

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

Motion to Enter First  
Material Modification to  
Consent Decree is GRANTED  
and this Decree is hereby  
APPROVED and ENTERED.  
05/18/2010 LJMck

UNITED STATES OF AMERICA and )  
THE STATE OF INDIANA )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
THE CITY OF ANDERSON, INDIANA )  
 )  
Defendant. )  
\_\_\_\_\_ )

Case No. 1:02-cv-1103-LJM-VSS

**FIRST MATERIAL MODIFICATION TO CONSENT DECREE**

**FIRST MATERIAL MODIFICATION TO CONSENT DECREE**

A. The United States of America (the “United States”), on behalf of the U.S. Environmental Protection Agency (“EPA”), and the State of Indiana (the “State”), on behalf of the Indiana Department of Environmental Management (“IDEM”), filed a Complaint in this matter on July 18, 2002, alleging violations of the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.* and comparable state law and seeking injunctive relief and civil penalties for violations of those laws by the City of Anderson (“Anderson”).

B. Among other things, the Complaint alleged that Anderson has violated applicable laws by discharging untreated wastewater from its combined sewer system. Combined sewer systems -- which have not been constructed for decades in the United States -- are wastewater collection systems that are designed to carry sanitary wastewater (domestic sewage from homes, as well as industrial and commercial wastewater) and storm water runoff from rainfall or snowmelt in a single system of pipes to a publicly owned treatment works. During dry weather, combined systems convey domestic, commercial, and industrial wastewater and limited amounts of infiltrated ground water. Such systems often were designed to overflow when collection system capacity is exceeded, such as during precipitation events, resulting in Combined Sewer Overflows (“CSOs”) that discharge excess untreated wastewater (including raw sewage) directly to surface water bodies such as lakes, rivers, and coastal waters. CSOs can be a major source of water pollution in communities served by combined sewer systems.

C. Upon filing the Complaint, the Plaintiffs also lodged a proposed Consent Decree that contained the terms of a proposed settlement between the Plaintiffs and the Defendant.

D. The Court approved and entered the Consent Decree on September 18, 2002 (hereinafter the “2002 Decree”).

E. The 2002 Decree required Anderson to develop and implement what is known as a Long Term Control Plan (“LTCP”) to control CSOs from its combined sewer system, in accordance with EPA’s published *Combined Sewer Overflow (CSO) Control Policy*, 59 Fed. Reg. 18,688 (Apr. 19, 1994). An LTCP typically provides for the construction of major infrastructure to minimize or eliminate the impact of CSOs.

F. Since entry of the 2002 Decree, Anderson has been developing an LTCP in consultation with EPA and IDEM. Anderson submitted a proposed LTCP to EPA and IDEM on June 19, 2009. The control plan alternative that Anderson selected under that proposed LTCP would require an array of sewer system and wastewater treatment plant improvement projects, at an estimated cost of more than \$160 million. The projects would include construction of:

(i) several new sewer lines, including a new parallel interceptor sewer and another new sewer to store and convey wastewater in certain areas; (ii) an inflatable dam to allow storage of wastewater within an existing sewer; (iii) a large storage and conveyance tunnel in another area that can be used to hold sewage until it can be treated; and (iv) a new lift station, a new preliminary treatment facility, new clarifiers, and other improvements at Anderson’s wastewater treatment plants. That work would be done in three phases: Phase I would involve more than \$38 million in work over the next five years; Phase II would require at least \$35 million more work in six to ten years; Phase III would require work costing at least another \$87 million 11 to 20 years from now. The specific projects to be completed in each of those three phases are described in a Long Term Control Plan Report that Anderson submitted under Paragraph 43 of the 2002 Decree.

G. The cost per household to implement Anderson’s LTCP is likely to exceed 2.0% of the median household income in the Anderson service area. When considered together with

Anderson's "Financial Capability Indicators" under EPA's guidance document entitled *Combined Sewer Overflows – Guidance for Financial Capability Assessment and Schedule Development* (Feb. 1997), the likely LTCP costs amount to a "High Burden" under that guidance. That EPA guidance document authorizes an LTCP implementation schedule of up to 20 years for a permittee like Anderson in the "High Burden" category.

