

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

|                            |   |                    |
|----------------------------|---|--------------------|
| UNITED STATES OF AMERICA,  | ) |                    |
| et al.,                    | ) |                    |
|                            | ) |                    |
| Plaintiffs,                | ) |                    |
|                            | ) | No. 4:07CV1120 HEA |
| v.                         | ) |                    |
|                            | ) |                    |
| THE METROPOLITAN ST. LOUIS | ) |                    |
| SEWER DISTRICT et al.,     | ) |                    |
|                            | ) |                    |
| Defendants                 | ) |                    |
|                            | ) |                    |

**SECOND MATERIAL AMENDMENT TO CONSENT DECREE**

**WHEREAS**, the United States of America (“United States”), the Missouri Coalition for the Environment Foundation (“Coalition”), and the Metropolitan St. Louis Sewer District’s (“MSD”) (collectively “Parties”) are parties to a Clean Water Act (“CWA”) Consent Decree entered by this Court on April 27, 2012 (Dkt. #159) and subsequently modified by non-material modifications, Dkt ##161 and 165, and (first) material amendment at Dkt. #164;

**WHEREAS**, the Consent Decree requires, among other things, that MSD construct and implement certain CSO Control Measures in accordance with the descriptions, design and performance criteria, and the dates for bid year and achievement of full operation for each CSO Control Measure set forth in Appendix D to the Consent Decree;

**WHEREAS**, the Consent Decree requires that MSD construct (1) a CSO storage tunnel, Upper River Des Peres Storage Tunnel Serving Lemay Outfalls 064, 066 to 096, 099 to 102, 167,

178 and 180, providing 30 million gallons of storage and resulting in no more than 94 million gallons of untreated overflow during four or less overflow events in a typical year, and achieving full operation by June 30, 2034, (2) a CSO storage tunnel, River Des Peres Tributaries Storage Tunnel Serving Lemay CSO Outfalls 103, 104, 105, 106, 111, 117 to 128, 130, 131, 134, 136 to 140, 166 and 176, providing 28 million gallons of storage and resulting in four or less overflow events in a typical year, and achieving full operation by June 30, 2030, (3) a CSO treatment unit with 100 million gallons per day capacity providing equivalent of primary clarification, solids/floatables disposal, and disinfection and resulting in four or less overflow events in a typical year, and achieving full operation by December 31, 2030 and (4) a CSO storage tunnel, Lower & Middle River Des Peres Storage Tunnel Serving Lemay CSO Outfalls 008 to 032, 036, 037, 039, 041 to 044, 048, 050, 052, 053, 054, 057, 058, 061, 063, 163, 170 to 173, and 181 providing 231 million gallons of storage and resulting in no more than 1,412 million gallons of untreated overflow during four or less overflow events in a typical year and achieving full operation by December 31, 2030. See Appendix D, Consent Decree, as modified by Second Agreed Non-Material Consent Decree Modification, Dkt. #165, at ¶ 1.b. However, the Parties have agreed to extend the critical milestones, including bid years and the achievement of full operation, for each of these storage tunnels and treatment unit by an additional three to seven years, as set forth in the revised Appendix D below (hereafter “Proposed Amendment”). The final date for achievement of full operation for all CSO Control Measures called for in the Consent Decree will be extended by five years from June 30, 2034 to June 30, 2039;

**WHEREAS**, the Parties agree that this Proposed Amendment is necessary because MSD currently incinerates 68,000 tons of sewage sludge annually, utilizing multiple hearth incinerators. The Federal Plan Requirements for Sewage Sludge Incineration Units Constructed on or before October 14, 2010, set forth at 40 C.F.R. Part 62, Subpart LLL (“SSI Rule”), issued by EPA in 2016, require MSD to replace its multiple hearth incinerators. The replacement of these incinerators will occur in fiscal years 2021 – 2026 timeframe and is estimated to cost approximately \$360 million in 2017 dollars. These incinerator improvements were not scheduled to be expended in the fiscal years 2021 – 2026 and have placed an additional financial burden on MSD ratepayers. By the end of fiscal year 2020, the MSD ratepayers will have experienced rate increases of 10% or more, on average, for the last 8 years. The requirements imposed by the 2016 SSI Rule will cause the ratepayers to experience even higher rate increases because the work will have to be done at or around the same time as the peak of the Consent Decree program.

