

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA,

and

THE STATE OF OHIO,

Plaintiffs,

v.

THE CITY OF YOUNGSTOWN, OHIO,  
A Municipal Corporation,

Defendant.

CASE NO.: 4:98-CV-2438

JUDGE CHRISTOPHER A. BOYKO

MAGISTRATE JUDGE JENNIFER  
DOWDELL ARMSTRONG

CONSENT DECREE AMENDMENT

Plaintiffs United States of America and State of Ohio and Defendant City of Youngstown, Ohio (collectively, the “Parties”), acting through the undersigned counsel, state as follows:

WHEREAS, the Parties negotiated a Consent Decree resolving the claims of the United States and Ohio, which the Court signed and entered in 2002. ECF No. 150 (the “Consent Decree”).

WHEREAS, Paragraph 12 of the Consent Decree provides that upon approval by EPA and Ohio EPA of the combined sewer system Long-Term Control Plan (“LTCP”), required to be developed by Youngstown under Paragraph 10 of the Consent Decree, the “approved LTCP shall be incorporated into and made an enforceable part of this Consent Decree, and Youngstown shall implement the approved LTCP in accordance with the schedule included in the approved LTCP.” *Id.* PageID #: 387.

WHEREAS, on January 5 and July 28, 2015 respectively, EPA and Ohio EPA approved the two-phase LTCP submitted by Youngstown, thereby incorporating the LTCP into and making the LTCP an enforceable part of this Consent Decree. *See* ECF No. 156-4, PageID #: 499, 502.

WHEREAS, under the first phase (“Phase 1”) of the LTCP, Youngstown is required to perform three key projects in accordance with the implementation schedule in Chapter 5 of the LTCP: (1) complete certain enumerated upgrades to Youngstown’s Wastewater Treatment Plant (the “WWTP”) to maintain the WWTP’s capacity of 80 million gallons per day (“MGD”); (2) construct a new sewer interceptor system that will eliminate combined sewer overflow (“CSO”) discharges up to the 5 year, 6 hour design storm to the sensitive waters of Mill Creek, which passes through Mill Creek Park (the “Mill Creek Project”); and (3) complete a project to substantially reduce overflows from Youngstown’s largest source of CSO discharges by volume (“CSO 6057”), consisting of a new conveyance sewer from CSO 6057 to a 100 MGD high-rate treatment facility to control wet weather flows from CSO 6057 (the “Wet Weather Facility Project”). ECF No. 160-1.

WHEREAS, Youngstown filed an Amended Motion to Modify the Consent Decree, ECF No. 170, requesting Court approval to replace the required Wet Weather Facility Project with the

“CSO 6057 Control Measure Project,” a proposed 80 MGD high-rate treatment facility to control wet weather flows from CSO 6057. The CSO 6057 Control Measure Project is further described in Chapter 6 of Youngstown’s October 1, 2024 CSO Control Measures Report. ECF No. 170-6, PageID#1638-69.

WHEREAS, Youngstown’s Amended Motion to Modify the Consent Decree included:

(a) a detailed schedule that would replace the schedule in Chapter 5 of the LTCP, and provide for the implementation of the CSO 6057 Control Measure as well as an additional project, the “West-Division Interceptor Sewer Replacement,” (b) a compressed schedule to complete the Mill Creek Project, including an earlier final completion deadline, and (c) earlier deadlines for the submission of reports for the second phase (“Phase 2”) of the LTCP. The LTCP upgrades to the WWTP have been completed and, therefore, were not included in Youngstown’s proposed revised schedule.

WHEREAS, in addition to reducing the required size of the facility from 100 MGD to 80 MGD, the proposed CSO 6057 Control Measure Project adopts a cloth-disk filter media technology for high-rate treatment of wet weather flows.

WHEREAS, Youngstown has also voluntarily completed additional projects not required by the LTCP that reduce overflows from CSO 6057, including: (a) improving nearby in-line storage, (b) installing a new regulating gate at CSO 6057 to add 500,000 gallons of in-line storage of wet weather flows, and (c) expanding the peak capacity of the WWTP to 90 MGD, which is greater than the 80 MGD required by the LTCP.

WHEREAS, the Parties have conferred and have mutually agreed to this Consent Decree Amendment (“Amendment”).

