

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

UNITED STATES OF AMERICA and)
STATE OF CONNECTICUT,)
Plaintiffs,)
) Civil Action No. 3:13-cv-01883 (JCH)
v.)
)
CITY OF WEST HAVEN,)
Defendant.)

STIPULATION TO MODIFY CONSENT DECREE

It is hereby stipulated by and between the undersigned Plaintiffs United States of America and State of Connecticut and Defendant City of West Haven (collectively hereinafter, the "Parties"), by and through their respective attorneys, and in accordance with Section XIX of the Consent Decree approved and entered by this Court in the above-captioned matter on May 27, 2014 (the "Consent Decree") [Doc. # 17], that the parties hereby agree to the following modification of the current terms of the Consent Decree:

1. Modify Section VII.B. by adding Section VII.B.3, as follows:

3. The City shall immediately and continuously implement the Preventative Maintenance Plan, conditionally approved by EPA and CTDEEP on June 2, 2015, subject to the following additional changes:

a. The City shall review all job descriptions for all current positions by June 30, 2017,

b. The City shall develop and implement a formal safety and job training program by June 30, 2017;

c. The City shall formalize a list of future Standard Operating Procedures (SOPs) to be developed, develop these SOPs, and train relevant

staff in these SOPs by June 30, 2017.

2. Modify Part VII. of the West Haven Consent Decree by adding Section “I” after Section “H” of the current Consent Decree, as follows:

I. MS4 Compliance

1. By April 1, 2017, the City must submit to EPA and CTDEEP for review and approval an updated Stormwater Management Plan (“SWMP”) that complies with Section 6 of the MS4 Permit.¹ The plan must include a description of all City resources dedicated to compliance with the City’s MS4 Permit in terms of staff time, management structure, as well as equipment.

2. By December 31, 2016, the City must update its illicit discharge ordinance (currently named Prohibited discharges into storm sewers – City Ordinance 191-27) to comply with Section 6(a)(3)(A)(i) of the MS4 Permit.

3. By December 31, 2016, the City must submit to EPA and CTDEEP for review and approval revised MS4 outfall map(s) that comply(ies) with the requirements of Section 6(a)(3)(B)(i) through (ii) of the MS4 Permit, including the locations of all MS4 outfalls and the type, material and size of all conveyances, channelized ditches, outfalls of 12” or greater, and sampling locations.

4. By October 1, 2017, the City must submit to EPA and CTDEEP for review and approval a program to detect and eliminate illicit discharges (“IDDE Plan”) in compliance with Section 6(a)(3)(B)(iii) of the MS4 Permit. The City

¹ On January 20, 2016, CT DEEP issued a new General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems, which will become effective July 1, 2017 (“2017 MS4 Permit”). In satisfying its obligations under this CD, the City may comply with comparable provisions of the 2017 MS4 Permit. This CD does not relieve the City of its obligation to comply with all the requirements of the 2017 MS4 Permit.

may utilize strategies and approaches outlined in reference guidance manuals such as *Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessments*,² but the IDDE Plan and protocols for its implementation must all be specific to the City. The IDDE Plan must include the following elements:

- a. Dry-weather outfall screening at 100% of the City's MS4 outfalls to be completed by October 1, 2017.
- b. A prioritization scheme for IDDE follow-up investigations within separate storm sewer catchment. The scheme shall have the built-in flexibility to be able to be modified, if necessary, based on the progress and results from outfall screening.
- c. Sampling standard protocols, including sets of in-field and laboratory analytes for different stages of investigation (e.g., screening, dry-weather, wet-weather, follow-up) must be identified within the IDDE plan. Wet and Dry weather IDDE sample investigations for any outfalls discharging to brackish or marine water bodies must include analysis for both fecal coliform and Enterococcus bacteria. The minimum set of parameters for analysis when conducting post-screening investigations are defined in Section 6(h)(2) of the MS4 Permit.
- d. The City shall maintain a record of illicit discharge abatement activities including, at a minimum: location (identified with an address and

² Brown, E., Caraco, D., Pitt, R. 2004. *Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessments*. Center for Watershed Protection, Ellicott City, MD & University of Alabama, Tuscaloosa, AL.

latitude and longitude), description, date(s) of inspection, sampling data (if applicable), action(s) taken, date of removal or repair and responsible party(ies).

5. By October 1, 2018, the City must submit to EPA and CTDEEP wet weather screening and or sampling data for any outfalls where dry-weather flow was observed and for which other means of follow-up investigation have not identified the presence or absence of an illicit discharge and for any outfall that discharges into an impaired water body whose indicator pollutants of concern could be found in municipal stormwater runoff. Analysis for outfalls discharging into an impaired water body must include the indicator pollutants of concern (or appropriate precursors) for the impaired receiving water body.

6. By December 31, 2016, the City must submit to EPA and CTDEEP for review and approval a Construction Site Stormwater Runoff Control Program that complies with Section 6.(a)(4)(A)(i) of the MS4 Permit.

7. By December 31, 2016, the City must submit to EPA and CTDEEP for review and approval a Post-Construction Site Stormwater Runoff Control Program that complies with Section 6.(a)(5)(A)(i) through (iv) of the MS4 Permit for land disturbance or development (including re-development) activities from areas with one half acre or more of soil disturbance, whether considered individually or collectively as part of a larger common plan. The program must include a plan outlining how all municipal or institutional departments and boards with jurisdiction over the review, permitting, or approval of land disturbance and development projects within the MS4 will coordinate their functions with one another.