EPA considered the projected residential indicator when evaluating this request by MSD to amend the Consent Decree. The residential indicator assesses the impact of projected costs on the median residential household by measuring the average cost of wastewater bills relative to median household income in the service area to help determine the financial capability of an entity to implement the necessary control measures. EPA’s “Combined Sewer Overflows - Guidance for Financial Capability Assessment and Schedule Development” provides that a residential indicator greater than 2% signals a “High” financial impact on residents, meaning that the community is likely to experience economic hardship in complying with the federal water standards. This Proposed Amendment will allow the MSD ratepayers to experience single digit rate increases for the

remainder of the Consent Decree program while allowing the projected residential indicator in the City of St. Louis to remain below 2.5% at least until fiscal year 2028 and possibly through the life of the Consent Decree program. Without the Proposed Amendment, the residential indicator in the City of St. Louis is expected to exceed 2.8% by fiscal year 2030. The residential indicator for the entire District is expected to stay below 1.8% with this amendment, whereas it is expected to peak near 2.0% without the Proposed Amendment.

**WHEREAS**, the Parties also agree that MSD will construct and implement the following additional CSO Control Measure: Green Infrastructure in Lemay Service Area to capture runoff from existing or future impervious areas on properties and, if possible, adjacent impervious streets and alleys, to a designed drainage area of at least 80 acres to reduce untreated overflow volume to the River Des Peres during the typical year by at least 8 million gallons, with at least a minimum expenditure of \$20 million for the River Des Peres CSOs;

**WHEREAS**, this additional CSO Control Measure – Green Infrastructure in the Lemay Service Area - will reduce an additional 8 million gallons of CSO discharges per year from entering the River Des Peres. Acceleration of the schedule for the sewage sludge incinerator improvements will result in a reduction of approximately 2,109 tons of air emissions each year;

**WHEREAS**, Paragraph 60 of the Consent Decree provides that if MSD experiences adverse changes to its financial circumstances or other financial or budgetary issues, MSD may request a modification of a CSO Control Measure and/or CSO Critical Milestone in this Consent Decree and Appendix D;

**WHEREAS**, Paragraph 136 of the Consent Decree provides that the Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all Parties. Where the modification constitutes a material change to the Consent Decree, the modification shall be effective only upon approval by the Court;

**WHEREAS**, the Parties have agreed, pursuant to Paragraph 136 of the Consent Decree, to this Proposed Amendment to the Consent Decree;

**WHEREAS**, this Proposed Amendment made herein constitutes a material change to the Consent Decree, requiring Court approval under Paragraph 136 of the Consent Decree; and

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

**NOW THEREFORE**, with the consent of the Parties, **IT IS HEREBY ADJUDGED, ORDERED, AND DECREED** as follows:

1. Except as specifically modified herein and by non-material modifications, Dkt. ##161 and 165, and (first) material amendment, Dkt. #164, all provisions of the Consent Decree entered by the Court on April 27, 2012 (Dkt. #159) shall remain unchanged and in full force and effect.

2. The CSO Control Measures for Upper River Des Peres Storage Tunnel, River Des Peres Tributaries Storage Tunnel, CSO Treatment Unit, and Lower & Middle River Des Peres Storage Tunnel as set forth at pages 3, 5, and 6 of Appendix D of the Consent Decree shall be amended as follows (deletions are indicated in strikeout text and additions are indicated in bold and italicized text):

