

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
COMMONWEALTH OF MASSACHUSETTS,)	CIVIL ACTION NO.: 1:10-cv-11460
)	
Plaintiff-Intervenor,)	
)	
v.)	
)	
CITY OF REVERE, MASSACHUSETTS,)	
)	
Defendant.)	
_____)	

FIRST MODIFICATION TO 2010 CONSENT DECREE

WHEREAS, the Plaintiff, the United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“EPA”), filed a Complaint on August 25, 2010, alleging that the City of Revere, Massachusetts (the “City”) violated Section 301(a) of the Clean Water Act (“Act” or “CWA”), 33 U.S.C. § 1311(a);

WHEREAS, the Commonwealth of Massachusetts (the “Commonwealth”), on behalf of the Massachusetts Department of Environmental Protection (“MassDEP”), was joined as a Plaintiff-Intervenor;

WHEREAS, on November 16, 2010, this Court entered the Consent Decree, which set forth requirements to address the claims in the Complaint (hereinafter, the “2010 Consent Decree”);

WHEREAS, the City has implemented a number of projects and measures pursuant to a Clean Water Act Administrative Order (Docket No. 07-004) (the “Administrative Order”) and

the 2010 Consent Decree designed to reduce the frequency, volume and duration of discharges from its Sewer System and to rehabilitate the Sewer System, but acknowledges that the Administrative order and the 2010 Consent Decree call for the completion of additional projects and measures;

WHEREAS, on July 16, 2014, the EPA terminated the Administrative Order and acknowledged that the City's obligations under the Administrative Order were satisfied or superseded by the 2010 Consent Decree;

WHEREAS, the 2010 Consent Decree specified that the Court would retain continuing jurisdiction for the purpose of enforcing and modifying the 2010 Consent Decree;

WHEREAS, MassDEP reviewed and approved the three phased Sewer System Evaluation Reports ("SSES"), and the subsequent Phases I – XII Field Investigation Reports, and design plans and specifications for the recommended construction work from these Reports;

WHEREAS, pursuant to the 2010 Consent Decree, the City submitted a Comprehensive Wastewater Management Plan/Comprehensive Stormwater Management Plan, dated December 2013;

WHEREAS, in response to EPA and MassDEP comments on the December 2013 Comprehensive Wastewater Management Plan/Comprehensive Stormwater Management Plan, the City completed a financial capacity analysis pursuant to EPA's November 2014 "Financial Capability Assessment Framework for Municipal Clean Water Act Requirements" (the "2014 Guidance") to determine the impact of the work proposed in the December 2013 Comprehensive Wastewater Management Plan/Comprehensive Stormwater Management Plan and the accelerated schedule required by the 2010 Consent Decree on the City's ratepayers;

WHEREAS, based on the findings of the financial capacity analysis and the comments from EPA and MassDEP on the December 2013 Comprehensive Wastewater Management Plan/Comprehensive Stormwater Management Plan, the City revised and supplemented the December 2013 Comprehensive Wastewater Management Plan/Comprehensive Stormwater Management Plan in September 2015 and August 2016 (the December 2013, September 2015 and August 2016 Comprehensive Wastewater Management Plan/Comprehensive Stormwater Management Plans are collectively referred to as the “CWMP/CSMP”), outlining the proposed, remaining remedial work (the “Remaining Remedial Work”), the reprioritization of the phasing of the Remaining Remedial Work as requested by EPA and MassDEP in their comments on the CWMP/CSMP, and the timing of the initial phases of the Remaining Remedial Work necessary to achieve the goals of the 2010 Consent Decree.

WHEREAS, EPA conditionally approved the City’s CWMP/CSMP on June 8, 2017;

WHEREAS, Paragraph 64 of the 2010 Consent Decree provides that any “material modification to the terms of [the 2010 Consent Decree] shall be effective only upon approval of the Court”;

WHEREAS, the Parties agree, consistent with EPA’s Integrated Planning policies, the 2014 Guidance, the submittals and measures undertaken by the City to date pursuant to the Administrative Order and the 2010 Consent Decree and the CWMP/CSMP, that the 2010 Consent Decree should be modified to provide sufficient time to assess and implement an updated Sanitary Sewer Overflow (“SSO”) abatement program, and to extend the time beyond 2022 to complete such work, which as described herein includes the development, design, submission for review and approval, construction, and re-evaluation of the effectiveness of the measures instituted pursuant to the CWMP/CSMP;

WHEREAS, the Parties to this First Modification of the 2010 Consent Decree (the “First Modification”) have agreed that pursuant to Paragraph 64 of the 2010 Consent Decree, the proposed modifications to extend the time to complete the requirements of the 2010 Consent Decree as set forth herein constitute material modifications to the 2010 Consent Decree, which require Court approval;

WHEREAS, this First Modification requires the City to perform injunctive relief beyond that required by the 2010 Consent Decree.

