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

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

Plaintiffs,

v.

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

Defendants.

Civil Action No. C-1-02-107
Judge S. Arthur Spiegel

REVISED FIRST AMENDMENT TO THE CONSENT DECREES

WHEREAS:

On July 28, 2009, 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, "Regulators") and the Board of County Commissioners of Hamilton County, Ohio, and the City of Cincinnati (collectively, "Defendants") lodged with this Court a proposed First Amendment to the Consent Decrees (Doc. 365-2), which would amend certain paragraphs of the Interim Partial Consent Decree on Sanitary Sewer Overflows and the Consent Decree on Combined Sewer Overflows, Wastewater Treatment Plants and

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Implementation of Capacity Assurance Program Plan for Sanitary Sewer Overflows that were entered by this Court on June 9, 2004. (Doc 129, entering Docs. 56 and 116.) The proposed First Amendment provided significant background on the need for the amendment as well as the text of the proposed revisions that would be made to the Consent Decrees. In brief, the amendments are necessary to conform the Consent Decrees to a revised scheduling approach that is incorporated in the Defendants' Wet Weather Improvement Program ("WWIP"), which was conditionally approved by the Plaintiffs on June 5, 2009. (See Doc. 355, Notice of Conditional Approval of Final WWIP by the United States, Ohio, and ORSANCO, June 8, 2009.) This approval was conditioned upon the Court's entry of the lodged First Amendment to the Consent Decrees.

The Department of Justice published notice of the amendment in the Federal Register and solicited public comment on the proposed amendment. See 74 Fed. Reg. 38,471 (Aug. 3, 2009). One set of public comments was received. That set of comments was from Intervenor Sierra Club, which also filed notice of its comments with the Court. (Doc. 371, Sept. 4, 2009).

The Sierra Club's comments prompted the Parties to make certain clarifications to the WWIP. On November 9, 2009, the Defendants submitted the revised Final WWIP to the Regulators for their approval and provided Sierra Club with a copy. Sierra Club filed additional comments on November 23, 2009. See Doc. 395. On December 14, 2009, Defendants submitted two revised pages for the Final WWIP. On January 6, 2010, the Regulators conditionally approved the revised Final WWIP. Again, this approval is conditioned on the Court's approval of conforming amendments to the Consent Decrees.

There are no substantive changes to the proposed First Amendment to the Consent

Decrees that are needed due to the changes made to the WWIP. However, the text in proposed amended Paragraph IX.B recites certain background, which is now inaccurate because of the changes made to the June 2009 WWIP and the Regulators' conditional approval of the revised Final WWIP on January 6, 2010. The Parties have revised the text as follows:

"B. Schedule for Implementation of WWIP

~~On June 4, 2009, Defendants submitted the Final Wet Weather Improvement Program (Final WWIP), which has been approved by the United States/State/ORSANCO. 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 June 30, 2017, 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 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."

This is the only change that the Parties have made to the revised Consent Decree language lodged with the Court on July 28, 2009. The proposed modifications in their entirety are as follows:

NOW, THEREFORE, upon consent of the Parties hereto, 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 certain paragraphs are revised as set forth below, which revisions shall become effective upon entry of this First Amendment to the Consent Decree by the Court.

2. For all CSO and SSO Consent Decree requirements applicable after Defendants' initial submission of the June 2006 WWIP (which submission was intended to fulfill in one document the Consent Decrees' requirements for the Long Term Control Plan Update and the Capacity Assurance Program Plan), the term "Wet Weather Improvement Program" or "WWIP" shall be substituted for the terms "Long Term Control Plan Update" and "Capacity Assurance Program Plan" as they are used in the Consent Decrees.

3. Paragraph IX.B of the CSO Decree is hereby deleted and replaced by the following:

"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 June 30, 2017, 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 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.”

4. Paragraph XVII.C.2 of the CSO Decree is hereby revised to add the following submittals as additional “critical path submittals,” subject to the stipulated penalties of

Subparagraph XVII.C.1:

- Proposed schedule(s) submitted pursuant to the Final WWIP for any phases after Phase 1
- LMCPR Study Report required in Paragraph A.2.a of the Final WWIP.

5. Paragraph XVII.C.2 of the CSO Decree is hereby revised to delete the second and third bullets setting forth “critical milestone” deadlines subject to the stipulated penalties of Subparagraph XVII.C.1 concerning the LTCPU and CAPP, respectively, and replace them with a single bullet setting forth “critical milestone” deadlines applicable to the Final WWIP:

- the “critical construction milestones”: a) contained in Attachment 1A to the Final WWIP; b) later submitted and approved pursuant to the Final WWIP; or c) later submitted and approved pursuant to any Addendum to

the Final WWIP (submitted pursuant to ¶ VII.B or ¶ VII.C of this Consent Decree).