| <b>CSO Control Measure</b>  | <b>Description</b>  | <b>Design Criteria</b>   | <b>Performance Criteria</b>  | <b>Critical Milestones</b>  |
|---|---|--|--|---|
| Upper River Des Peres Storage Tunnel serving Lemay Outfalls 064, 066 to 096, 099 to 102, 167, 178 and 180   | Deep storage tunnel, near-surface facilities, pump station, sewer separation and consolidation sewers         | Provide storage volume of 30 million gallons in deep tunnel system to capture flows from Lemay CSO Outfalls 064, 066 to 096, 099 to 102, 167, 178 and 180  | When incorporated with other River Des Peres CSO controls, reduce overflows to 4 events or less, and 94 million gallons of untreated overflow volume in the typical year <sup>(1)</sup>  | <ul style="list-style-type: none"> <li>• Bid Year – <del>2028</del> <b>2032</b></li> <li>• Achievement of Full Operation – <del>6/30/2034</del> <b>6/30/2039</b></li> </ul>   |
| River Des Peres Tributaries Storage Tunnel serving Lemay CSO Outfalls 103, 104, 105, 106, 111, 117 to 128, 130, 131, 134, 136 to 140, 166 and 176                                     | Storage / Conveyance tunnel, near-surface facilities, pump station, sewer separation and consolidation sewers | Conveyance tunnel with storage volume of 28 million gallons to capture flows from Lemay CSO Outfalls 103, 104, 105, 106, 111, 117 to 128, 130, 131, 134, 136 to 140, 166 and 176   | When incorporated with other River Des Peres CSO controls, reduce overflows to 4 events or less to River Des Peres main channel in the typical year <sup>(1)</sup>   | <ul style="list-style-type: none"> <li>• Bid Year – <del>2024</del> <b>2028</b></li> <li>• Achievement of Full Operation – <del>6/30/2030</del> <b>6/30/2035</b></li> </ul>   |
| CSO Treatment Unit  | Enhanced High Rate Clarification facility   | 100 MGD capacity providing equivalent of primary clarification, solids/floatables disposal, and disinfection   | When incorporated with other River Des Peres CSO controls, reduce overflows to 4 events or less in the typical year <sup>(1)</sup><br>Comply with applicable Missouri Operating Permit.  | <ul style="list-style-type: none"> <li>• Bid Year – <del>2027</del> <b>2034</b></li> <li>• Achievement of Full Operation – <del>12/31/2030</del> <b>12/31/2037</b></li> </ul> |
| Lower & Middle River Des Peres Storage Tunnel serving Lemay CSO Outfalls 008 to 032, 036, 037, 039, 041 to 044, 048, 050, 052, 053, 054, 057, 058, 061, 063, 163, 170 to 173, and 181 | Deep storage tunnel, near-surface facilities, pump station, sewer separation and consolidation sewers         | Provide storage volume of at least 231 million gallons in deep tunnel system to capture flows from Lemay CSO Outfalls 008 to 032, 036, 037, 039, 041 to 044, 048, 050, 052, 053, 054, 057, 058, 061, 063, 163, 170 to 173, and 181 | When incorporated with other River Des Peres CSO controls, reduce overflows to 4 events or less in the typical year <sup>(1)</sup> , and untreated overflow volume to the River Des Peres of 1,412 million gallons from the Lower & Middle River Des Peres Storage Tunnel and the River Des Peres Tributaries Storage Tunnel combined. | <ul style="list-style-type: none"> <li>• Bid Year – <del>2021</del> <b>2027</b></li> <li>• Achievement of Full Operation – <del>12/31/2030</del> <b>12/31/2037</b></li> </ul> |

### 3. The CSO Control Measure of the Green Infrastructure in the Lemay Service Area

shall be added at page 9 of Appendix D of the Consent Decree as follows:

| CSO Control Measure                               | Description  | Design Criteria   | Performance Criteria   | Critical Milestones   |
|---|--|---|--|---|
| <i>Green Infrastructure in Lemay Service Area</i> | <i>Storm water retrofitting and greening of properties in Lemay service area</i> | <i>Capture runoff from existing or future impervious areas on properties and, if possible, adjacent impervious streets and alleys, in accordance with MSD's 2017 Material Modification B.</i> | <i>Beginning January 1, 2018, apply green infrastructure to a designed drainage area of at least 80 acres to reduce untreated overflow volume to the River Des Peres during the typical year by at least 8 million gallons, with a minimum expenditure of \$20 million for the River Des Peres CSOs.</i> | <ul style="list-style-type: none"> <li>• <i>Bid Year – 2018</i></li> <li>• <i>Achievement of Full Operation – 12/31/2039</i></li> </ul> |

4. The effective date of this Amendment shall be the date upon which this Amendment is entered by the Court or the motion to enter this Amendment is granted, whichever occurs first, as recorded on the Court’s docket.

5. Each undersigned representative of MSD, the Coalition, EPA, and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Amendment and to execute and legally bind the Party he or she represents to this Amendment.

6. This Amendment shall be lodged with this Court for a period of 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 this Amendment disclose facts or considerations indicating that this Amendment is inappropriate, improper, or inadequate. MSD consents to entry of this Amendment as proposed without further notice and agrees not to withdraw from or oppose entry of this Amendment by the Court or to challenge any provision of this Amendment, unless the

United States has notified MSD in writing that the United States no longer supports entry of the Amendment.

7. This Amendment to the Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to this Amendment to the Consent Decree, and this Amendment supersedes all prior agreements and understandings, whether oral or written concerning the Amendment embodied herein.

8. This Agreement may be executed in counterparts, and its validity shall not be challenged on that basis.

Dated and entered this 22<sup>nd</sup> day of June, 2018.



---

HENRY EDWARD AUTREY  
UNITED STATES DISTRICT JUDGE