the control of Defendant, or any entity controlled by Defendant, including its agents, consultants or contractors. Defendant shall also bear the burden of proving the duration and extent of any delay or violation attributable to such circumstances.

XVII. RIGHT OF ENTRY

68. EPA and/or its representatives, contractors, consultants, and the attorneys for the United States shall have the authority to enter the Facility or any other area wherein Defendant is performing work pursuant to this Consent Decree, including, but not limited to those where records relating to this Consent Decree are kept, during reasonable hours, upon presentation of credentials, for the purpose of:

- a. verifying any data or information submitted to the EPA in accordance with the terms of the Consent Decree;
- b. obtaining samples, and upon request, splits of any samples taken by Defendant or their contractors and consultants;
- c. reviewing and copying any records required to be kept by Defendant under the Consent Decree, the NPDES permit, and any other documents as may be required by law; and
- d. in general, assessing Defendant's compliance with the CWA, this Decree, and the NPDES permit.

69. Access shall be subject to all applicable security requirements, including those imposed by the Federal Aviation Administration.

70. The Citizen Plaintiffs shall have authority to review any records required to be

maintained by this Decree. A Citizen Plaintiff shall request access to such records in writing at least fourteen (14) days before inspection is desired, and, in its request, the Citizen Plaintiffs shall identify the specific records or categories of records it desires to inspect. Citizen Plaintiffs shall make their best efforts to limit requests to only those records necessary to monitor compliance with this Decree. Nothing in this Paragraph or in Paragraph 78, constitutes a waiver of any privilege applicable by federal or Maryland law to any record or document. Defendant, at its option, may provide Citizen Plaintiffs access to records either by permitting inspection at its offices or by providing copies of requested records. Before incurring copying costs, Defendant shall provide The Citizen Plaintiffs an estimate of the reasonable cost of copying any requested records. Citizen Plaintiffs shall pay for any copying costs subsequently requested.

71. Nothing in this Section, or any other section of this Consent Decree shall be construed to limit the United States' right of access pursuant to the Clean Water Act, or any other federal law.

XVIII. FORM OF NOTICE

72. Notifications, certifications, reports, or other communications required pursuant to this Consent Decree shall be deemed submitted on the date (1) postmarked and sent by certified mail, return receipt requested; (2) sent by facsimile transmission, with confirmation of receipt; or (3) sent by overnight delivery service. If a notification, certification, report or other communication required by this Decree is sent by first class mail, it shall be deemed submitted on the date it is actually received. Except as specified otherwise, when written notification to or communication with a party is required by the terms of this Consent Decree, it shall be addressed as follows:

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Post Office Box 7611 - Ben Franklin Station
Washington, D.C. 20044
Reference Case No. 90-5-1-1-4543

Chief, Civil Division
Office of the United States Attorney
District of Maryland
Northern Division
6625 United States Courthouse
101 West Lombard Street
Baltimore, Maryland 21201-2692

Chief, NPDES Branch, Water Protection Division
U.S. Environmental Protection Agency Region III
1650 Arch Street
Philadelphia, PA 19103
Att: K. R. Young

As to Maryland Aviation Administration

Louisa H. Goldstein
Counsel
Maryland Aviation Administration
P.O. Box 8766
Baltimore/Washington International Airport
Maryland 21240-0766

As to Citizen Plaintiffs:

Nancy S. Marks, Esq.
Natural Resources Defense Council, Inc.
40 West 20th Street
New York, New York 10011

Each party may change its designated recipient of notices under this paragraph by notifying the other parties in writing.

XIX. MODIFICATION

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

XX. COSTS OF SUIT

74. Except as identified in Section VI above, the Parties shall each bear its own costs and attorneys' fees in this action. The Citizen Plaintiffs shall bear their own costs of monitoring compliance with this Consent Decree

XXI. PUBLIC NOTICE

75. The parties acknowledge and agree that the final approval and entry of this Consent Decree is subject to public notice and comment, consistent with the requirements of 28 C.F.R. § 50.7. The public shall have at least thirty (30) days in which to make any comments and the United States may withhold or withdraw its consent to this Decree based on such comments. If the United States withdraws its consent based on public comments, this Decree shall be null and void. Defendant and the Citizen Plaintiffs hereby agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified them in writing that it no longer supports entry of this Consent Decree.

XXII. RETENTION OF JURISDICTION

76. Jurisdiction is retained by this Court for the purposes of issuing such further orders and directions as may be necessary and appropriate for the carrying out or modification (pursuant to Section XIX) of this Consent Decree, resolution of disputes pursuant to Section XV, and for enforcing compliance with the provisions of this Consent Decree.

XXIII. AUTHORITY TO SIGN

77. The individuals executing this Consent Decree represent that they are duly authorized to execute this Consent Decree.