6. Paragraph VI.C.3 of the SSO Decree is hereby deleted and replaced with the following:

“3. Defendants shall submit to U.S. EPA/Ohio EPA/ORSANCO an SSO 700 Remedial Plan by December 31, 2012. The SSO 700 Remedial Plan shall set out a plan for installation of remedial measures that have the goal of eliminating SSOs from SSO 700. The SSO 700 Remedial Plan shall consider information arising from the evaluation of the effectiveness of the SSO 700 Interim Remedial Measures, the Lower Mill Creek Study being conducted pursuant to Paragraph A.2.a of the Final WWIP, examination of the potential use of green measures, RDI/I work upstream of SSO 700, and other factors. The SSO 700 Remedial Plan shall also include a detailed technical description of the proposed remedial measures, estimated costs (capital, annual operation and maintenance (O&M) and either present value or annualized costs), and information regarding the expected performance of the proposed SSO 700 remedial measures (including the expected performance of the measures during storms of various sizes and the maximum storm that the measures can be expected to capture or otherwise address). In addition, the Plan shall indicate whether the CEHRS and Storage Facility will remain in operation after construction of the proposed SSO 700 remedial measures, and if so, in what capacity and with what expected performance results. The SSO 700 Remedial Plan need not include a

schedule for implementation of the proposed remedial measures. Rather, the schedule for design and construction of the proposed remedial measures shall be submitted to the United States/State/ORSANCO in accordance with Paragraph A.3 and the Phase 2 schedule requirements set forth in Paragraph B.1 of the Final WWIP. This schedule shall: a) include critical construction milestones, including, at a minimum, deadlines for submission of a Permit to Install; commencement of construction, and completion of construction; and b) be as expeditious as practicable.”

7. Exhibit 1 of the CSO Consent Decree is hereby revised to delete the Capital Improvement Projects designated for East Branch Muddy Creek (addressing CSO numbers 223, 408, 410-416, 541, and 654) and for Eastern and Delta Sewer Separation (addressing CSO numbers 467, 468, 469, and 657). Instead, the East Branch Muddy Bundle of projects (defined in Attachments 1B and 2 of the Final WWIP to include project numbers 10130780, 10130840, 10131000, 10131002, 10131003 10131004, 10131006 and 10131140) and the Eastern and Delta Bundle of projects (defined in Attachment 1B of the Final WWIP to include project numbers 10171980, 10171920 and 10171900) are to be governed by the provisions of the Final WWIP. In addition to certain technical changes to the projects, the deadline for substantial completion of construction for the Eastern and Delta Bundle of projects is revised to be December 31, 2015, and the East Branch Muddy Bundle of projects will be scheduled as part of the Phase 2 scheduling process.

This Revised First Amendment to the Consent Decrees is entered and approved this

23rd day of August, 2010.

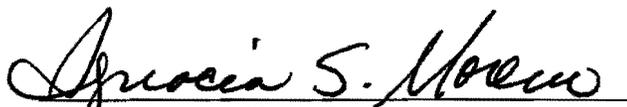


S. ARTHUR SPIEGEL
Senior United States District Judge
United States District Court
Southern District of Ohio

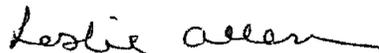
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FOR THE UNITED STATES OF AMERICA:



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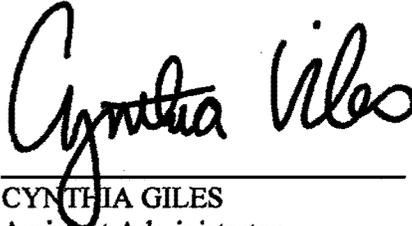
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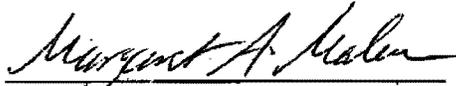

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FOR OHIO RIVER VALLEY WATER
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107

FOR BOARD OF COUNTY COMMISSIONERS
OF HAMILTON COUNTY, OHIO

By: 
PATRICK J. THOMPSON
COUNTY ADMINISTRATOR

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FOR CITY OF CINCINNATI, OHIO

By: 
MILTON R. DOHONEY, JR.
CITY MANAGER

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