

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

UNITED STATES OF AMERICA,)
)
 and)
)
 THE STATE OF INDIANA,)
)
 Plaintiffs,)
)
 v.)
)
 THE CITY OF INDIANAPOLIS,)
 INDIANA, A Municipal)
 Corporation,)
)
 Defendant.)
 _____)

Civil Action No. 1:06-cv-1456
Judge David F. Hamilton

FIRST AMENDMENT TO 2006 CONSENT DECREE

WHEREAS, the Court entered a Consent Decree in this matter on December 19, 2006 (“2006 Consent Decree”). That Consent Decree requires, among other things, that the City of Indianapolis (“City” or “Indianapolis”) perform certain activities and construct certain Combined Sewer Overflow (“CSO”) Control Measures in accordance with the Descriptions, Design Criteria, and dates for Completion of the Bidding Process and Achievement of Full Operation for each CSO Control Measure set forth in Table 7-5 of Section 7 of the City’s Long Term Control Plan, attached to the 2006 Consent Decree at Exhibit 1 (hereinafter “Exhibit 1”)

WHEREAS, CSO Control Measure 16, as set forth in the 2006 Consent Decree, requires the City to construct a shallow interceptor sewer with a peak diversion of 150 million gallons per day of CSO flow to the Southport advanced wastewater treatment plant. However, Plaintiffs United States and the State of Indiana, together with the City (the “Parties”), have agreed that CSO Control Measure 16 should be modified to require Indianapolis to undertake construction

of a conveyance and storage tunnel that would be constructed approximately 200 feet below ground (the "Deep Rock Tunnel Connector"). The entire Deep Rock Tunnel Connector would provide a minimum storage volume of 54 million gallons and a minimum peak conveyance and dewatering capacity of 150 million gallons per day of CSO flow to the Southport advanced wastewater treatment plant. The project, as modified, would also provide for connection of CSO Outfall 008 to the Deep Rock Tunnel Connector as well as other associated measures.

WHEREAS, the Parties agree that the Deep Rock Tunnel Connector will increase storage capacity and thereby improve the City's ability to control CSOs. Further, constructing the Deep Rock Tunnel Connector and connecting CSO Outfall 008 to the connector will enable the City to capture discharges from CSO Outfall 008 three and one-half years earlier than otherwise prescribed by the current scope of the Consent Decree (via the construction of Control Measure 25 by 2019). Historically, CSO Outfall 008 has been the outfall in Indianapolis with the greatest volume of untreated CSO discharges on an annual basis.

WHEREAS, the Parties anticipate that it will take Indianapolis approximately three and one-half years longer to construct the Deep Rock Tunnel Connector and associated measures than it would have taken to construct the shallow interceptor sewer. However, the parties concur that allowing the City this additional amount of time to implement this element of its Long Term Control Plan is warranted by the long-term environmental benefits that are expected to accrue from the increase in storage capacity that would be realized through construction of the Deep Rock Tunnel Connector, and from the benefits of capturing discharges from CSO Outfall 008 three and one-half years earlier than was previously anticipated.

WHEREAS, the Parties believe that a modification of the 2006 Consent Decree would be the most efficient means of achieving the remedy change proposed above. To that end, the

Parties propose to modify Exhibit 1 to the 2006 Consent Decree by substituting a new Exhibit 1, which would modify the requirements pertaining to CSO Control Measures 16, 27, and 28. The modifications to Control Measures 27 and 28 are merely conforming modifications that are necessitated by the proposed modifications to CSO Control Measure 16. The new Exhibit 1 is attached hereto.

WHEREAS, the proposed modifications to Exhibit 1 are set forth in italics in the following tables. The text of footnote numbers 7 and 8, which appear at the end of both the original and the proposed modified versions of the table in Exhibit 1, is unchanged by this proposed modification. As such, the text of those footnotes is not reprinted in the following summary tables.

1. Proposed Modification of CSO Control Measure No. 16:

(Table 7-5; Exhibit 1 to 2006 Consent Decree) (proposed modifications in italics)

	CSO Control Measure	Description	Design Criteria	Performance Criteria	Critical Milestones	
Original	16	Interplant Connection	Interceptor originating near CSO 117 and terminating near the headworks of the Southport facility &/	Peak Diversion of 150 MGD CSO flow to Southport	Deliver flow from White River Tunnel to Southport AWT plant	Bid Year - 2008 Achievement of Full Operation - 2012
Proposed Modification	16	<i>Deep Rock Tunnel Connector, Deep Tunnel Pumping Station and Screening Facilities, and Connection of CSO 008 to the Deep Rock Tunnel Connector</i>	<i>Deep rock tunnel originating near CSO 117 and terminating near the headworks of the Southport facility, &/ deep tunnel pumping station and screening facilities located near the Southport treatment facility, and structures necessary to tie CSO 008 flows into the Deep Rock Tunnel Connector</i>	<i>Provide a minimum storage volume of 54 MG within the entire Tunnel Connector project and a minimum peak conveyance and dewatering capacity of 150 MGD CSO flow to Southport</i>	<i>Maximize delivery of flow from White River Tunnel to Southport AWT Plant. Optimize capture of CSO 008 and CSO 117</i>	<i>Bid Year - May 31, 2011 Achievement of Full Operation - May 31, 2016</i>

2. Proposed Modification to CSO Control Measure No. 27:

(Table 7-5; Exhibit 1 to 2006 Consent Decree) (proposed modifications in italics)