8. By October 1, 2017, the City must develop and implement

an operation and maintenance program that includes the following:

- a. a training component for municipal employees and contractors and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations that complies with Section 6.(a)(6)(A)(i) of the MS4 Permit;
- b. procedures for sweeping permittee-owned or -operated streets and parking lots. All streets and parking lots within the “Urbanized Area” (as defined in the MS4 Permit) shall be inspected, swept and/or cleaned (as necessary) with a minimum frequency of once per year in the spring following the cessation of winter maintenance activities (i.e. sanding, deicing, etc.); and
- c. a schedule for routine and preventative catch basin inspection and cleaning, the frequency of which will ensure that no catch basin at any time will be more than 50% full. Prioritize inspection and maintenance activities for permittee-owned catch basins located near impaired waters and construction activities (roadway construction, residential, commercial, or industrial development or redevelopment). Clean catch basins in such areas more frequently if inspection and maintenance activities indicate excessive sediment or debris loadings.

3. Modify Part VIII.C.1 of the West Haven CD by adding subsections “l” through “o” after “k.”

- l. A tabular listing of all documented dry-weather and wet-weather flow observed during outfall screenings. Each record must include, but not be limited to, the following information:
 - i. outfall identifier;
 - ii. date of observation;

iii. the water body to which the City MS4 outfall discharged or discharges, the Surface Water Classification for the waterbody, and whether a Total Maximum Daily Load ("TMDL") has been established for the water body;

iv. estimate of flow rate;

v. antecedent precipitation amount in inches from preceding 48 hours;

vi. monitoring results (visual, olfactory, and or analytic);

vii. a schedule of planned follow-up investigations and or the results from already implemented follow-up investigations;

viii. if applicable, evidence to support the determination that an illicit discharge is not present.

m. All illicit discharge abatement activity records described in Part I.4.(d) above and costs associated with removal or repair.

n. Documentation on catch-basin inspection and cleanings, including whether the frequency of cleaning had to be adjusted for any specific areas or catchbasins due to past inspection/cleaning results. Also include an estimate of the tonnage of material removed during catch-basin cleaning.

o. Records of street sweeping work from the prior calendar year presented in map format. Include an estimate of the tonnage of material collected during sweeping and vacuuming.

4. Modify Part XIX of the West Haven CD by replacing it in its entirety with the following

language:

- A. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. The City's request for modification may be based, among other things, on: (a) an integrated plan developed in accordance with EPA's Integrated Municipal Stormwater and Wastewater Planning Approach Framework, issued on June 5, 2012; or (b) a current Financial Capability Assessment (per EPA's Financial Capability Assessment Framework, issued on November 24, 2014). If either the Integrated Municipal Stormwater and Wastewater Planning Approach Framework or the Financial Capability Assessment Framework is modified after the Effective Date, the City's request for modification shall be based on the version of the Framework(s) that is in effect on the Day that the request for modification is submitted to the Plaintiffs.
- B. Any modification of this Consent Decree, or any documents that are developed pursuant to the requirements of this Decree and that become a part of the Decree, that effect a material change to the terms of the Decree shall become effective upon a subsequent written agreement signed by all Parties and approved by the Court. Any schedule that is included in this Decree or in any document developed pursuant to the Decree may be extended, modified, or revised upon written agreement of the Parties, without Court approval, unless the schedule extension effects a material change to the terms of this Decree.
- C. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XIII of this Decree (Dispute Resolution). However, instead of the burden of proof provided by Section XIII.F, the Party seeking the modification bears the burden

of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

- D. Acknowledgement: The Parties, agree, with respect to this Modification, without adjudication or admission of fact or law related to the City's compliance with the MS4 Permit, that this Modification is in the public interest and that entry of this Modification without further litigation is an appropriate resolution. The Parties agree that the work described in this Stipulation constitutes a material modification of the Consent Decree as provided in Section XIX thereof. This Stipulation shall not be construed as a waiver of any rights of the City to object to any further modification of the Consent Decree that may be sought by the EPA or CTDEEP in the future, or a waiver of the City's right to seek its own modification of the Consent Decree.
5. Modify the "WHEREAS" Section of the West Haven CD by adding the following language:

WHEREAS, the plaintiff, United States of America, on behalf of EPA has concurrently filed a supplemental complaint alleging that the City has violated conditions established in the Connecticut General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems issued to the City by CT DEEP.

WHEREAS, the city, by entering into this agreement, does not concede, and in fact disputes, that any issue relating to MS4 compliance was contemplated or otherwise covered by the original 2013 consent decree.

STIPULATED AND AGREED TO:

Each undersigned representative of the City, the United States and the State of Connecticut hereby consents to the entry of this modification of the Consent Decree and certifies that he or she is fully authorized to enter into the terms and conditions of this *Stipulation to Modify Consent Decree* and to execute and legally bind the Party whom he or she represents to this document.

For Plaintiff UNITED STATES OF AMERICA



ELLEN M. MAHAN
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice

12/6/16

DATE



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For the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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11/10/16
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10/25/2016
DATE

For Plaintiff STATE OF CONNECTICUT

GEORGE JEPSEN
ATTORNEY GENERAL

by 

Denise Lillo Vecchio
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11/4/14
DATE

For Defendant, THE CITY OF WEST HAVEN, CONNECTICUT

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10/27/16
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SO ORDERED:

The forgoing modification of the Consent Decree entered on May 27, 2014 [Doc. #17] is hereby entered on this ___ day of _____, 2016.

UNITED STATES DISTRICT JUDGE