WHEREAS, this Amendment modifies the Consent Decree and LTCP by: (1) replacing the LTCP requirement to complete the Wet Weather Facility Project with the requirement to complete the CSO 6057 Control Measure Project; and (2) replacing Chapter 5 of the LTCP with a superseding Chapter 5, including a Revised Implementation Schedule, attached hereto as Appendix A. The Revised Implementation Schedule requires Youngstown to complete the West-Division Interceptor Sewer Replacement to reduce combined sewer overflows. It also modifies the implementation schedule for Phase 1 of the LTCP by, among other things, establishing deadlines for the CSO 6057 Control Measure Project, compressing and accelerating the schedule for the Mill Creek Project, and moving up deadlines for completing the reports for submitting potential projects to be considered as part of the LTCP's Phase 2.

WHEREAS, Paragraph 67 of the Consent Decree provides that “[t]here shall be no modification of this Consent Decree without written approval by all parties to this Consent Decree and the Court.”

WHEREAS, the Parties recognize, and the Court by entering this Amendment finds, that this Amendment has been negotiated at arms-length and in good faith, and that this Amendment is fair, reasonable, and in the public interest.

WHEREAS, this Amendment will be lodged with the Court for at least 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 the Amendment disclose facts or considerations indicating that the Amendment is inappropriate, improper, or inadequate. The City of Youngstown agrees to entry of this Amendment without further notice and agrees not to withdraw from or oppose entry of this Amendment by the Court or to challenge any provision of

the Amendment, unless the United States has notified the City of Youngstown in writing that it no longer supports entry of the Amendment.

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

The Consent Decree shall remain in full force and effect in accordance with its terms, except that upon entry of this Amendment, Appendix A to this Amendment (“Revised Implementation Schedule”) shall replace and supersede Chapter 5 of the original LTCP. The Revised Implementation Schedule shall be incorporated into and become an enforceable part of the Consent Decree.

Entry of this Amendment does not waive, withdraw, or moot the United States’ Motion for Stipulated Penalties (ECF No. 169) or the September 29, 2023 demand for stipulated penalties made by the United States under Paragraph 39 of the Consent Decree (*See* ECF No. 161-3) for alleged past violations of Chapter 5 of the original LTCP. The City of Youngstown reserves its rights under the Consent Decree with respect to the United States’ past demand and Motion for Stipulated Penalties.

Within seven (7) days of the entry of this Amendment, Youngstown shall file a Notice withdrawing its Amended Motion to Modify Consent Decree, ECF 170.

JUDGMENT IS HEREBY ENTERED in accordance with this Amendment to Consent Decree, on this date, \_\_\_\_\_

---

JUDGE CHRISTOPHER A. BOYKO  
UNITED STATES DISTRICT COURT JUDGE

Signature Page for the United States of America for Amendment to the Consent Decree in the matter of *United States et al. v. City of Youngstown, Ohio*, Case No. 4:98-CV-2438 (N.D. Ohio).

ADAM R.F. GUSTAFSON  
Acting Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice

CAROL M. SKUTNIK  
Acting United States Attorney

/s/Pedro Segura  
PEDRO SEGURA (TX: 24121823)  
Trial Attorney  
U.S. Department of Justice  
Environmental Enforcement Section  
P.O. Box 7611  
Washington, D.C. 20044-7611  
pedro.segura@usdoj.gov

/s/Elizabeth Berry  
Elizabeth L. Berry (OH: 0095524)  
Assistant United States Attorney  
801 West Superior Avenue, Suite 400  
Cleveland, OH 44113  
(216) 622-3682  
(216) 522-2404 (facsimile)  
Elizabeth.Berry2@usdoj.gov

Signature Page for the State of Ohio for Amendment to the Consent Decree in the matter of *United States et al. v. City of Youngstown, Ohio*, Case No. 4:98-CV-2438 (N.D. Ohio).

/s/ Eythan Gregory (with permission)

Eythan J. Gregory (98891)

Assistant Attorneys General

State of Ohio

Environmental Enforcement Section

30 East Broad Street, 25<sup>th</sup> Floor

Columbus, OH 43215

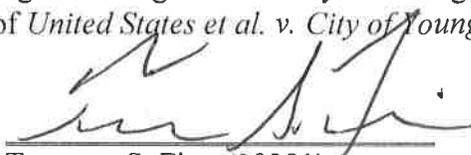
Phone: 614.466.2766

eythan.gregory@ohioago.gov

mark.navarre@ohioago.gov

*Attorneys for Plaintiff State of Ohio*

Signature Page for the City of Youngstown for Amendment to the Consent Decree in the matter of *United States et al. v. City of Youngstown, Ohio*, Case No. 4:98-CV-2438 (N.D. Ohio).