	CSO Control Measure		Description	Design Criteria	Performance Criteria	Critical Milestones
Original	27	Southport Advanced Wastewater Treatment Plant Improvements -- CSO Pump Station	New pump station for additional dewatering of captured CSO from the Interplant Connection	Additional 75 MGD for routing to Enhanced High Rate Clarifiers (EHRC)	When incorporated with the rest of the Southport improvements, facility complies with current NPDES permit	Bid Year 2022 Achievement of Full Operation - 2025
Proposed Modification	27	Southport Advanced Wastewater Treatment Plant Improvements -- CSO Pump Station	New pump station for additional dewatering of captured CSO from <i>the Deep Rock Tunnel Connector</i>	Additional 75 MGD for routing to Enhanced High Rate Clarifiers (EHRC)	When incorporated with the rest of the Southport improvements, facility complies with current NPDES permit	Bid Year 2022 Achievement of Full Operation - 2025

3. Proposed Modification to CSO Control Measure No. 28:

(Table 7-5; Exhibit 1 to 2006 Consent Decree) (proposed modifications in italics)

	CSO Control Measure		Description	Design Criteria	Performance Criteria	Critical Milestones
Original	28	Southport Advanced Wastewater Treatment Plant Improvements EHRC Facility <u>7</u>	New enhanced high rate clarifiers, and new process/yard piping	Additional 75 MGD EHRC treatment for dewatering of captured CSO from the Interplant Connection	When incorporated with the rest of the Southport improvements, facility complies with current NPDES permit	Bid Year 2022 Achievement of Full Operation - 2025
Proposed Modification	28	Southport Advanced Wastewater Treatment Plant Improvements EHRC Facility <u>7</u>	New enhanced high rate clarifiers, and new process/yard piping	Additional 75 MGD EHRC treatment for dewatering of captured CSO from <i>the Deep Rock Tunnel Connector</i>	When incorporated with the rest of the Southport improvements, facility complies with current NPDES permit	Bid Year 2022 Achievement of Full Operation - 2025

NOW, THEREFORE, it is hereby ORDERED:

1. The attached Exhibit 1 supersedes Exhibit 1 to the 2006 Consent Decree. All references to "Exhibit 1" in the 2006 Consent Decree hereafter shall refer to the attached Exhibit 1.


2. This proposed First Amendment to 2006 Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days, for public notice and comment in accordance with the provisions of 28 C.F.R. § 50.7. The United States reserves the right to withdraw or

withhold its consent if the comments received disclose facts or considerations which indicate that this First Amendment to 2006 Consent Decree is inappropriate, improper or inadequate. Indianapolis hereby agrees not to withdraw from, oppose entry of, or to challenge any provision of this First Amendment to 2006 Consent Decree, unless the United States has notified Indianapolis in writing that it no longer supports entry of the First Amendment to 2006 Consent Decree.

3. The Acting Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice, on behalf of the United States, the Indiana Assistant Attorney General signing this First Amendment to 2006 Consent Decree on behalf of Indiana, and the undersigned representative of Indianapolis each certifies that he or she is authorized to enter into the terms and conditions of this First Amendment to Consent Decree and to execute and bind legally such Party to this document.

4. The Court finds there is no just reason for delay and therefore enters this First Amendment to Consent Decree.

SO ORDERED this 23rd day of April, 2009.

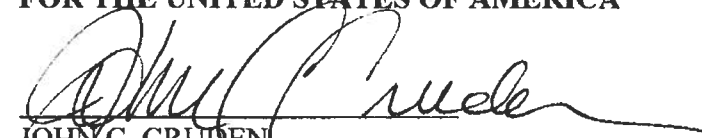


DAVID F. HAMILTON, CHIEF JUDGE
United States District Court
Southern District of Indiana

The UNDERSIGNED PARTY hereby consents to the First Amendment to Consent Decree in the matter of United States and State of Indiana v. City of Indianapolis, No. 1:06-cv-1456.

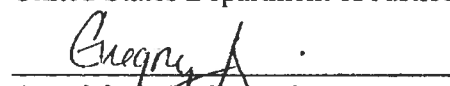
FOR THE UNITED STATES OF AMERICA

Date: 3/5/09



JOHN C. CRUDEN
Acting Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice


Date: 3/9/09



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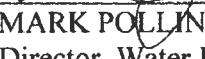
Date: 3/9/09


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**FOR THE UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY**

Date: 2/27/09




MARK POLLINS
Director, Water Enforcement Division
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460


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**FOR THE UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY**

Date: 1/15/09


LYNN BUHL
Regional Administrator
U.S. EPA Region 5

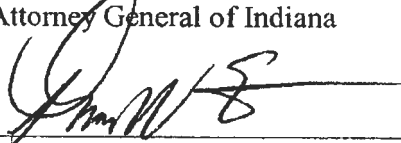
Date: 1/7/09


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FOR THE STATE OF INDIANA

STEVE CARTER
Attorney General of Indiana



Date: DECEMBER 12, 2008

THOMAS W. EASTERLY
Commissioner
Indiana Department of Environmental
Management
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Date: December 19, 2008

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Date: 12/4/08

FOR THE CITY OF INDIANAPOLIS, INDIANA



DAVID R. SHERMAN

Director

Department of Public Works

City of Indianapolis

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Date: 12/4/08



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