

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION**

UNITED STATES OF AMERICA,

and

THE STATE OF INDIANA,

Plaintiffs,

v.

THE CITY OF JEFFERSONVILLE,
INDIANA,

Defendant.

Civil Action No. 4:09-cv-0125 DFW-WGH

AMENDMENT TO CONSENT DECREE

A. On September 17, 2009, the United States of America (the “United States”), by the authority of the Attorney General of the United States and through its undersigned counsel, acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency (“U.S. EPA”), and the State of Indiana, acting at the request of the Indiana Department of Environmental Management (“IDEM,” collectively “Plaintiffs”), filed a Complaint in this matter (ECF No. 1, “Complaint”), pursuant to Section 309 of the Clean Water Act (“CWA”), 33 U.S.C. § 1319, and Ind. Code. 13-30-4-1 and 13-14-2-6, against the City of Jeffersonville, Indiana (“Jeffersonville”).

B. The Complaint alleged that Jeffersonville violated the CWA, 33 U.S.C. § 1251 *et seq.*, Title 327 of Indiana Administrative Code, Article 5, and its National Pollutant Discharge Elimination System Permit (the “NPDES Permit”), issued pursuant to the CWA and Indiana law,

by, *inter alia*: (1) discharging untreated waste water from point sources in Jeffersonville's combined sewer system in a manner which violates the terms and conditions of the NPDES Permit; (2) discharging untreated waste water from point sources in Jeffersonville's separate sanitary sewer system in violation of the CWA's and Indiana's prohibition on sanitary sewer overflows, 33 U.S.C. § 1311(a), and the terms and conditions of its NPDES permit; and (3) discharging pollutants from the final effluent of the Jeffersonville Wastewater Treatment Plant at levels exceeding pollutant limits set in the NPDES Permit.

C. Concurrently with filing the Complaint, Plaintiffs lodged a Consent Decree between Plaintiffs and the City of Jeffersonville resolving the allegations in the Complaint. The Consent Decree required Jeffersonville, *inter alia*, to develop and obtain approval for a Long Term Control Plan ("LTCP"), eliminate SSO discharges, reduce CSO discharges, improve its wastewater treatment plant ("WWTP"), and revise its sewer system Management, Operation and Maintenance Program.

D. On November 24, 2009, the Court entered this Consent Decree. The Consent Decree has not been amended previously.

E. In 2011, Plaintiffs approved the LTCP that Jeffersonville developed and proposed in accordance with the Consent Decree.

F. In 2016, Jeffersonville requested a material modification to the Consent Decree, pursuant to Section XXI of the Consent Decree, by proposing significant modifications to the 2011 LTCP. The proposed modifications to the LTCP would revise the control measures called for in the 2011 LTCP while reducing the volume of combined sewer overflow discharges. Plaintiffs requested additional information concerning the proposed modifications to the LTCP. Jeffersonville provided the information and revised its proposed modifications to the LTCP.

Plaintiffs have tentatively approved Jeffersonville's proposed modified LTCP, but such approval is not effective until the Consent Decree is modified. Jeffersonville's proposed modified LTCP does not alter the overall deadline of June 1, 2025 set forth in Paragraph 25 of the Complaint.

WHEREAS, the Plaintiffs and Jeffersonville (the "Parties") have now agreed upon a modification to the control requirements in Jeffersonville's LTCP, and agree to incorporate such requirements into the Consent Decree through this Amendment to Consent Decree.

WHEREAS, the Parties agree that this Amendment to Consent Decree constitutes a material change to the Consent Decree, and requires Court approval to be effective. The Parties recognize, and the Court by entering this Amendment to Consent Decree finds, that it has been negotiated at arms-length and in good faith and that this Amendment to Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

1. Except as specifically provided in this Amendment to Consent Decree, all provisions of the original Consent Decree shall remain in full force and effect. No provision of the original Consent Decree is modified, superseded, or altered in any way except as specifically provided in this Amendment to Consent Decree.