XXIV. ENFORCEMENT AUTHORITY

78. Any party to this Consent Decree may seek to enforce it, except that where any provision by its terms creates an obligation only to one party or to less than all the parties, that provision may be enforced only by the party to whom the obligation is owed. Notwithstanding this or any other provision in this Consent Decree, the Citizen Plaintiffs may act under this Consent Decree only if the NRDC specifically and actively joins in the action under the Consent Decree. This limitation on action by the Citizen Plaintiffs applies to any reference to the Citizen Plaintiffs in this Consent Decree. If any of the Citizen Plaintiffs or any officer or member of any of the Citizen Plaintiffs attempts to enforce this Consent Decree without the specific and active participation by the NRDC, the Court shall deny the attempt to enforce the Consent Decree.

XV. TERMINATION

79. Certain obligations under this Consent Decree shall expire by their own terms prior to the termination of this Consent Decree as a whole, as follows:

a. The provisions in Sections VI shall expire when the Supplemental Environmental Project required in that section is completed.

b. The injunctive provisions in Sections VIII.A and VIII.B shall expire when the projects required in those sections are completed.

c. The injunctive provisions in Sections VIII.C and VIII.D shall expire when the 1994 NPDES Permit, as extended, is superseded by a new or modified NPDES permit.

d. Any other provision of this Decree that has a specific duration or completion date shall expire when such duration ends or completion is achieved.

e. Those provisions of this Decree, such as the releases or waivers of claims, which are perpetual in nature shall remain in effect unless specifically terminated.

f. Any question of the continued effectiveness of any provision of this Decree shall be subject to the dispute resolution procedures established in Section XV of this Decree.

80. This Consent Decree shall terminate by the Court's Order granting a motion of any party to the Court after all of the following have occurred:

a. The Defendant has paid all penalties, including stipulated penalties, due under this Decree and no payments are outstanding or owed to the United States;

b. The Defendant has paid all attorneys fees and costs due to the Citizen Plaintiffs hereunder;

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

d. The United States has made a written determination that Defendant has completed the Runway 28 Deicing Pad and Pier B Passive Collection Drain projects, as described in Section VIII.

e. The injunctive relief provided in Section VIII.C and VIII.D has been completed and the 1994 NPDES Permit has been superseded by a new or modified Permit.

f. Any issues as to which the dispute resolution procedures provided in Section XV above have been involved have finally been resolved, including but not limited to any opposition by the United States to termination of the Decree.

THE PARTIES HEREBY CONSENT to the entry of this Consent Decree.

FOR PLAINTIFF, UNITED STATES OF AMERICA

JOEL GROSS
Section Chief
Environmental Enforcement Section
Environment & Natural Resources
Division
United States Department of
Justice

Date: _____

DAVID L. DAIN
Trial Attorney
Environmental Enforcement Section
Environment & Natural Resources
Division
United States Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044
(202) 514-3644

Date: _____

LYNNE A. BATTAGLIA
United States Attorney
District of Maryland
Northern Division
6625 United States Courthouse
101 West Lombard Street
Baltimore, Maryland 21201-2692

Date: _____

P. MICHAEL CUNNINGHAM
Assistant United States Attorney
District of Maryland
6625 United States Courthouse
101 West Lombard Street
Baltimore, Maryland 21201-2692
(410) 209-4881

Date: _____

Date: _____

STEVEN A. HERMAN
Assistant Administrator for Enforcement
and Compliance Assurance
U.S. Environmental Protection Agency
Mail Code 2001A
401 M Street, S.W.
Washington, DC 20460

Date: _____

WILLIAM C. EARLY
Acting Regional Counsel
U.S. Environmental Protection
Agency (3RC00)
Region III
1650 Arch Street
Philadelphia, PA 19103

Date: _____

DEANE H. BARTLETT
Senior Assistant Regional Counsel
U.S. Environmental Protection
Agency (3RC20)
1650 Arch Street
Philadelphia, PA 19103
(215) 814-2776

FOR CITIZEN PLAINTIFFS:

Date: _____

Nancy S. Marks, Esq.
Senior Attorney
Natural Resources Defense Council, Inc.
40 West 20th Street
New York, New York 10011
(212) 727-4414

Simon Walton (No. 24002)
Schulteis & Walton, P.A.
4635 Falls Road
Baltimore, MD 21209
(410) 235-6425

Attorneys for Plaintiffs Natural Resources Defense
Council, Inc., Airport Environmental Coalition, Humane
Society of the United States, and US Citizens
Aviation Watch

FOR DEFENDANT MARYLAND AVIATION ADMINISTRATION

Date: _____
David L. Blackshear
Executive Director
Maryland Aviation Administration
P.O. Box 8766
Baltimore/Washington International Airport, Maryland 21240-0766

Date: _____
Louisa H. Goldstein (Bar No. 23918)
Counsel
Maryland Aviation Administration
P.O. Box 8766
Baltimore/Washington International Airport, Maryland 21240-0766
(410) 859-7066

Date: _____
Deborah A. Donohue (Bar No. 05554)
Counsel
Maryland Transportation Authority
303 Authority Drive
Baltimore, Maryland 21222
(410) 288-8426

APPROVED AND ENTERED THIS ____ day of _____, 2000.

WILLIAM M. NICKERSON
U.S. District Judge
District of Maryland