

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 ) CASE NO. 5:09-cv-00272  
 )  
 v. )  
 ) JUDGE JOHN R. ADAMS  
 CITY OF AKRON, OHIO )  
 )  
 and )  
 )  
 THE STATE OF OHIO, )  
 )  
 Defendants. )  
\_\_\_\_\_)

**THIRD AMENDMENT TO CONSENT  
DECREE**

WHEREAS, this Third Amendment to Consent Decree (“Third Amendment”) provides for the following modification, described in detail below: a change to the size of the Northside Interceptor Tunnel (“NSIT”) that is described in Row 12 of the City of Akron’s (“City” or “Akron”) approved Long Term Control Plan Update (the “LTCP Update”) and the addition of the Rack 34 combined sewer separation project.

WHEREAS, The United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), filed a complaint in this matter on February 5, 2009. The complaint was amended on March 20, 2009. The amended complaint sought injunctive relief and civil

penalties for, among other things, unauthorized discharges of sewage by the City from its combined and sanitary sewer system in violation of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1311, 1319(b) and 1365(a). The State of Ohio (“State”) was named as a defendant pursuant to Section 309(e) of the CWA, 33 U.S.C. § 1319(e). On May 11, 2009, the State filed a crossclaim against the City alleging violations of the CWA and related Ohio law, O.R.C. § 6111.

WHEREAS, the parties in this matter (the “Parties”) entered into a Consent Decree (the “Consent Decree”) resolving the claims of the United States and State.

WHEREAS, the City entered into the Consent Decree, without admitting the violations alleged by the United States and the State, in order to settle this case and avoid complicated, protracted and expensive litigation.

WHEREAS, the Consent Decree, lodged on November 13, 2009, was entered on January 17, 2014.

WHEREAS, Paragraph 120 of the Consent Decree incorporates by reference the injunctive relief required pursuant to all “approved deliverables,” including the LTCP Update. The City requested approval of the current LTCP Update as a deliverable required by Paragraph 12 of the Consent Decree. The LTCP Update was approved by EPA in November 2011 and by Ohio EPA in April 2012.

WHEREAS, Paragraph 112 of the Consent Decree provides that material changes to the terms of the Consent Decree, including any attached appendices, must be approved in writing by all of the Parties and the Court. Non-material changes are effective upon written agreement of the Parties. *Id.*

WHEREAS, at the request of the Parties, the Court entered the First Amendment to Consent Decree (the “First Amendment”) on September 20, 2016. The First Amendment provided for the following two modifications to the Consent Decree and the LTCP Update: (1) a change to the sequencing of two elements of injunctive relief at the City’s WPCS; and (2) a change to the method the City is required to use to address potential weaknesses in the Main Outfall Sewer. The First Amendment also described non-material changes to the Consent Decree that were previously agreed to by the Parties, including the substitution of green infrastructure for two storage basins and the resizing of control measures at the WPCS.

WHEREAS, at the request of the Parties, the Court entered the Second Amendment to Consent Decree (the “Second Amendment”) on December 17, 2019. The Second Amendment provided for the following two modifications to the Consent Decree and the LTCP Update: (1) a change to the technology used to treat secondary bypasses at the WPCS, along with the requirement to implement a demonstration study; and (2) replacing the requirement to install certain storage basins with the requirement to install new control measures, including green infrastructure and increased conveyance, to control combined sewer overflows (“CSOs”).

WHEREAS, the Parties have now agreed to an additional proposed modification to the LTCP Update and the Consent Decree, as set forth herein. This proposed modification addresses a change to the size of the NSIT that is described in Row 12 of the LTCP Update and adds the requirement to separate the Rack 34 combined sewers. The resized NSIT is expected to result in achievement of the Consent Decree performance criterion of zero untreated CSOs in typical year conditions. Sewer separation will result in an even higher level of control than the zero untreated CSOs performance criterion because it will eliminate overflows in greater than typical year conditions at that CSO discharge point. The Rack 34 CSO discharge point is

located on a segment of the Cuyahoga River that is immediately downstream of the Gorge Dam and is upstream of the confluence with the Little Cuyahoga River. EPA's Great Lakes National Program Office believes that the anticipated benefits of the planned removal of the Gorge Dam include improving habitat and recreational opportunities within the Cuyahoga River Area of Concern. *See* <https://www.epa.gov/great-lakes-aocs/cuyahoga-river-aoc>.

