

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
and)	
)	
THE STATE OF OHIO,)	
)	Civil Action No. 3:91:CV7646
Plaintiffs,)	Chief Judge James G. Carr
)	
v.)	
)	
THE CITY OF TOLEDO, OHIO,)	
A Municipal Corporation,)	
)	
Defendant.)	
_____)	

FIRST AMENDMENT TO CONSENT DECREE

Plaintiff the United States, on behalf of the United States Environmental Protection Agency (“EPA”) filed a complaint in this matter on October 29, 1991, and amended its complaint on December 17, 1992, seeking injunctive relief and civil penalties for violations of Section 301(a) of the Clean Water Act (the “Act”), 33 U.S.C. § 1311(a), against the Defendant, the City of Toledo (“Toledo”).

Plaintiff the State of Ohio (the “State”) was originally named as a defendant pursuant to Section 309(e) of the Act, 33 U.S.C. § 1319(e). The State moved, and this Court granted Ohio’s motion, to be realigned as a party plaintiff in this matter. The State then filed a complaint and, subsequently, an amended complaint against Toledo seeking injunctive relief and civil penalties pursuant to Section 505(a) of the Act, 33 U.S.C. § 1365(a), for violations of Section 301(a) of the Act, 33 U.S.C. § 1311(a), and Chapter 6111 of the Ohio Revised Code.

The parties in this matter (the “Parties”) entered into a Consent Decree (the “Consent

Decree”), resolving the Plaintiffs’ claims, which was entered by the Court on December 16, 2002.

Paragraph 143 of the Consent Decree provides that material modifications to the Consent Decree must be approved in writing by all of the Parties and the Court.

The Parties have now agreed to certain material modifications to the Consent Decree, as set forth herein. The proposed modifications address certain injunctive obligations related to improvements that have either been built or are required under the Consent Decree to be built at Toledo’s Bay View Plant, and, as an additional requirement, requires Toledo to perform a certain Pathogen Study, described in Paragraph 4, below. The proposed amendments to the Consent Decree result from negotiations among the Parties regarding these amendments and EPA’s conditional approval of Toledo’s proposed Long Term Control Plan to control Toledo’s combined sewer overflows, which Toledo submitted to EPA on April 24, 2009, pursuant to Paragraph 32 of the Consent Decree. EPA has conditioned its approval of Toledo’s proposed Long Term Control Plan, issued to Toledo on June 5, 2009, upon the Court’s entry of this proposed First Amendment to Consent Decree (the “First Amendment”).

The Parties recognize, and the Court by entering this First Amendment finds, that this First Amendment has been negotiated at arms-length and in good faith, and that this First Amendment is fair, reasonable, and in the public interest.

NOW THEREFORE, before the taking of any further testimony, without further adjudication of any issue of fact or law, and upon the consent and agreement of the Parties, it is hereby ORDERED, JUDGED, and DECREED as follows:

1. The Consent Decree shall remain in full force and effect in accordance with its

terms, except that Paragraphs 8(d), 8(e), 9 through 11, 32(c), and 78 are revised or deleted as set forth below, effective upon entry of this First Amendment to Consent Decree by the Court.

2. Paragraph 8(d) of the Consent Decree, which currently requires construction of an equalization basin accordance with the design approved pursuant to Paragraph 7(d)) is revised as follows:

“(d) An equalization basin with a capacity of no less than twenty-five million gallons. Toledo has already complied with this requirement;”

3. Paragraph 8(e), which currently requires construction of an additional secondary clarifier, is hereby deleted.

4. Paragraphs 9-11 of the Consent Decree are revised as follows:

9. U.S. EPA and Ohio EPA have approved Toledo’s work plan, dated December 12, 2003, for conducting a two year study (“Ballasted Flocculation Study”) of the effectiveness of the ballasted flocculation facilities constructed pursuant to Paragraph 8(f) of the Consent Decree. In addition to the Ballasted Flocculation Study, Toledo shall conduct a second study (the “Pathogen Study”) to further understand the effectiveness of Toledo’s ballasted flocculation facilities. Toledo has prepared, and with the lodging of this First Amendment to Consent Decree, the U.S. EPA and Ohio EPA have approved, a protocol for the Pathogen Study, which is attached to and incorporated in this First Amendment to Consent Decree as Attachment A. In addition, Toledo shall prepare and submit to U.S. EPA for its approval a proposed Sampling and Quality Assurance Project Plan (the “QAPP”), for the Pathogen Study in accordance with the approved protocol. The QAPP shall be submitted no later than December 1, 2010.

10. Toledo has already commenced and is implementing the Ballasted Flocculation Study. Toledo shall complete the Ballasted Flocculation Study in accordance with the approved work plan and schedule set forth in the approved work plan for the Ballasted Flocculation Study. Toledo has commenced and shall implement and complete the Pathogen Study in accordance with the protocol (Attachment A), including the schedule set forth in the protocol, and in accordance with the QAPP described in Paragraph 9 of the Consent Decree. Toledo shall submit annual reports to U.S. EPA and Ohio EPA in accordance with Section 4 of the protocol.

11. Within sixty (60) days after completion of the Ballasted Flocculation Study, Toledo shall submit a written report to U.S. EPA and Ohio EPA, for approval, which contains the results of the Ballasted Flocculation Study. Within sixty days of completion of the Pathogen Study in accordance with the protocol and approved QAPP, Toledo shall submit a written report to U.S. EPA and Ohio EPA for approval which contains the results of the Pathogen Study.”

5. The last sentence of Paragraph 32(c) of the Consent Decree is hereby revised as follows:

“The schedule shall also include a deadline for the completion of all construction of and full implementation of all measures under the Long Term Control Plan, as provided for in the Consent Decree, as amended by this First Amendment to Consent Decree, which shall be completed as early as possible, but in no event later than August 31, 2020.”

6. Paragraph 78 of the Consent Decree is hereby revised as follows:

“For each CSO that violates the water quality-based or technology-based effluent

limitations and conditions in Toledo's NPDES permit (including the General Effluent Limitations) that occurs subsequent to completion of all construction and full implementation of all measures under the Long Term Control Plan or August 31, 2020, whichever is earlier, Toledo shall pay stipulated penalties of \$5,000 per day for each day of each CSO occurring."

7. This First Amendment shall be lodged with the Court for a period of not less than 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 First Amendment disclose facts or considerations indicating that the First Amendment is inappropriate, improper, or inadequate. Toledo and the State of Ohio consent to entry of this First Amendment without further notice and agree not to withdraw from or oppose entry of this First Amendment by the Court or to challenge any provision of the First Amendment, unless the United States has notified Defendant and the State of Ohio in writing that it no longer supports entry of the First Amendment.

This First Amendment to Consent Decree is entered and approved this _____ day of _____, 2009.

JAMES G. CARR, CHIEF JUDGE
United States District Court
Northern District of Ohio

First Amendment to Consent Decree, *United States and State of Ohio v. City of Toledo, Ohio*,
Civil Action No. 3:91:CV7646, (N.D. OH)

FOR THE UNITED STATES OF AMERICA

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FOR THE STATE OF OHIO

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