

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
et al.,	)	
	)	
Plaintiffs,	)	
	)	No. 4:07-cv-01120 (CEJ)
v.	)	
	)	
THE METROPOLITAN ST. LOUIS	)	
SEWER DISTRICT,	)	
	)	
Defendant.	)	
	)	

**AGREED NON-MATERIAL CONSENT DECREE MODIFICATION**

**Background**

A. On April 27, 2012, the United States District Court for the Eastern District of Missouri, Eastern Division approved and entered a Consent Decree between the United States and the Missouri Coalition for the Environment Foundation (“Coalition”) and the Metropolitan St. Louis Sewer District’s (“MSD”) (collectively “Parties”), in a case captioned *United States, et al. v. Metropolitan St. Louis Sewer District*, Civil Action No. 4:07-cv-01120 (E.D. Mo.).

B. The express purpose of the Consent Decree is for MSD to take all necessary measures to meet the goals and objectives of the CWA; to achieve and maintain compliance with the CWA and the Missouri Clean Water Law and the regulations promulgated thereunder, and the terms and conditions of MSD’s Missouri State Operating Permits; to meet the objectives of the EPA’s April 19, 1994 CSO Control Policy, 59 Fed. Reg. 18688, which is incorporated by reference into

Mo. Code Regs. Ann. Tit. 10, § 20-7.015(10); to eliminate all Constructed SSO Outfalls; and to achieve the goal of eliminating all known SSOs.

C. Paragraph 51 of the Consent Decree requires, among other things, that MSD construct and implement the 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.

D. Appendix D, at page 6, requires that MSD construct and implement a CSO treatment unit – enhanced high rate clarification facility - at the location of the Lemay CSO Outfall 063. Similarly, Appendix E, the Post-Construction Monitoring Program, refers to this enhanced high rate treatment unit as being near Outfall 063.

E. 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.

F. The Parties have agreed, pursuant to Paragraph 136 of the Consent Decree, to allow MSD to move the location of the CSO treatment unit to a new location near the downstream end of the CSO storage tunnel as illustrated in Exhibit A. The description, design and performance criteria, and critical milestones for this CSO treatment unit will remain the same as set forth in Appendix D.

G. The changes made herein constitute non-material Consent Decree modifications that do not require Court approval under Paragraph 136 of the Consent Decree. The undersigned Parties anticipate that the United States will file this Agreed Non-Material Consent Decree Modification (“Agreement”) with the Court as a non-material modification and an agreed supplement to the

Consent Decree. The Parties hereby agree that this Agreement shall be effective on the date that it has been signed by all Parties.

H. No action by the Court is required at this time. The Parties file this non-material modification to the Consent Decree with the Court in order to maintain a complete record of the Consent Decree and this modification thereto.

#### Agreement

1. The Parties hereby agree to the following non-material modification to Appendices D and E of the Consent Decree:

- a. Delete the phrase “CSO Treatment Unit at Lemay CSO Outfall 063” on page 6 of Appendix D under the column heading entitled “CSO Control Measure”.
- b. Replace the deleted phrase in Paragraph 1(a) above with “CSO Treatment Unit”.
- c. Delete the Figure entitled “Lower & Middle River Des Peres CSO Controls” on page 7 of Appendix D.
- d. Replace the deleted Figure in Paragraph 1(c) with Exhibit A.
- e. Delete the phrase “Enhanced High Rate treatment unit near Outfall 063” on page 3 of Appendix E (Post-Construction Monitoring Program) under the heading for Lower and Middle River Des Peres, at the second bullet.
- f. Replace the deleted phrase in Paragraph 1(e) with “Enhanced High Rate treatment unit.”

2. Except as specified herein, no additional provisions of the Consent Decree are modified, superseded, or altered in any way by this Agreement.

3. This Agreement may be executed in counterparts.

The undersigned party hereby consents and certifies that it is authorized to consent to the terms and conditions of this Agreed Non-Material Consent Decree Modification in the matter of *United States, et al. v. Metropolitan St. Louis Sewer District*, No. 4:07-cv-01120-CEJ (E.D. Mo.).

