

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Civil Action No. 20-386
CITY OF GARY, INDIANA,	)	
	)	
Defendant.	)	
	)	
_____	)	

**FIRST AMENDMENT TO CONSENT DECREE**

WHEREAS, Plaintiff United States, on behalf of the United States Environmental Protection Agency (“EPA”), filed a complaint on October 27, 2020, in this matter seeking injunctive relief and civil penalties for violations of the Clean Air Act (“CAA”) against the Defendant, the City of Gary, Indiana (“Gary”) (collectively, “Parties”);

WHEREAS, simultaneously with the filing of the complaint, the Parties lodged a Consent Decree, which was entered by the Court on January 5, 2021;

WHEREAS, the Consent Decree requires that Gary, among other things, undertake a suite of improvements to its landfill gas collection and control system (“GCCS”); carry out enhanced monitoring and maintenance requirements and follow certain standard operating procedures; and pay a \$20,000 civil penalty;

WHEREAS, Gary’s GCCS Design Plan is attached to the Consent Decree as Appendix 1 and requires replacement of the existing large flare with an upgraded, NSPS-compliant flare; installation of new active gas collection wells to minimize any potential offsite gas migration;

conversion of certain existing passive wells to active gas extraction wells; replacement of active wellheads; and new piping to support expansion of the active GCCS;

WHEREAS, in a supplement to the Second Annual Report on Compliance with Consent Decree, the United States explained that Gary had amended its GCCS Design Plan to include additional vertical wells rather than the originally planned horizontal collector;

WHEREAS, Paragraphs 14-17 of the Consent Decree describe requirements for Gary to monitor its landfill and respond to potential emissions problems;

WHEREAS, Paragraph 14 of the Consent Decree requires Gary to “monitor surface concentrations of methane along the entire perimeter of the gas collection area and along a pattern that traverses the Landfill at 15-meter intervals for each gas collection area on a quarterly basis;”

WHEREAS, Paragraph 15 of the Consent Decree requires Gary to take a number of response actions “in the event of an exceedance of the methane concentration standard of 500 ppm;”

WHEREAS, Paragraph 16 of the Consent Decree requires Gary to implement a program to monitor for landfill cover integrity issues and implement cover repairs as necessary, in accordance with Cover Integrity Standard Operating Procedures, attached to the Consent Decree as Appendix 4;

WHEREAS, Paragraph 17 of the Consent Decree requires Gary to monitor gas probes and respond with corrective action if certain methane levels are exceeded;

WHEREAS, Paragraph 8 of the Consent Decree requires that “[a]ll GCCS improvements described in the Design Plan shall be completed by two years from the date of lodging of the Consent Decree,” or October 27, 2022;

WHEREAS, during planning and implementation of the GCCS Design Plan improvements, Gary encountered delays related to the state permitting process, the development of the GCCS amendment, and supply chain issues;

WHEREAS, Gary requested an extension of the GCCS deadline to account for these unexpected delays;

WHEREAS, Paragraph 79 of the Consent Decree states:

“The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.”

WHEREAS, the Parties agree that a modification of the deadline in Paragraph 8 is a material modification of the Consent Decree that must be in writing and approved by the Court in accordance with Paragraph 79 of the Consent Decree before it can become effective;

WHEREAS, the Parties agree, and this Court by entering this First Amendment finds, that the First Amendment has been negotiated in good faith and at arm’s length, and that it is fair, reasonable, and in the public interest;

WHEREAS, 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, during which time the United States reserves the right to withdraw or withhold their consent if the comments regarding this First Amendment disclose facts or considerations indicating that the First Amendment is inappropriate, improper, or inadequate;

WHEREAS, Gary consents to entry of this First Amendment without further notice and agrees 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 Gary in writing that it no longer supports entry of the Amendment;

NOW THEREFORE, the Parties having agreed that the following provisions of the Consent Decree should be modified as follows:

1. Paragraph 8 of the Consent Decree shall be modified and replaced with the following:

8. GCCS Design Plan Implementation. Gary shall comply with the GCCS Design Plan, attached to this Consent Decree as Appendix 1. All GCCS improvements described in the Design Plan shall be completed by October 27, 2023. Any possible amendments to the GCCS Design Plan must be submitted to EPA for review and approval in accordance with Section IV.G.