H. Paragraph 43 of the 2002 Decree provides that Anderson's LTCP "shall require the design, construction, and implementation of all control/treatment measures selected by Anderson by no later than December 31, 2009." The parties all recognized that – with the benefit of studies performed in developing Anderson's LTCP – the current completion date is no longer appropriate. This First Modification to Consent Decree ("First Decree Modification") would extend the completion date to December 31, 2029 to allow the phased LTCP implementation described above. That approach and timing is consistent with EPA's *Combined Sewer Overflow Control Policy*, which recognizes that "schedules for implementation of the CSO controls may be phased based on . . . a permittee's financial capability," 59 Fed. Reg. at 18,696, as well as EPA's *Guidance for Financial Capability Assessment and Schedule Development*, as explained above.

I. Paragraph 43 of the 2002 Decree also directs Anderson to give priority to particular CSO-related measures in its LTCP development process, including measures "to address discharges from the Greensbranch Relief Sewer Overflow (Outfall 007), the Morton Street Overflow (Outfall 013), the Dewey Street Raw Sewage Bypass (Outfall 006), and the Dewey Street Primary Effluent Bypass (Outfall 005)." The phased approach prescribed by Anderson's LTCP eliminates the need for that Consent Decree proviso, and this First Decree Modification replaces that language with new language concerning the schedule for completing

those phases, in order to avoid potential conflict between the LTCP and the Decree on the timing and priority of particular projects.

J. In Sections XVI and XVII of the 2002 Decree, the Court explicitly reserved jurisdiction to approve agreed modifications to the 2002 Decree, such as this First Decree Modification.

NOW, THEREFORE, the United States, the State, and Anderson hereby agree that the 2002 Decree shall be modified as follows:

1. Modification to Paragraph 43 of the 2002 Decree. The existing text comprising the final sentence in Paragraph 43 of the 2002 Decree is stricken and replaced with the following language:

**The schedule included in the Long Term Control Plan Report shall require the design, construction, and implementation of all control/treatment measures selected by Anderson by no later than December 31, 2029. More specifically, Anderson shall design, construct, and implement all such control/treatment measures in three phases, as described in Anderson's Long Term Control Plan Report, as follows: (i) Phase I shall be completed by no later than December 31, 2014; (ii) Phase II shall be completed by no later than December 31, 2019; and (iii) Phase III shall be completed by no later than December 31, 2029.**

2. Effective Date. The Effective Date of this First Decree Modification shall be the date upon which this Modification is approved by the Court, after a public comment period.

3. Public Comment. This First Decree Modification 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 the First Decree Modification disclose facts or considerations indicating that the First Decree Modification is inappropriate, improper, or inadequate. Anderson consents to entry of this First Decree Modification without further notice and agrees not to withdraw from

or oppose entry of this First Decree Modification by the Court or to challenge any provision of this Modification, unless the United States has notified Anderson in writing that it no longer supports entry of the Modification.

4. Signatories. Each undersigned representative certifies that he or she is fully authorized to enter into the terms and conditions of this First Decree Modification and to execute and legally bind the Party he or she represents to this document.

5. Execution. This First Decree Modification may be signed in counterparts, and its validity shall not be challenged on that basis. Anderson agrees to accept service of process by mail with respect to all matters arising under or relating to the 2002 Decree and this First Decree Modification and agrees to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court.

Dated and entered this \_\_\_\_\_ day of \_\_\_\_\_, 2010


---

UNITED STATES DISTRICT JUDGE

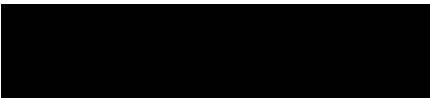
First Material Modification to the Consent Decree in  
United States and the State of Indiana v. City of Anderson, Indiana. (S.D. Ind.)