WHEREAS, the Parties recognize, and the Court by entering this First Modification finds, without admission of facts or law except as expressly stated herein and without admission of liability by the City, that this First Modification has been negotiated at arms-length and in good faith and that this First Modification is fair, reasonable and in the public interest, and that entry of this Consent Decree without further litigation is an appropriate resolution of the disputes.

NOW, THEREFORE, upon the consent of the Parties, it is hereby ordered, adjudged, and decreed as follows:

MODIFIED CONSENT DECREE PROVISIONS

The 2010 Consent Decree shall remain in full force and effect in accordance with its terms with the exception of the revisions to the numbered Paragraphs below which correspond to the Paragraph numbering of the 2010 Consent Decree:

13. Add a new Paragraph 13(f) which states: CWMP/CSMP Implementation: f. On or before December 31, 2025, the City shall complete construction of all work identified in Figure 6-1A, 6-1B, and 6-1C in the City’s August 2016 Supplemental CWMP/CSMP Updated Section 6 and 7 with the exception of work identified in Figure 6-1C as Citywide

Metering: Spring and Fall 2026 and Interim Report No. 3(2012-2025) which metering and reporting will be replaced by work described below in Paragraph 14. The City shall provide written notice to EPA and MassDEP upon completion of the work. The Parties acknowledge that the City will continue to implement the Sump Pump Removal, Public Inflow Removal and Private Inflow Removal activities throughout the City (Citywide).

14. Delete Paragraph 14 in its entirety and replace it with the following: On or before December 31, 2026, the City shall submit to EPA and MassDEP for approval a report updating portions of the CWMP/CSMP necessary to modify the schedule and remaining work (“2026 Update Report”). The 2026 Update Report shall include the following elements:

- a. A summary of the work completed pursuant to the 2010 Consent Decree;
- b. An assessment of the level of service of the City’s sewer system, and associated risk of capacity-related SSOs, which shall include:
 - i. A relative comparison of infiltration and inflow (“I/I”) flow volumes before and after implementation of the extensive system improvements completed pursuant to the 2010 Consent Decree, documenting the results of the work in identifying and removing I/I sources;
 - ii. A review of the capacity-related SSO events since 2010, identifying the cause of the event, including but not limited to a characterization of associated wet weather events and their recurrence interval using best available data and any restrictions documented in connections to the regional Massachusetts Water Resources Authority (“MWRA”) collection system facilities;

- iii. Use of best available precipitation data and the calibrated sewer system model to predict the risk of capacity-related SSOs for 1-year, 5-year, and 10-year storm events, noting those elements and locations of the City's collection system at risk of SSO events during such events;
- c. Development and assessment of alternatives to achieve the goal of the 2010 Consent Decree to prevent collection system surcharges or capacity-related SSO events. The alternatives analysis shall be based on the use of the sewer system model, the information in the CWMP/CSMP, and the City's Regional Relief Sewer Study. The alternatives evaluated must include, at a minimum:
- i. Projects identified as Projects 26 – 36 in Figure 6-1D and 6-1E in the City's August 2016 Supplemental CWMP/CSMP Update. If, based upon the evaluation of the City's current collection system performance, the City determines some of the Projects 26-36 in Figure 6-1D and 6-1E are no longer feasible, for each project, the City shall provide an explanation as to why the project is no longer being considered or has been re-designed;
 - ii. Projects identified in the City's Regional Relief Sewer Study; and
 - iii. Any other City or Regional alternatives which represent cost-effective options to achieve the goal for the level of sewer service.

