

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.)	

SECOND 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 (“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 an in-sewer storage upstream of Lemay CSO Outfall 063 to provide 25 million gallons storage capacity within the existing sewer system to capture flows from the Lemay CSO Outfall 063 (“In-Sewer Storage”). Similarly, Appendix E, the Post-Construction Monitoring Program, refers to this in-sewer storage in the 29 foot horseshoe sewers under Forest Park, which is upstream of Lemay CSO Outfall 063.

E. Appendix D, at page 6, also requires that MSD construct the Lower & Middle River Des Peres Storage Tunnel (“Storage Tunnel”) to provide storage volume of 206 million gallons to capture flows from a variety of Lemay CSO Outfalls.

F. The Parties have always understood that these two CSO Control Measures – the In-Sewer Storage and the Storage Tunnel – work together and are to be treated as one overall project when selecting and modifying the design criteria necessary to capture flows from the Lemay CSO Outfalls along the Lower and Middle River Des Peres and to meet the performance criteria.

G. Paragraph 61 of the Consent Decree provides that MSD may request that the design criteria for the CSO Control Measures listed in Appendix D be revised if it can demonstrate that the requested revision (1) reflects good engineering practice and (2) will continue to achieve the

performance criteria specified in Appendix D.

H. Paragraph 61(e) also provides that if EPA approves a greater than 20 percent revision of design criteria, the modification shall not be effective until a modification of the Decree is approved by the Court in accordance with Paragraph 136 of the Decree.

I. 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.

J. The Parties have agreed, pursuant to Paragraphs 61 and 136 of the Consent Decree, to allow MSD to eliminate the In-Sewer Storage and to increase the storage volume of the Storage Tunnel by 25 million gallons to store the additional flow from the Lemay CSO Outfall 063 that was to be captured by the In-Sewer Storage. As a result, the design criteria for the Storage Tunnel will be increased from its original storage capacity of 206 million gallons to 231 million gallons, and thus representing no change in the design criteria necessary to capture flows from the Lemay CSO Outfalls along the Lower and Middle River Des Peres. The description and performance criteria, and critical milestones for this Storage Tunnel will remain the same as set forth in Appendix D.

K. This proposed modification reflects good engineering practice and will continue to meet the required performance criteria, in accordance with Paragraph 61. For example, this proposed modification eliminates potential risks posed by the In-Sewer Storage, including risk of flooding and potential damage of the horseshoe sewers upstream of Outfall 063 due to surcharging of the sewers or failure of the storage dam systems to operate properly, as well as the risk of sedimentation and odors occurring within the horseshoe sewers beneath Forest Park as a result of

the stored sewage. In addition, by relocating the additional 25 million gallons of storage volume to the downstream tunnel, this storage volume can be used regardless of where it is raining in the Lemay combined sewer area served by the tunnel. Originally, the 25 million gallons of In-Sewer Storage would only be used when it rains in the upper portion of the Lemay combined sewer area upstream of Outfall 063.

L. Because the proposed modification is less than 20 percent revision of the design criteria, the changes made herein constitute non-material Consent Decree modifications that do not require Court approval under Paragraphs 61 and 136 of the Consent Decree. The undersigned Parties anticipate that the United States will file this Second 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.

M. 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 entire row entitled “In-sewer Storage Upstream of Lemay CSO Outfall 063” on page 6 of Appendix D.
- b. Delete “206” and replace with “at least 231” million gallons on page 6 of Appendix D under the heading for Design Criteria for the Lower & Middle River Des Peres Storage Tunnel.

- c. Delete the phrase “Flow storage in 29-ft horseshoe sewers under Forest Park” on page 3 of Appendix E (Post-Construction Monitoring Program) under the heading for Lower and Middle River Des Peres, at the first bullet.
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 Second 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: 04-07-2015



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

Date: 4-7-2015




KATHRYN C. MACDONALD
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FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII:

Date: 4-1-2015



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Date: 4-1-2015




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

Date: 4.6.15



MARK POLLINS
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Date: 4/8/15



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FOR THE MISSOURI COALITION FOR THE ENVIRONMENT FOUNDATION:

Date: 4/3/15



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Missouri Coalition for the Environment Foundation
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Date: _____

ELIZABETH J. HUBERTZ
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FOR THE METROPOLITAN ST. LOUIS SEWER DISTRICT:

Date: 4/1/15



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