

16 of 6/09/11

AGENDA ITEM NUMBER: 44 – Proposed Ord. No. 170-11

NAME OF PROJECT: Authorization for execution of a federal consent decree with the United States of America, acting at the request and on behalf of the United States Environmental Protection Agency (“EPA”), and the Missouri Coalition for the Environment (the “Coalition”) to settle all alleged claims by the Plaintiffs and requiring improvements in the District’s separate and combined sewer system and wastewater treatment plants.

LOCATION: The entire Metropolitan St. Louis Sewer District service area

TYPE OF PROJECT: N/A

DEPARTMENT REQUESTING ACTION: General Counsel

REQUESTED ACTION:

Why is this action necessary?: To resolve claims made in the legal action filed against the District by the United States, the State of Missouri, by the authority of the Missouri Attorney General, acting at the request and on behalf of the Missouri Department of Natural Resources (“MDNR”), and the Coalition for alleged violations of the Clean Water Act.

What does action accomplish?: Board authorization will allow the District to execute a consent decree with the United States and the Coalition for the Environment, which will settle alleged violations of the Clean Water Act made by the Plaintiffs and provide a schedule for implementation of various system improvements and programs.

SUMMARY EXPLANATION/BACKGROUND:

Contractor: N/A

Previous District Contract: N/A

Consultant: N/A

Agency: N/A

Number of bidders: N/A

Low Bid: N/A

High Bid: N/A

Appropriation Amount: N/A

District’s Estimate: N/A

MBE/WBE Participation: N/A

Plan Approval Date: N/A

Type of Contract: Federal Consent Decree

Properties Affected: N/A

Properties Benefiting: N/A

Designed by: N/A

The United States of America and the State of Missouri filed a civil action against the District on June 11, 2007 that alleged the District had been in violation of the Clean Water Act by discharging untreated sewage from its collection system through combined sewer overflows and constructed sanitary sewer overflows. The Plaintiffs also made allegations that the District was in violation of conditions established in the National Pollutant Discharge Elimination System (“NPDES”) permits issued to MSD by MDNR. The Coalition intervened in this action in 2007. All of the parties to the action have engaged in extensive mediation of the matters at issue in settlement of all allegations made by the Plaintiffs in this action. The representatives of the District, the United States, and the Coalition have negotiated the terms and language of the Consent Decree which would resolve all allegations of the Complaints. The Consent Decree will still need to be approved by the appropriate officials of the Parties. The State of Missouri has decided, after joining the action as a Plaintiff and participating in the extensive mediation in cooperation with the Plaintiff’s for almost four years, not to sign the Consent Decree.

Major federal consent decree components:

1. The Consent Decree will have an implementation schedule of 23 years from the date of approval by the State of Missouri of the CSO Long Term Control Plan, which addresses sewer overflows and other issues in the combined sanitary sewer system. For the work in the sanitary and combined collection system and in the wastewater treatment plants, the District estimates its cost of complying with the Consent Decree at \$4.7 billion in 2011 dollars.
2. Early Elimination Projects - Requires the completion of sanitary sewer projects that will allow for the elimination of 50 specific constructed Sanitary Sewer Overflow ("SSO") Outfalls within the sanitary sewer system by December 31, 2012.
3. SSO Master Plan – Requires the submission of an SSO Master Plan that includes an extensive SSES (Sewer System Evaluation Survey), Hydraulic Modeling, and Capacity Analysis of the Sanitary Sewer System. The Master Plan will identify Remedial Measures and Elimination Projects aimed at removing all constructed SSO Outfalls, known SSOs, WWTP bypassing within the Sanitary Sewer System, and reducing reoccurring Building Backups. MSD must submit this plan no later than December 31, 2013.
4. Remedial Measures – Requires the completion of the Remedial Measures and Elimination projects identified in the SSO Master Plan in accordance with the schedule provided therein, which includes the removal of 85% of the constructed SSO Outfalls, and the goals of eliminating all other known SSOs by no later than December 31, 2023, and all remaining constructed SSO Outfalls by December 31, 2033.
5. CMOM Program – Requires the District continue its development and implementation of a CMOM Program (Capacity, Management, Operations, and Maintenance) that includes detailed performance goals for the prioritization, cleaning, inspection, and rehabilitation of the entire sewer system. Program also includes continued implementation of MSD FOG (Fat's Oils, and Grease) Program, the development and implementation of Private Inflow and Infiltration Reduction Program, Building Backup Response Plan, and a Non-Capacity Related SSO Response Plan. The CMOM Program is aimed at preventing overflows and building backups from the system.
6. Cityshed Mitigation Program – Requires the commitment of a regular annual program to mitigate the effects of wet weather surcharging and overland flooding of the combined sewer system (Citysheds), with an anticipated expenditure of \$230 Million over the life of the consent decree.
7. Combined Sewer Overflow (CSO) Long Term Control Plan (LTCP) – Requires the construction and implementation of CSO Control Measures in accordance with the requirements and schedule set forth in the approved CSO LTCP and consent decree. On June 1, 2011, the State of Missouri approved Chapter 11 "Selected Plan", Chapter 12 "Green Infrastructure Program", and Appendix Q "MSD's Green Infrastructure Program" of the Metropolitan St. Louis Sewer District's Combined Sewer Overflow Long-Term Control Plan Update Report, dated February 2011. The projects in the LTCP will be completed 23 years after the LTCP approval by the State of Missouri.
8. CSO Post Construction Monitoring Program – Upon completion of CSO Control Measures, requires the implementation of a Post Construction Monitoring Program to validate performance of CSO Control Measures as set forth in the approved CSO LTCP and CD.
9. CSO Green Infrastructure Program – As part of the approved CSO LTCP, this program includes the commitment of \$100 Million to implement a Green Infrastructure Program that will include a five-year pilot program, which will be aimed at using green infrastructure to reduce combined sewer overflow volumes in the combined sewer areas in both St. Louis City and St. Louis County and impact the CSO overflows into the Mississippi River.
10. Consent Decree Reporting – Requires significant and continuous detailed reporting and transparency on all activities identified above, as well as reporting on progress in achieving the overall goals of the consent decree in eliminating and reducing sewer system overflows within the District. The annual reports will be made available on the MSD website.
11. Supplemental Environmental Project (SEP) – To offset civil penalties, the District will spend \$1.6 million dollars for a SEP program in which the District will implement a Sewer Connection & Septic Tank Closure Program for low-income residents. This program will include 1) the installation of a sewer service line (i.e. lateral) and public sewer line if needed to the homes of participating property owners, removal as needed of their septic tank from operation and 2) the replacement, rehabilitation, or repair as necessary of private lateral lines. MSD must complete the SEP within five years of the effective date of the consent decree.