2. Paragraph 14 of the Consent Decree shall be modified and replaced with the following:

14. Determining Compliance with Methane Concentration Standard. The following procedures must be used to determine compliance with the 500 ppm surface methane operational standard:

a. During the period of March 1, 2023, through October 31, 2023, Gary shall monitor surface concentrations of methane along the entire perimeter of the gas collection area and along a pattern that traverses the Landfill at 15-meter intervals for each gas collection area on a monthly basis. Surface emission monitoring must be performed in accordance with section 8.3.1 of EPA Method 21, except that the probe inlet must be placed within 5 to 10 centimeters above the ground. Monitoring must be performed during typical meteorological conditions. Gary shall record the path traveled for each monitoring event using a Global Positioning System (“GPS”) unit and shall mark all locations where a surface exceedance is measured.

b. After October 31, 2023, Gary shall monitor surface concentrations of methane along the entire perimeter of the gas collection area and along a pattern that traverses the Landfill at 15-meter intervals for each gas

collection area on a quarterly basis. If surface measurements of methane concentration do not exceed 500 ppm for six months, Gary may adjust the monitoring pattern to 30-meter intervals. Surface emission monitoring must be performed in accordance with section 8.3.1 of EPA Method 21, except that the probe inlet must be placed within 5 to 10 centimeters above the ground. Monitoring must be performed during typical meteorological conditions. Gary shall record the path traveled for each monitoring event using a GPS unit and shall mark all locations where a surface exceedance is measured.

c. In addition to the monitoring required by subparagraphs 1.a and 14.b, Gary shall monitor and report on a quarterly basis any location where visual observations indicate potential elevated concentrations of landfill gas, such as distressed vegetation and cracks or seeps in the cover and all cover penetrations. Gary shall use an organic vapor analyzer, flame ionization detector, or other portable monitor meeting the following specifications:

- i. The portable analyzer must meet the instrument specifications provided in section 6 of Method 21, except that “methane” replaces all references to “VOC”;
- ii. The calibration gas must be methane, diluted to a nominal concentration of 500 ppm in air;
- iii. To meet the performance evaluation requirements in section 8.1 of EPA Method 21, the instrument evaluation procedures of section 8.1 of EPA Method 21 must be used; and
- iv. The calibration procedures provided in sections 8 and 10 of EPA Method 21 must be followed immediately before commencing a surface monitoring survey.

d. Gary shall measure the background concentrations of methane by moving the probe inlet upwind and downwind outside the boundary of the Landfill at a distance of at least 30 meters from the perimeter wells.

3. Paragraph 16 of the Consent Decree shall be modified and replaced with the following:

16. Gary shall implement a program to monitor for cover integrity issues on a monthly basis and shall implement cover repairs as necessary. Gary shall follow a standard operating procedure for cover integrity inspections (“Cover Integrity SOP”). The Cover Integrity SOP shall address: slope drainage, evidence of gas/leachate, vegetation quality issues, erosion on cover and slopes, damage from

external sources (humans, animals, etc.), and surface cracks or fissures. Gary shall keep a record of all cover integrity inspections including deficiencies found and a timeline for the repairs made to the cover. Gary shall also prepare a monthly cover integrity repair log that includes photos of deficiencies and repairs performed. The Cover Integrity SOP is attached to this Consent Decree as Appendix 4.