2. For the purposes of this Amendment to Consent Decree, the following definitions shall apply and shall substitute any prior use of such definitions:

- a. "Consent Decree" or "Decree" shall mean the Consent Decree entered in this action on November 24, 2009 and all Appendices attached thereto (as listed in Section XXV), as modified by this Amendment to Consent Decree. In the event of conflict between the Decree and any Appendix, the Decree shall control.
- b. "CSO Control Measures" shall mean the physical and/or operational measures identified as a "Control Measure/Project", as set forth in the LTCP Projects Summary included as Attachment 1 to this Amendment to Consent Decree.
- c. "Long Term Control Plan" or "LTCP" shall mean the Modified Long Term Control Plan, attached as Attachment 2 to this Amendment to Consent Decree.

3. In the event that Jeffersonville anticipates that it will not be able to comply with any deadline set forth in the implementation schedule in the LTCP Projects Summary (Attachment 1), then Jeffersonville shall notify the Plaintiffs in writing of any such anticipated inability to comply as soon as possible but in no event later than thirty (30) Days prior to the implementation schedule deadline. Jeffersonville shall concurrently submit a written request for extension of the implementation schedule deadline to Plaintiffs in accordance with Section XXI. For the purposes of this Amendment to Consent Decree, a request for extension of an implementation schedule deadline shall be considered a non-material modification provided that the extension request is related only to deadlines detailed in Attachment 1 and does not extend the final compliance deadlines. Requests to modify the final compliance deadlines shall be considered material modifications. Any non-material extension request and shall be effective upon review and approval by Plaintiffs and service upon all the Parties.

4. Paragraph 26 of the Consent Decree shall be replaced with the following text:

Jeffersonville shall implement the CSO Control Measures listed in the LTCP Projects Summary (Appendix F) in accordance with the implementation schedule therein, rather than the control projects in the LTCP Report as previously approved. By December 31, 2026, Jeffersonville shall submit a report, in compliance with Section 11.08 of the LTCP (in Appendix G), demonstrating its compliance with the performance criteria contained in the LTCP Projects Summary, the technology-based and water quality-based requirements of the CWA, state law and regulation, and the applicable provisions of its NPDES Permit.

5. Jeffersonville's failure to meet the dates in the LTCP Projects Summary implementation schedule, satisfy the Design Criteria in the LTCP Projects Summary by the deadline for Achievement of Full Operation, or its failure to comply with the Performance Criteria in the LTCP Projects Summary, will be subject to stipulated penalties as set forth in Paragraph 57 of the Consent Decree.

6. This Amendment to Consent Decree shall be lodged with the Court for a period of not less than thirty (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 the Amendment to Consent Decree disclose facts or considerations indicating that the Amendment to Consent Decree is inappropriate, improper, or inadequate. Jeffersonville consents to entry of this Amendment to Consent Decree without further notice.

7. If for any reason the Court should decline to approve this Amendment to Consent Decree in the form presented, this Amendment to Consent Decree is voidable at the sole discretion of any Party in writing within 30 days of the Court's action. If any Party elects to void the Amendment to Consent Decree, the terms of the Amendment to Consent Decree may not be used as evidence in any litigation between the Parties and the original Consent Decree shall remain fully in effect and enforceable.

8. The LTCP Projects Summary (Attachment 1) shall become Appendix F to the Consent Decree and its terms shall be fully enforceable as any other provision in the Consent Decree.

9. The Modified LTCP (Attachment 2) is included here as necessary for the interpretation of the LTCP Projects Summary, but is not made part of the Consent Decree except for Section 11 (Postconstruction Compliance Monitoring), which shall become Appendix G to the Consent Decree and its terms shall be fully enforceable as any other provision in the Consent Decree. The final report under Section 11.08 demonstrating compliance with all performance criteria shall be submitted on or before December 31, 2026.

10. The undersigned representative of Jeffersonville, of IDEM, and of the Assistant Attorney General for the Environment and Natural Resources Division of the Department of

Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Amendment to Consent Decree and to execute and legally bind such Party to this document.

11. This Amendment to Consent Decree may be executed in counterparts.

SO ORDERED.

United States District Judge
Southern District of Indiana

THE UNDERSIGNED PARTY enters into this Amendment to Consent Decree in the matter of United States and State of Indiana v. City of Jeffersonville, Indiana, Civil Action No. 4:09-cv-0125 (S.D. Ind.).

