

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,
THE STATE OF OHIO, AND
THE OHIO RIVER VALLEY WATER
SANITATION COMMISSION,

Plaintiffs,

v.

THE BOARD OF COUNTY
COMMISSIONERS OF HAMILTON
COUNTY, OHIO AND THE CITY
OF CINCINNATI, OHIO,

Defendants.

Civil Action No. C-1-02-107

Judge Michael R. Barrett
Magistrate Karen L. Litkovitz

**AMENDMENT TO THE CONSENT DECREE ON COMBINED SEWER OVERFLOWS,
WASTEWATER TREATMENT PLANTS AND IMPLEMENTATION OF CAPACITY
ASSURANCE PROGRAM PLAN FOR SANITARY SEWER OVERFLOWS (Doc. 131)**

WHEREAS:

The United States, on behalf of the United States Environmental Protection Agency (“EPA”), State of Ohio, and Ohio River Valley Water Sanitation Commission (“ORSANCO”) (collectively, “Plaintiffs”) and the Board of County Commissioners of Hamilton County, Ohio, and the City of Cincinnati (collectively, “Defendants”), entered into two Consent Decrees to resolve the Plaintiffs’ claims in this action—including the Consent Decree on Combined Sewer Overflows, Wastewater Treatment Plants and Implementation of Capacity Assurance Program

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Plan for Sanitary Sewer Overflows (“Global Consent Decree”)—both of which were entered on June 9, 2004 (Docs. 130 and 131); and entered into a Revised First Amendment to the Decrees, which was entered on August 10, 2010 (Doc. 455).

Paragraph IX.B of the Global Consent Decree, as modified by the Revised First Amendment to the Decrees, required Defendants to submit a Phase 2 schedule for implementation of measures specified in the Final Wet Weather Improvement Program (“WWIP”) by June 30, 2017; which deadline was modified by a June 27, 2017, Non-Material Modification to Global Consent Decree (Doc. 974-1) to change the date for submission of a Phase 2 schedule to October 31, 2017.

Following initiation of the dispute resolution process (Doc. 1057) and a stay of those proceedings pursuant to Court Order (Doc. 1108), the Plaintiffs and Defendants agreed in writing to a Non-Material Modification to the Global Consent Decree and WWIP (Doc. 1141) on October 30, 2017, which stayed and extended the October 1, 2017, Phase 2 submission deadline pending modification of the Consent Decree or, failing that, recommencement of dispute resolution.

On April 3, 2018, Defendants submitted to the Regulators a proposal to modify the WWIP to (a) change the date for submission of a Phase 2 schedule to June 30, 2018, and (b) require Defendants to implement approximately \$49 million in remedial measures by December 31, 2019 (the “Bridge Schedule”). The proposal is conditioned on this Court’s entry of this Amendment to the Global Consent Decree. On April 3, 2018, the Regulators conditionally approved Defendants’ proposal. This approval is conditioned on the Court’s entry of this Amendment to the Global Consent Decree.

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The Parties have agreed to this Amendment to the Global Consent Decree, which the United States asserts constitutes a material modification to the Consent Decrees, which, in accordance with the Global Consent Decree, must be approved in writing by all of the Parties and the Court.

The Parties agree, and the Court by entering this Amendment to the Global Decree finds, that settlement of this matter without further litigation is in the public interest and that entry of this Amendment is fair, reasonable, and in the public interest.

NOW, THEREFORE, upon consent of the Parties, before the taking of testimony, and without any adjudication of issues of fact or law, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. The Consent Decrees shall remain in full force and effect in accordance with their terms, except that Paragraph IX.B of the CSO Consent Decree, as modified by the June 27, 2017, Non-Material Modification to Global Consent Decree, is revised to change the date for submission of the Phase 2 schedule from October 31, 2017, to June 30, 2018. Thus, Paragraph IX.B now provides:

B. Schedule for Implementation of WWIP

On January 6, 2010, the United States/State/ORSANCO approved the Final Wet Weather Improvement Program (Final WWIP). The deadline for completion of all remedial measures specified in the Final WWIP must be as expeditious as practicable, but the remedial measures may be implemented in phases consistent with the deadlines and approach set forth in the Final WWIP. Except as set forth in the Final WWIP, Phase 1, which includes the projects set forth in Attachments 1A, 1B, and 1C of the Final WWIP, must be completed by December 31, 2018. By ~~October 31, 2017~~ **June 30, 2018**, Defendants shall submit a schedule that is as expeditious as practicable to the United States/State/ORSANCO for additional Final WWIP projects to be constructed (Phase 2). Defendants may propose a Phase 2 schedule for only a subset of the

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remaining Final WWIP projects (Phase 2A), with construction of the remainder of the Final WWIP projects to be scheduled as part of an additional final phase (Phase 2B), with the schedule for Phase 2B due at a later date specified in the Phase 2A schedule, provided that the Phase 2B schedule must also be as expeditious as practicable. Defendants may request additional phase(s) beyond Phase 2B only if they can demonstrate that the additional phase is necessary to avoid severe financial hardship and that the schedule for completion of remedial measures in that phase is as expeditious as practicable.

2. This Amendment to the Global Consent Decree will be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding this Amendment disclose facts or considerations indicating that the Amendment is inappropriate, improper, or inadequate. Defendants hereby agree not to withdraw from, oppose entry of, or to challenge any provision of this Amendment, unless the United States has notified Defendants in writing that it no longer supports entry of this Amendment.


This Amendment to the Global Consent Decree is entered and approved this _____ day of _____, 2018.


MICHAEL R. BARRETT
United States District Court Judge
United States District Court
Southern District of Ohio

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FOR THE UNITED STATES:

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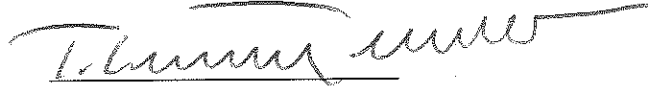

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