4. Paragraph 17 of the Consent Decree shall be modified and replaced with the following:

17. Gary shall monitor the Gas Probes on a weekly basis and record the gas quality in each probe including the concentrations of methane, oxygen, and carbon dioxide in each Gas Probe.

a. If Gary is able to demonstrate that methane levels are below the lower explosive level (“LEL”) of 5% methane for four consecutive weeks at a Gas Probe, then Gary may decrease monitoring frequency of that Gas Probe to a monthly basis.

b. If Gary monitors a methane level above the LEL of 5% methane for four consecutive weeks (or two consecutive months if monitoring on a monthly basis) at a Gas Probe, then Gary shall: (i) install a new well or other collection device within 120 Days of the initial exceedance; (ii) convert a nearby Passive Gas Well to an Active Gas Extraction Well and connect the well to the Active Collection System within 120 Days of the initial exceedance; or (iii) within 30 days of the initial exceedance, submit to EPA for review and approval in accordance with Section IV.G some other action to minimize landfill gas migration or confirm landfill gas migration is not occurring above acceptable levels.

c. By March 13, 2023, Gary shall submit to EPA for review and approval in accordance with Section IV.G a root cause analysis of the elevated methane concentrations from Boundary Gas Probe GP-6, located on the southern boundary of the landfill, that includes the following:

- i. A summary of the elevated methane root cause investigation and its findings; and
- ii. A proposal and timeline for corrective action, which may include: (i) installing a new well or other collection; (ii) converting a nearby Passive Gas Well to an Active Gas Extraction Well and connect the well to the Active Collection System; or (iii) some other action to minimize landfill gas migration or confirm landfill

gas migration is not occurring above acceptable levels.

Gary shall perform the corrective action in accordance with the approved root cause analysis and proposal.

This First Amendment to Consent Decree is entered and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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JUDGE THERESA L. SPRINGMANN  
United States District Court  
Northern District of Indiana

First Amendment to Consent Decree in the matter of *United States v. City of Gary, Indiana*, No. 20-386.

**FOR THE UNITED STATES:**

TODD KIM  
Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice  
Washington, D.C. 20530

Date: March 30, 2023

*Nicholas McDaniel*

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Signature Page for the First Amendment to the Consent Decree in the matter of *United States v. City of Gary, Indiana*, No. 20-386.

**FOR THE U.S. ENVIRONMENTAL PROTECTION  
AGENCY:**

**ROBERT  
KAPLAN**

Digitally signed by ROBERT  
KAPLAN  
Date: 2023.03.30 18:22:58  
-05'00'

Dated: \_\_\_\_\_


ROBERT A. KAPLAN  
Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Blvd.  
Chicago, Illinois 60604

Signature Page for the First Amendment to Consent Decree in the matter of *United States v. City of Gary, Indiana*, No. 20-386.

**FOR THE CITY OF GARY, INDIANA:**

BOARD OF PUBLIC WORKS AND SAFETY  
401 Broadway  
Gary, IN 46402

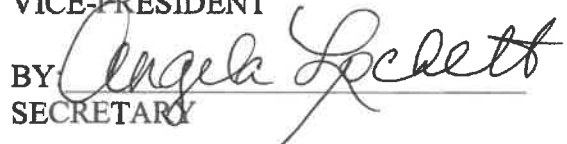
DATE: 03/01/2023

BY:   
PRESIDENT

DATE: 03/01/2023

BY:   
VICE-PRESIDENT

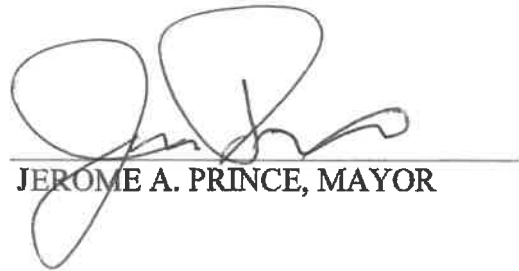
DATE: 3/1/23

BY:   
SECRETARY

ATTEST:   
MARIANETTA L. BARBER, CLERK

APPROVED:

DATE: 3-2-23

  
JEROME A. PRINCE, MAYOR