The parties acknowledge that some of the alternatives to be assessed will require collaboration with other regional sewer authorities, such as MWRA and the Boston Water & Sewer Commission, and private property owners where critical regional sewer infrastructure extends to property owned by these groups. For any

such alternatives, the 2026 Update Report shall include a discussion of any institutional or technical constraints to their implementation and any partnering efforts undertaken to affirm the viability of those alternatives.

- d. A recommended plan and implementation schedule identifying cost-effective projects to attain the target level of sewer system service in the City of a ten-year design storm as presented in the recommended plan. The recommended plan and schedule shall include but not be limited to a description of the projects, the estimated cost, all critical milestones in implementing the work, a description of the required permits and approvals for the work, and any needed collaboration or partnering with outside sewer authorities; and
- e. All work proposed pursuant to Paragraph 14(d) shall be completed by December 31, 2038. In addition, based on metering and modeling work conducted by the City after the completion of all work in 2038, the City shall submit to EPA and MassDEP a Capacity Assurance Plan pursuant to Paragraph 16 of the 2010 Consent Decree no later than December 31, 2040. EPA and MassDEP may provide to the City further details related to the elements of the Capacity Assurance Plan.
- f. The Parties acknowledge that in addition to the provisions of Paragraphs 23-26 of the 2010 Consent Decree, EPA and MassDEP shall review and may approve the 2026 Update Report and the schedule to complete the recommended projects in the 2026 Update Report. Upon approval, such schedule shall be incorporated into the 2010 Consent Decree and this First Modification. The approval of the 2026 Update Report and the schedule to complete the recommended work

included in the 2026 Update Report pursuant to Paragraph 14(d), as approved by EPA and MassDEP, including any subsequent modifications to the recommended work or schedule which do not extend the completion date beyond December 31, 2038, shall not be considered a material modification pursuant to Paragraph 64 of the 2010 Consent Decree.

16. Paragraph 16 is amended solely to acknowledge that the Capacity Assurance Plan required shall be completed pursuant to the timing described in Paragraph 14(e) above.
18. Illicit Discharge Detection and Elimination Plan (“IDDE”) – The City shall implement the IDDE program provided for in the CWMP/CSMP as approved by EPA subject to any approved modifications of the IDDE program by EPA, which shall not be considered a material modification pursuant to Paragraph 64 of the 2010 Consent Decree.
52. Paragraph 52 shall remain in its original except for the following recipients shall be updated as described below. Narrative paragraphs describing the form of submissions shall remain in their original, except for the names of any recipients as updated below.

As to the Department of Justice:

Chief, Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
P.O. Box 7611 – Ben Franklin Station
Washington, DC 20044
DJ # 90-5-1-1-09299

As to the United States Attorney:

United States Attorney
District of Massachusetts
One Courthouse Way
John Joseph Moakley Courthouse
Boston, MA 02210
Attention: Annapurna Balakrishna

Annapurna.Balakrishna@usdoj.gov

As to EPA:

Todd Borci
Enforcement Officer
Water Technical Unit
U.S. Environmental Protection Agency, Region 1
5 Post Office Square – Suite 100
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borci.todd@epa.gov

Jeff Kopf
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square – Suite 100
Boston, MA 02109-3912
Kopf.jeff@epa.gov

As to MassDEP:

Susannah King
Section Chief
MassDEP-NERO- Wastewater Management Section
150 Presidential Way
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susannah.king@mass.gov

Heidi M. Zisch
Chief Regional Counsel
MassDEP-NERO-Office of General Counsel
150 Presidential Way
Woburn, MA 01801
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As to the Office of the Massachusetts Attorney General:

Louis Dundin
Deputy Division Chief
Assistant Attorney General
Environmental Protection Division
Massachusetts Attorney General's Office
One Ashburton Place,
Boston, MA 02108
louis.dundin@mass.gov

As to the Massachusetts Division of Marine Fisheries

Jeff Kennedy
Shellfish Project Information Officer
Massachusetts Division of Marine Fisheries
251 Causeway Street, Suite 400
Boston, MA 02114
Shellfish.newburyport@state.ma.us

As to the City of Revere:

Office of the Mayor
City of Revere
Revere City Hall
281 Broadway
Revere, MA 02151

Michael A. Leon
Matthew H. Snell
Nutter McClennen & Fish LLP
Seaport West
155 Seaport Boulevard
Boston, MA 02210
mleon@nutter.com
msnell@nutter.com

63. The Effective Date of this First Modification shall be the date upon which this First Modification is entered by the Court. The Court shall retain jurisdiction to modify and enforce the terms and conditions of the 2010 Consent Decree and this First Modification, and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of the 2010 Consent Decree and this First Modification.
66. The provisions of the 2010 Consent Decree and this First Modification shall be severable, and should any provision be declared by the Court to be unenforceable; the remaining provisions shall remain in full force and effect.