FOR THE UNITED STATES OF AMERICA

Dated: 3/9/10, 2010

  
IGNACIA S. MORENO  
Assistant Attorney General  
Environment and Natural Resources Division

Dated: 3/9, 2010

  
RANDALL M. STONE  
Senior Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611  
Phone: (202) 514-1308  
Fax: (202) 616-6584  
E-Mail: [randall.stone@usdoj.gov](mailto:randall.stone@usdoj.gov)

TIMOTHY M. MORRISON  
United States Attorney  
Southern District of Indiana

THOMAS E. KIEPER  
Assistant United States Attorney  
Southern District of Indiana  
10 West Market Street, Suite 2100  
Indianapolis, IN 46204-3048

First Material Modification to the Consent Decree in  
United States and the State of Indiana v. City of Anderson, Indiana. (S.D. Ind.)

FOR THE U.S. ENVIRONMENTAL  
PROTECTION AGENCY

Dated: 3/23, 2010



CYNTHIA J. GILES  
Assistant Administrator  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency

Dated: 3/25, 2010



ADAM M. KUSHNER  
Office Director  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency

Dated: Mar 9, 2010



MARK POLLINS  
Division Director  
Water Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency

Dated: March 5, 2010




BENJAMIN BAHK  
Staff Attorney  
Water Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency




First Material Modification to the Consent Decree in  
United States and the State of Indiana v. City of Anderson, Indiana. (S.D. Ind.)

FOR THE U.S. ENVIRONMENTAL  
PROTECTION AGENCY

Dated: 3/17, 2010

  
BHARAT MATHUR *for [signature]*  
Acting Regional Administrator  
U.S. Environmental Protection Agency  
77 West Jackson Blvd.  
Chicago, IL 60604


Dated: 2 March, 2010

  
NICOLE CANTELLO  
Associate Regional Counsel  
U.S. Environmental Protection Agency  
77 West Jackson Blvd.  
Chicago, IL 60604

First Material Modification to the Consent Decree in  
United States and the State of Indiana v. City of Anderson, Indiana. (S.D. Ind.)

FOR THE STATE OF INDIANA,  
ON BEHALF OF THE INDIANA DEPARTMENT  
OF ENVIRONMENTAL MANAGEMENT:

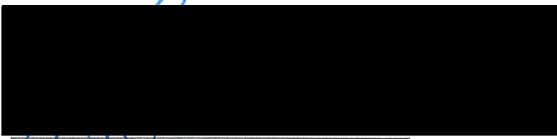
Dated: FEBRUARY 1, 2010

  
THOMAS W. EASTERLY  
Commissioner  
Indiana Department of  
Environmental Management

As to form and legality:

GREGORY F. ZOELLER  
Indiana Attorney General

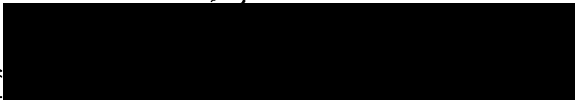
Dated: February 1, 2010

  
PATRICIA ORLOFF ERDMANN  
Chief Counsel for Litigation  
Office of the Attorney General  
Indiana Government Center South  
5th Floor  
302 West Washington Street  
Indianapolis, IN 46204

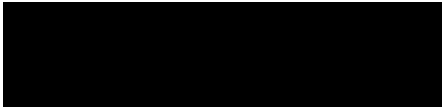
First Material Modification to the Consent Decree in  
United States and the State of Indiana v. City of Anderson, Indiana. (S.D. Ind.)

FOR THE CITY OF ANDERSON:

Dated: \_\_\_\_\_, 2010

  
~~Kris Ockomon~~  
Mayor  
City of Anderson

Dated: February 2, 2010

  
Erika K. Powers  
Barnes & Thornburg LLP  
One North Wacker Drive – Suite 4400  
Chicago, IL 60606-2833

Counsel for the City of Anderson