Terrence S. Finn (39391)

tfinn@ralaw.com

Emily K. Anglewicz (83129)

eanglewicz@ralaw.com

Roetzel & Andress, LPA

222 South Main Street

Akron, OH 44308

Phone: 330.376.2700

Fax: 330.376.4577

And

Gary L. Pasheilich (79162)

gpasheilich@ralaw.com

Roetzel & Andress, LPA

41 South High Street

Huntington Center, 21st Floor

Columbus, OH 43215

Phone: 614.463.9770

Fax: 614.463.9792

*Attorneys for Defendant*

*City of Youngstown, Ohio*

## APPENDIX A

## **CHAPTER 5 - Revised Implementation Schedule**

### **5.1 Introduction**

This Revised Chapter 5, including the Implementation Schedule and milestones outlined below, replaces and supersedes Chapter 5 of Youngstown's LTCP approved by U.S. EPA and Ohio EPA in 2015.

In accordance with Consent Decree Paragraph 11, Sections 5.2, 5.3, and 5.4 of this Chapter establish milestones for which stipulated penalties shall apply, under Consent Decree Paragraph 38, if the milestones are not achieved by the corresponding deadlines.

### **5.2 Implementation Schedule Milestones – Wastewater Treatment Plant**

<b><u>Long Term Control Plan Milestone</u></b>	<b><u>Deadline</u></b>
Complete WWTP Improvements	Completed

### **5.3 Implementation Schedule Milestones – CSS Improvement Projects and CSO 6057 Control Measure**

<b><u>Long Term Control Plan Milestone</u></b>	<b><u>Deadline</u></b>
Complete & Place in Service CSO 6057/Regulating Chamber 104 Improvements	Completed
Complete & Place in Service West-Division Interceptor Sewer Replacement Phase I	December 2, 2025
Complete & Place in Service West-Division Interceptor Sewer Replacement Phase II	January 27, 2026
Complete & Place in Service Sludge Handling Improvements (If Needed)	February 1, 2028
Initiate Prelim. Design of HRT Facility	Completed
Complete Final Design HRT Facility	July 30, 2027
Initiate Construction of HRT Facility	January 20, 2028
Complete & Place in Service HRT Facility	September 7, 2030

### **5.4 Implementation Schedule Milestones – Mill Creek Improvements**

<b><u>Long Term Control Plan Milestone</u></b>	<b><u>Superseding Deadline</u></b>
Initiate Design of Mill Creek Part I & II:	Completed
Complete and Submit Preliminary Design Report:	Completed
Initiate Construction of Mill Creek Part I:	January 31, 2026
Complete & Place in Service Mill Creek Part I:	May 29, 2028
Initiate Construction Mill Creek Part II:	January 31, 2026
Complete & Place in Service Mill Creek Part II:	May 29, 2028

Initiate Construction Mill Creek Part III:	April 23, 2028
Complete & Place in Service Mill Creek Part III:	April 18, 2031
Initiate Construction Mill Creek Part IV:	August 31, 2030
Complete & Place in Service Mill Creek Part IV:	September 29, 2032

## 5.5 Revised Implementation Schedule Project Requirements

In accordance with this Revised Chapter 5, Youngstown shall perform the following projects in addition to the “Mill Creek Interceptor” project required under Chapter 4:

Task 2.1 (CSO 6057/Regulating Chamber 104 Improvements) – Task 2.1 consists of the following improvements to CSO 6057/Regulating Chamber 104: (1) replacement of a failed flap gate with a motor-operated slide gate; (2) installation of level sensors up and downstream of the slide gate for gate control; (3) structural modification to improve access; (4) cellular connection of level sensors to the WWTP for remote monitoring; (5) installation of an emergency generator.

Task 2.2 (West Division Interceptor Sewer Replacement)

- Phase 1 of the West-Division Interceptor Sewer Project shall consist of upsizing and replacing approximately 4,617 lineal feet (LF) of existing combined brick sewer from West Avenue to Bridge Street. The existing sewer sizes range from 30-inch to 48-inch and will be replaced with approximately 4,618 LF of 60-inch sewer and 51 LF of 48-inch sewer. By upsizing and increasing the capacity of the existing sewer, Part 1 will physically eliminate Overflow Chamber 37 (CSO 6023).
- Phase 2 of the West-Division Interceptor Sewer Project shall consist of upsizing and replacing approximately 6,079 LF of existing 30-inch combined brick sewer from Bridge Street to Division Street. This sewer shall be replaced with approximately 6,079 LF of 48-inch combined sewer. By upsizing and increasing the capacity of the existing sewer, Part 2 shall physically eliminate CSO 6098 and CSO 6099.

