

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO**

UNITED STATES OF AMERICA,)	
)	
and)	
)	
THE STATE OF OHIO,)	
)	
Plaintiffs,)	
)	Civil Action No. 18-cv-90
v.)	
)	
THE CITY OF MIDDLETOWN, OHIO,)	
)	
Defendant.)	
_____)	

FIRST AMENDMENT TO CONSENT DECREE

WHEREAS, Plaintiff United States, on behalf of the United States Environmental Protection Agency (“EPA”), and Plaintiff the State of Ohio (“State”), on behalf of the Ohio Environmental Protection Agency (“Ohio EPA”), filed a complaint on February 9, 2018, in this matter seeking injunctive relief and civil penalties for violations of Section 301(a) of the Clean Water Act (the “Act”), 33 U.S.C. § 1311(a), and Chapter 6111 of the Ohio Revised Code and rules promulgated thereunder; against the Defendant, the City of Middletown, Ohio (“Middletown”) (collectively, “Parties”);

WHEREAS, simultaneously with the filing of the complaint, the Parties lodged a Consent Decree, which was entered by the Court on April 12, 2018;

WHEREAS, the Consent Decree requires that Middletown, among other things, implement a Long Term Control Plan (“LTCP”) to reduce the discharges of combined stormwater and sanitary sewage, called combined sewer overflows or “CSOs,” from the portion

of Middletown's sewer system known as the combined sewer system;

WHEREAS, Paragraph 12 of the Consent Decree requires Middletown to "perform the activities and construct the CSO control measures in accordance with the Descriptions and Design Criteria specified in the LTCP attached as Appendix A and the Construction Schedule attached as Appendix C";

WHEREAS, the CSO Control Measure in Row 3 of the LTCP, called the "Lakeside Redirection Project," is a project to reduce the amount of stormwater that enters the combined sewer system in the Lakeside sewershed by implementing measures so that stormwater in approximately 291 acres of the sewershed is discharged directly to the Hydraulic Canal rather than into the combined sewer system;

WHEREAS, the Consent Decree requires Middletown to accomplish the Lakeside Redirection Project by constructing a 15 cubic feet per second pump station for pumping storm water, and 3,900 square feet of 18" force main and 3,000 feet of 36" of gravity sewer for conveying stormwater;

WHEREAS, during detailed design of the Lakeside Redirection Project following entry of the Consent Decree, Middletown discovered a number of technical difficulties in carrying out the project as originally planned;

WHEREAS, Middletown proposed an alternative option of constructing the currently-required pump station and converting a portion of the combined sewer system into a stormwater-only system;

WHEREAS, the Parties agree that this alternative will likely provide the same or better level of CSO control as the current Row 3 requirements;

WHEREAS, Paragraph 88 of the Consent Decree states:

“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 or materially affects the ability to meet the objectives of the Decree shall become effective upon a subsequent written agreement signed by all parties and approved by the Court as a modification to this Decree.”

WHEREAS, the current Row 3 requirements for the Lakeside Redirection Project are as follows:

ROW #	CONTROL MEASURE LOCATION	DESCRIPTION	DESIGN CRITERIA	PERFORMANCE CRITERION (TYPICAL YEAR)	CRITICAL MILESTONES
CSO Control Measures					
<i>Collection System Measures and Green Infrastructure</i>					
3	Lakeside Redirection	Redirection of approximately 291 acres of sewershed to the Hydraulic Canal	At least 15 CFS storm water pump station, 3,900 feet of 18” force main, and 3,000 feet of 36” gravity sewer	6 CSO Events Systemwide	See Appendix C

WHEREAS, the Parties agree that a modification of the current Row 3 requirements is a material modification of the Consent Decree that must be in writing and approved by the Court in accordance with Paragraph 88 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 to Consent Decree 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 and the State reserve the right to withdraw or withhold their consent if the comments regarding this First Amendment to Consent Decree disclose facts or considerations indicating that the Amendment is inappropriate, improper, or inadequate;

WHEREAS, Middletown consents to entry of this Amendment without further notice and agrees not to withdraw from or oppose entry of this Amendment by the Court or to challenge any provision of the Amendment, unless the United States or the State has notified the other two parties to this Amendment in writing that it no longer supports entry of the Amendment;

NOW THEREFORE, the Parties having agreed that the Design Criteria in Row 3 of the LTCP included as Appendix A to the Consent Decree should be modified as follows:

1. Row 3 of the LTCP, Consent Decree Appendix A, shall be modified and replaced with the following:

ROW #	CONTROL MEASURE LOCATION	DESCRIPTION	DESIGN CRITERIA	PERFORMANCE CRITERION (TYPICAL YEAR)	CRITICAL MILESTONES
CSO Control Measures					
<i>Collection System Measures and Green Infrastructure</i>					
3	Lakeside Redirection	Redirection of approximately 291 acres of sewershed to the Hydraulic Canal	At least 15 CFS, firm capacity, storm water pump station with at least 5,000 ft. of 20" force main piping to remove stormwater. Stormwater conveyed to pump station via conversion of at least 3,500 ft. of an existing 30"-60" combined sewer pipe to stormwater only by separation. Separation achieved via the installation of at least 2,000 ft. of 18" gravity sewer to redirect upstream sanitary flows, installation of at least 250 ft. of 8" gravity sewer to remove 3 sanitary laterals, and modification of a regulator structure leading to the elimination of sanitary sewer overflowing into the combined pipe to be separated.	6 CSO Events Systemwide	See Appendix C

This First Amendment to Consent Decree is entered and approved this _____ day of _____, 2021.

SUSAN J. DLOTT, JUDGE
 United States District Court
 Southern District of Ohio

First Amendment to Consent Decree in the matter of *United States and State of Ohio v. City of Middletown, Ohio*, No. 18-cv-90

FOR THE UNITED STATES:

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Date: 12/29/2021



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FOR THE STATE OF OHIO

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FOR THE CITY OF MIDDLETOWN, OHIO

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