72. This First Modification shall be lodged with the Court for a period of not less than thirty (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 received disclose facts or considerations that indicate that this First Modification is inappropriate, improper, or inadequate. The Commonwealth also reserves its right to withdraw or withhold its consent to the entry of this First Modification if comments disclose facts or considerations which show that this First Modification violates state law. The City consents to the entry of this First Modification without further notice and agrees not to withdraw from or oppose entry of this First Modification by the Court or to challenge any provision of this First Modification, unless the United States or the Commonwealth has notified the Parties in writing that it no longer supports entry of this First Modification.
73. Each undersigned representative certifies that he or she is fully authorized to enter into the terms and conditions of this First Modification and to execute and legally bind the Party he or she represents to this document.
74. This First Modification may be signed in counterparts, and its validity shall not be challenged on that basis.
75. This First Modification, in conjunction with the 2010 Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than submissions that are subsequently submitted and Approved by EPA or Approved by EPA and MassDEP pursuant to this First Modification and the 2010 Consent Decree, no other document, nor

any representation, inducement, agreement, understanding, or promise, constitutes any part of this First Modification and the 2010 Consent Decree or the settlement it represents, nor shall it be used in construing the terms of this First Modification and the 2010 Consent Decree.

APPROVED AND ENTERED THIS ___ DAY OF _____, 2023.

UNITED STATES DISTRICT JUDGE
District of Massachusetts

FOR PLAINTIFF, UNITED STATES OF AMERICA:

JOSHUA S. LEVY
Acting United States Attorney

ANNAPURNA Digitally signed by
ANNAPURNA BALAKRISHNA
BALAKRISHNA Date: 2023.09.20 08:50:42
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Annapurna Balakrishna
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John Joseph Moakley Courthouse
One Courthouse Way
Suite 9200
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(617) 748-3103
Annapurna.Balakrishna@usdoj.gov

Date

FOR PLAINTIFF, UNITED STATES OF AMERICA, continued:

TODD KIM
Assistant Attorney General
Environment and Natural Resources Division



Angela McFadden
Environmental Enforcement Section
Environment and Natural Resources Division
P.O Box 7611 Ben Franklin Station
Washington, DC 20044
(202) 532-3587



Date

For the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

**BENJAMIN
BAHK**

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BENJAMIN BAHK
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Benjamin Bahk
Director
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Date

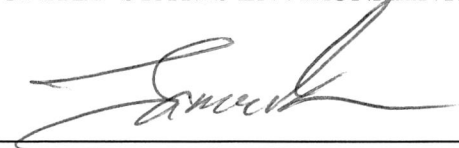
**MEGAN
KNIGHT**

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MEGAN KNIGHT
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Megan Knight
Attorney-Advisor
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Date

For the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, continued:



James Chow, Acting Director
Enforcement and Compliance Assurance Division
United States Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

9/19/23
Date



Jeff Kopf
Senior Enforcement Counsel
United States Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
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Sept. 14 2023
Date

For the COMMONWEALTH OF MASSACHUSETTS:

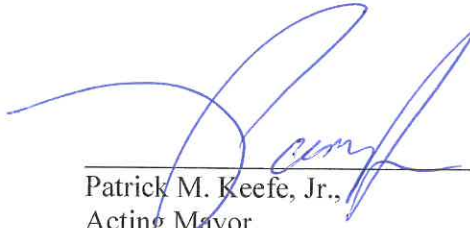
ANDREA JOY CAMPBELL
Attorney General



Louis Dundin
Deputy Division Chief
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One Ashburton Place
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Date 9/19/23

For DEFENDANT CITY OF REVERE, MASSACHUSETTS:



Patrick M. Keefe, Jr.,
Acting Mayor
City of Revere
Revere City Hall
281 Broadway
Revere, MA 02151

9-17-2023
Date