FOR THE UNITED STATES OF AMERICA

JONATHAN D. BRIGHTBILL
Principal Deputy Assistant Attorney General
Environment & Natural Resources Division
U.S. Department of Justice

Date: June 24, 2020

/s/ Lila C. Jones
LILA C. JONES
Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20004
Tel: 202-514-9859
lila.jones@usdoj.gov

THE UNDERSIGNED PARTY enters into this Amendment to Consent Decree in the matter of United States and State of Indiana v. City of Jeffersonville, Indiana, Civil Action No. 4:09-cv-0125 (S.D. Ind.).

FOR THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

T. Leverett Nelson Digitally signed by T. Leverett Nelson
Date: 2020.05.13 15:49:49 -05'00'

Date: _____

T. LEVERETT NELSON
Regional Counsel
U.S. Environmental Protection Agency Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Date: 05/13/2020

Steven P. Kaiser
STEVEN P. KAISER
Associate Regional Counsel
U.S. Environmental Protection Agency Region 5
77 West Jackson Boulevard (C-14)
Chicago, IL 60604-3507

THE UNDERSIGNED PARTY enters into this Amendment to Consent Decree in the matter of United States and State of Indiana v. City of Jeffersonville, Indiana, Civil Action No. 4:09-cv-0125 (S.D. Ind.).

FOR THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

Date:

5-3-2020



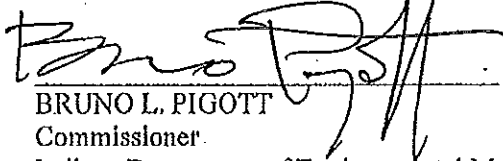
MARK POLLINS
Director, Water Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20004

THE UNDERSIGNED PARTY enters into this Amendment to Consent Decree in the matter of United States and State of Indiana v. City of Jeffersonville, Indiana, Civil Action No. 4:09-cv-0125 (S.D. Ind.).

FOR PLAINTIFF
THE STATE OF INDIANA

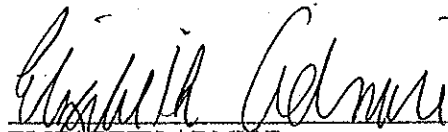
INDIANA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

3/17/20
Date


BRUNO L. PIGOTT
Commissioner
Indiana Department of Environmental Management
100 North Senate Street
P.O. Box 6015
Indianapolis, IN 46206
Commissioner

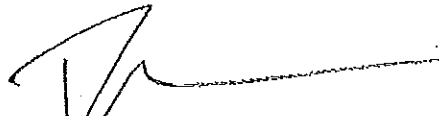
Approved as to form and legality:

3/18/2020
Date


ELIZABETH ADMIRE
Attorney
Indiana Department of Environmental Management
100 North Senate Street
P.O. Box 6015
Indianapolis, IN 46206

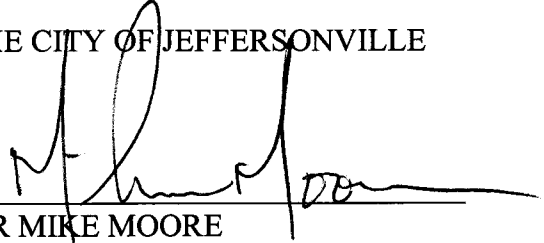
INDIANA ATTORNEY GENERAL

March 13, 2020
Date


PATRICIA ORLOFF ERDMANN
Chief Counsel for Litigation
Office of the Indiana Attorney General
402 West Washington Street
IGCS, 5th Floor
Indianapolis, IN 46204

THE UNDERSIGNED PARTY enters into this Amendment to Consent Decree in the matter of United States and State of Indiana v. City of Jeffersonville, Indiana, Civil Action No. 4:09-cv-0125 (S.D. Ind.).

FOR THE CITY OF JEFFERSONVILLE

A handwritten signature in black ink, appearing to read 'Mike Moore', written over a horizontal line.

MAYOR MIKE MOORE
President Jeffersonville Sanitary Sewer Board

Date: 3/20/20