WHEREAS, this Third Amendment will 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 from or withhold its consent if the comments regarding this Third Amendment disclose facts or considerations indicating that the Third Amendment is inappropriate, improper, or inadequate. Akron and the State consent to entry of this Third Amendment without further notice and agree not to withdraw from or oppose entry of this Third Amendment by the Court, or to challenge any provision of the Third Amendment, unless the United States has notified Akron and the State in writing that the United States no longer supports entry of the Third Amendment.

WHEREAS, the Parties recognize, and the Court by entering this Third Amendment finds, that this Third Amendment has been negotiated at arms-length and in good faith, and that this Third 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, ADJUDGED, and DECREED as follows:

The Consent Decree shall remain in full force and effect in accordance with its terms, except that LTCP Update Row 12 is replaced with new Row 12 and Row 12a., as identified

herein, effective upon the entry of this Third Amendment by the Court. Row 12 of the LTCP Update, which currently requires installation of the NSIT that has 23 million gallons of storage volume, is replaced with new Row 12 and Row 12.a. as set forth in Attachment A of this Third Amendment. New Row 12 requires the installation of the NSIT that has a storage volume of 10.3 million gallons and new Row 12a. requires the separation of the Rack 34 combined sewers.

JUDGMENT IS HEREBY ENTERED in accordance with this Third Amendment to Consent Decree, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

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JUDGE JOHN R. ADAMS  
UNITED STATES DISTRICT COURT JUDGE

Signature Page for United States of America for Third Amendment to the Consent Decree in the matter of *United States v. City of Akron, et al.*, No. 5:09-cv-272 (N.D. Ohio).

FOR THE UNITED STATES OF AMERICA:

Date: February 13, 2023

TODD KIM  
Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice

*/s/ Bonnie A. Cosgrove*

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Signature Page for United States Attorney for Third Amendment to the Consent Decree in the matter of United States v. City of Akron, et al., No. 5:09-cv-272 (N.D. Ohio).

FOR THE UNITED STATES OF AMERICA:

MICHELLE M. BAEPLER  
First Assistant United States Attorney for the  
Northern District of Ohio

Dated: February 13, 2023

*/s/ J. Jackson Froliklong*

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Signature Page for U.S. EPA for Third Amendment to the Consent Decree in the matter of *United States v. City of Akron, et al.*, No. 5:09-cv-272 (N.D. Ohio).

FOR THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

DIANA SAENZ Digitally signed by DIANA SAENZ  
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FOR THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

Dated: December 20, 2022

  
\_\_\_\_\_  
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Phone: (312) 886-1499  
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THE UNDERSIGNED PARTY hereby consents to this Third Amendment to the Consent Decree in the matter of *United States v. City of Akron, et al.*, No. 5:09-cv-272 (N.D. Ohio).

FOR THE STATE OF OHIO:

DAVE YOST  
Ohio Attorney General

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Dated: December 8, 2022

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THE UNDERSIGNED PARTY hereby consents to this Third Amendment to the Consent Decree in the matter of *United States v. City of Akron, et al.*, No. 5:09-cv-272 (N.D. Ohio).

FOR THE CITY OF AKRON

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Dated: \_\_\_\_\_, 2022

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# ATTACHMENT A

**Revised Row 12 and 12.a**

ROW #	CONTROL MEASURE LOCATION	DESCRIPTION	DESIGN CRITERIA	PERFORMANCE CRITERIA (TYPICAL YEAR)	CRITICAL MILESTONES
12	Racks 32, 33, 34, 35	Northside Interceptor Tunnel – Construct a 16-foot internal diameter tunnel, 6850 feet in length or any other combination of diameter and length that achieves the design criteria.	Minimum storage volume of 10,300,000 gallons. This volume excludes conveyance tunnels, dewatering tunnels/sewers, adits, and drop shafts.	0 CSOs	Bidding of Control Measure April 30, 2023  Achievement of Full Operation Dec. 31, 2026
12a.	Rack 34	Separation of Rack 34 combined sewer	Separate the combined sewer tributary to Rack 34 and eliminate the Rack 34 overflow structure	0 CSOs	Bidding of Control Measure Dec. 31, 2022  Sewer separation substantially complete and in service Dec. 31, 2024  Rack 34 overflow structure eliminated Dec 31, 2026