

US EPA ARCHIVE DOCUMENT

Appendix B

Summary of Changes to WWIP

On March 25, 2009, the Defendants proposed a Revised Wet Weather Improvement Program (March 2009 Revised WWIP). The Regulators reviewed the March 2009 Revised WWIP and Sierra Club's April 22, 2009, comments on that proposal. Based upon that review and Sierra Club's comments, the Regulators requested that Defendants make a number of changes to the March 2009 Revised WWIP, which they did, resulting in the Final Wet Weather Improvement Program (Final WWIP) that was submitted to the Regulators on June 4, 2009. The following is a summary of most of the substantive changes that were made from the March 2009 Revised WWIP.

1. The second introductory paragraph in the Final WWIP includes a sentence indicating that the "Final WWIP is proposed on the condition that" the consent decrees in this case are modified in various respects to conform to the Final WWIP. The March 2009 Revised WWIP contained no such statement.
2. The schedule for implementation of the Phase 1 projects was compressed by one year in the Final WWIP (with a new end date for substantial completion of construction of December 31, 2018) from the schedule in the March 2009 Revised WWIP. The Phase 1 measures also include \$15 million in additional measures from what had been included in Phase 1 in the March 2009 Revised WWIP.
3. Section A.2.a in the Final WWIP includes a provision that clarifies that the Revised Original Lower Mill Creek Partial Remedy described in Section A.1.2.a must be completed by the Phase 1 End Date.
4. A number of new or revised provisions were added to the Final WWIP addressing a variety of issues pertaining to the Permit to Install process associated with the Enhanced High Rate Treatment facilities set forth in the Final WWIP. These provisions are in Sections A.2.b, A.2.d, A.2.4, and B.6.
5. The LMCPR schedule extension provision that had previously allowed requests for schedule extensions beyond 2 years whenever "necessary" has been narrowed in Section A.2.c of the Final WWIP to only apply when the projected costs of the LMCPR exceed \$350 million.
6. A new Section A.3 has been added in the Final WWIP pertaining to studying and developing the SSO 700 Final Remedial Plan.
7. The date for submission of a proposed Phase 2 schedule was moved up to June 30, 2017.

8. A new provision has been added in Section B.1.a of the Final WWIP allowing the Regulators authority to impose a Phase 2 schedule if Defendants fail to propose one by August 31, 2017.
9. Section B.1.b in the Final WWIP clarifies that Phase 2 can only be divided into two subparts, unless Defendants can demonstrate that additional subparts are “necessary to avoid severe financial hardship.”
10. Section B.1.c in the Final WWIP specifies additional requirements that would apply in the Phase 2 scheduling process if Defendants choose to propose breaking Phase 2 into subparts.
11. Section B.2 in the Final WWIP includes language clarifying that the 2.8% MHI outer boundary cap does not relieve the Defendants of the obligation to complete all the projects necessary to come into compliance.
12. Section B.5 clarifies that any proposal for a different project or projects for the Lower Mill Creek Final Remedy (LMCFR) must provide equal or greater control of CSO annual volumes (which was also a requirements in the March 2009 Revised WWIP) and also must be capable of being completed in a comparable timeframe to the LMCFR (which was not clearly stated in the March 2009 Revised WWIP).
13. The Bond Covenant provision in Section C.1 of the Final WWIP has been tightened from the comparable provision in the March 2009 Revised WWIP, so that the provision in the first sentence only pertains to existing bond covenants.
14. The Adaptive Plan provisions in Section C.2 have been revised to address the Regulators’ ability to review and approve or disapprove changes to the projects, project bundles, and Performance and Design Criteria.
15. New provisions have been added as Section C.4 of the Final WWIP governing review and approval of submissions and dispute resolution.
16. Section C.6 provides additional information and description of Defendants’ Allowance programs.
17. The Attachments have been substantially revised to, among other things, include Design and Performance Criteria.