Task 3 (Sludge Handling Improvements) – The need for any sludge handling improvements shall be determined based upon the Sludge Handling Evaluation under Task 3.1, though which Youngstown shall evaluate the additional sludge generated by the HRT Facility and the capacity of the WWTP to manage this additional sludge. Youngstown shall complete the Sludge Handling Evaluation concurrently with the preliminary design of the HRT Facility and submit the Sludge Handling Evaluation to the Ohio EPA for approval. In this submission, Youngstown may request an Ohio EPA determination that the Sludge Handling Improvements are not required. If Ohio EPA approves a determination that Sludge Handling Improvements are not required, then, without further need for modification of this Implementation Schedule, the subsequent Implementation Schedule requirements for Task 3 (Sludge Handling Improvements) shall not apply.

Task 4 (High-Rate Treatment Facility) – The HRT Facility shall be a high-rate treatment facility to control overflows from CSO outfall 6057 with a minimum peak capacity of 80 million gallons per day (“MGD”) using cloth disk media filter technology, as described in Youngstown’s October 1, 2024 CSO Control Measures Report. While the final sizing of this control measure will be subject to Ohio EPA approval based upon additional validation of Youngstown’s hydraulic model in accordance with Tasks 4.3 and 4.4, the size of the HRT Facility shall be a minimum of 80 MGD peak capacity.