FOR THE UNITED STATES OF AMERICA:

Date: 06-26-2013



THOMAS A. MARIANI, JR.  
Deputy Chief  
United States Department of Justice  
Environment and Natural Resources Division  
Environmental Enforcement Section

Date: 7/5/2013




KATHRYN C. MACDONALD  
Senior Trial Attorney  
United States Department of Justice  
Environment and Natural Resources Division  
Environmental Enforcement Section  
P.O. Box 7611  
Washington, D.C. 20044


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FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII:

Date: 6/20

  
\_\_\_\_\_  
DAVID COZAD  
Regional Counsel  
United States Environmental Protection Agency  
Region 7  
11201 Renner Road  
Lenexa, Kansas 66219


Date: 6/20

  
\_\_\_\_\_  
ELIZABETH HUSTON  
Assistant Regional Counsel  
A United States Environmental Protection Agency  
Region 7  
11201 Renner Road  
Lenexa, Kansas 66219


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FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE:


Date: 6/27/13

  
CYNTHIA GILES  
Assistant Administrator  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004


Date: 6/25/13

  
SUSAN SHINKMAN  
Director, Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

Date: 6/25/13

  
MARK POLLINS  
Director, Water Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004


Date: 6/25/13

  
JOANNA CITRON DAY  
Attorney Advisor, Water Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004


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FOR THE MISSOURI COALITION FOR THE ENVIRONMENT FOUNDATION:

Date: 6/20/2013

  
HEATHER B. NAVARRO  
Executive Director  
Missouri Coalition for the Environment Foundation  
6267 Delmar Blvd., Suite 2E  
St. Louis, Missouri 63130

Date: 6/20/13

  
ELIZABETH J. HUBERTZ  
Clinic Attorney  
Interdisciplinary Environmental Clinic  
Washington University School of Law  
Campus Box 1120  
St. Louis, Missouri 63130

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FOR THE METROPOLITAN ST. LOUIS SEWER DISTRICT:

Date: 6/21/13



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BRIAN L. HOELSCHER

Executive Director

Metropolitan St. Louis Sewer District

2350 Market Street

St. Louis, Missouri 63103

Date: 6/21/13



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SUSAN M. MYERS

General Counsel

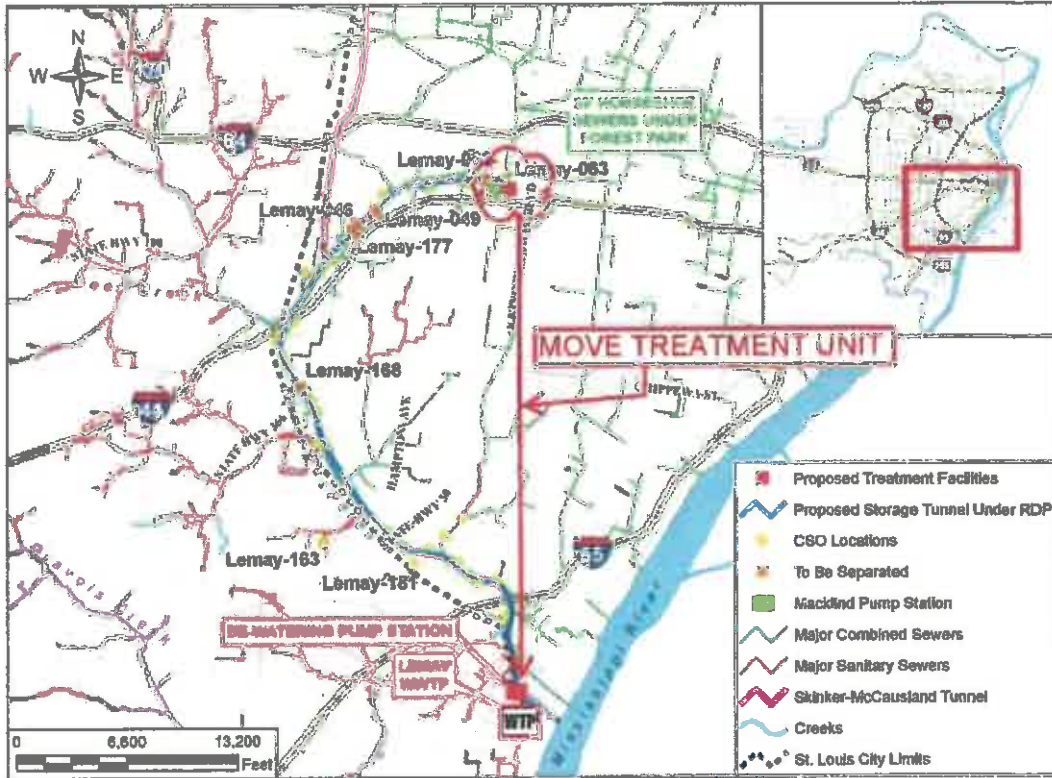
Metropolitan St. Louis Sewer District

2350 Market Street

St. Louis, Missouri 63103



EXHIBIT A



Lower & Middle River Des Peres CSO Controls