### City of Youngstown CSO LTCP Revised Implementation Schedule

Task	Task Name	Start	Finish
	<b>CSO Revised Implementation Schedule</b>	<b>7/15/23</b>	<b>10/1/35</b>
<b>1</b>	<b>Collection System Characterization</b>	<b>COMPLETED</b>	<b>COMPLETED</b>
<b>1.1</b>	<b>Metering Program &amp; Modeling Analysis and System Updates</b>	<b>COMPLETED</b>	<b>COMPLETED</b>
<b>2</b>	<b>CSS Improvement Projects</b>	<b>COMPLETED</b>	<b>1/27/26</b>
<b>2.1</b>	<b>CSO 6057 / Regulating Chamber 104 Improvements</b>	<b>COMPLETED</b>	<b>COMPLETED</b>
2.1.1	Bidding, Award, & Financing	COMPLETED	COMPLETED
2.1.2	Construction	COMPLETED	COMPLETED
<b>2.1.3</b>	<b>Completion &amp; Placement in Service</b>	<b>COMPLETED</b>	<b>COMPLETED</b>
<b>2.2</b>	<b>West-Division Interceptor Sewer Replacement</b>	<b>COMPLETED</b>	<b>1/27/26</b>
2.2.1	West-Division Phase I		
2.2.1.1	Agency Review & Approval	COMPLETED	COMPLETED
2.2.1.2	Bidding, Award, & Financing	COMPLETED	COMPLETED
2.2.1.3	Construction	1/6/25	12/2/25
<b>2.2.1.4</b>	<b>Completion &amp; Placement in Service</b>	<b>12/2/25</b>	<b>12/2/25</b>
2.2.2	West-Division Phase II		
2.2.2.1	Agency Review & Approval	2/7/25	4/7/25
2.2.2.2	Bidding, Award, & Financing	4/15/25	6/20/25
2.2.2.3	Construction	6/23/25	1/30/26
<b>2.2.2.4</b>	<b>Completion &amp; Placement in Service</b>	<b>1/27/26</b>	<b>1/27/26</b>
<b>3</b>	<b>Sludge Handling Improvements</b>	<b>4/12/25</b>	<b>2/1/28</b>
3.1	Sludge Handling Evaluation	4/12/25	7/30/25
3.2	Final Design Sludge Handling	4/13/26	8/11/26
3.3	Agency Review & Approval	8/12/26	11/10/26
3.4	Bidding, Award, & Financing	11/11/26	1/31/27
3.5	Construction	2/1/27	2/1/28
<b>3.6</b>	<b>Completion &amp; Placement in Service</b>	<b>2/1/28</b>	<b>2/1/28</b>
<b>4</b>	<b>High-Rate Treatment Facility ("HRT")</b>	<b>9/16/24</b>	<b>9/7/30</b>
<b>4.1</b>	<b>Initiation of Preliminary Design of HRT</b>	<b>COMPLETED</b>	<b>COMPLETED</b>
4.2	Preliminary Design of HRT	COMPLETED	COMPLETED
4.3	Validation Monitoring Requested by Ohio EPA	COMPLETED	7/30/25
4.4	Ohio EPA Review & Approval of Final Size of HRT	8/1/25	9/30/25
4.5	RFQ and Selection of Consultant	10/1/25	1/29/26
<b>4.6</b>	<b>Final Design of HRT</b>	<b>1/30/26</b>	<b>7/30/27</b>
<b>4.7</b>	<b>Completion of Final Design of HRT</b>	<b>7/30/27</b>	<b>7/30/27</b>
4.8	Agency Review & Approval	7/31/27	10/29/27
4.9	Bidding, Award, & Financing	10/30/27	1/19/28
<b>4.10</b>	<b>Initiation of Construction of HRT</b>	<b>1/20/28</b>	<b>1/20/28</b>
4.11	Construction of HRT	1/20/28	9/7/30
<b>4.12</b>	<b>Completion &amp; Placement in Service</b>	<b>9/7/30</b>	<b>9/7/30</b>
<b>5</b>	<b>Mill Creek Interceptor ("MCI")</b>	<b>COMPLETED</b>	<b>10/16/32</b>
5.1	RFQ & Selection of Consultant	COMPLETED	COMPLETED
5.2	Preliminary Design of Mill Creek Interceptor	COMPLETED	COMPLETED
<b>5.3</b>	<b>Final Design of Mill Creek Interceptor (Part I &amp; II)</b>	<b>9/3/24</b>	<b>2/28/25</b>
<b>5.4</b>	<b>MCI Part I &amp; II</b>	<b>3/1/25</b>	<b>5/29/28</b>
5.4.1	Agency Review & Approval	3/1/25	6/29/25
5.4.2	Bidding, Award, & Financing	6/30/25	12/27/25
<b>5.4.3</b>	<b>Initiation of Construction MCI Part I &amp; II</b>	<b>1/31/26</b>	<b>1/31/26</b>
5.4.4	Construction	1/31/26	5/29/28
<b>5.4.5</b>	<b>Completion &amp; Placement in Service Part I &amp; II</b>	<b>5/29/28</b>	<b>5/29/28</b>
<b>5.4.6</b>	<b>Final Design of Mill Creek Interceptor (Part III &amp; IV)</b>	<b>12/28/25</b>	<b>6/23/27</b>
<b>5.5</b>	<b>MCI Part III</b>	<b>6/24/27</b>	<b>4/18/31</b>
5.5.1	Agency Review & Approval	6/24/27	10/22/27
5.5.2	Bidding, Award, & Financing	10/23/27	4/22/28
<b>5.5.3</b>	<b>Initiation of Construction MCI Part III</b>	<b>4/23/28</b>	<b>4/23/28</b>
5.5.4	Construction	4/23/28	4/18/31
<b>5.5.5</b>	<b>Completion &amp; Placement in Service Part III</b>	<b>4/18/31</b>	<b>4/18/31</b>
<b>5.6</b>	<b>MCI Part IV</b>	<b>11/1/29</b>	<b>9/29/32</b>
5.6.1	Agency Review & Approval	11/1/29	3/1/30
5.6.2	Bidding, Award, & Financing	3/2/30	8/30/30

<b>5.6.3</b>	<b>Initiation of Construction MCI Part IV</b>	<b>8/31/30</b>	<b>8/31/30</b>
5.6.4	Construction	8/31/30	9/29/32
<b>5.6.5</b>	<b>Completion &amp; Placement in Service Part IV</b>	<b>9/29/32</b>	<b>9/29/32</b>
<b>6</b>	<b>Submission of Post Construction Monitoring Program Report to EPA and OEPA</b>	<b>9/30/32</b>	<b>10/3/34</b>
<b>7</b>	<b>Submission of LTCP Phase 2 Financial Capabilities Assessment to EPA and OEPA</b>	<b>10/1/32</b>	<b>5/1/33</b>
<b>8</b>	<b>Submission of LTCP Phase 2 Project Considerations to EPA and OEPA</b>	<b>11/1/34</b>	<b>10/1/35</b>

**Revised Implementation Schedule Definitions:**

- “Initiate Construction” means Youngstown’s issuance of a notice to proceed to start construction work under a contract for the construction, or a portion of the construction, of the project.
- “Agency Review & Approval” refers to Ohio EPA approval of a Permit to Install or Plan Approval application for the respective project pursuant to O.A.C. Chapter 3745-42.