



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF

JUL 17 2018

WC-15J

Ms. Diana Christy, Interim Director
Metropolitan Sewer District of Greater Cincinnati
1600 Gest Street
Cincinnati, Ohio 45204

Mr. Jeff Aluotto
County Administrator
County Administration Building
138 East Court Street, Suite 603
Cincinnati, Ohio 45202

Re: Phase 2 Wet Weather Improvement Program Schedule in *United States, State of Ohio and Ohio River Valley Sanitation Commission v. Board of County Commissioners of Hamilton County and City of Cincinnati*, No. 1:02CV107 (S.D. Ohio)

Dear Ms. Christy and Mr. Aluotto:

Thank you for your letters of June 28, 2018, and June 29, 2018. Ms. Christy's June 28 letter transmitted on behalf of the City of Cincinnati ("the City") a proposed schedule for constructing a set of remedial measures as part of the Final Wet Weather Improvement Program ("WWIP"). Mr. Aluotto's June 29 letter transmitted on behalf of the Board of County Commissioners for Hamilton County ("the Board") a different proposed schedule for constructing a different set of measures from those included in the City's proposal. The purpose of this letter is to make clear that the U.S. Environmental Protection Agency, Ohio Environmental Protection Agency and Ohio River Valley Sanitation Commission ("the Regulators") do not view Defendants' submissions of different proposals as having satisfied Defendants' obligation to submit a single proposed Phase 2 schedule on behalf of both Defendants under Paragraph IX.B of the Consent Decree on Combined Sewer Overflows, Wastewater Treatment Plants and Implementation of Capacity Assurance Program Plan for Sanitary Sewer Overflows ("CSO Consent Decree"), as amended by the Revised First Amendment to the Consent Decrees that was entered by the Court on August 10, 2010.

Paragraph IX.B of the CSO Consent Decree, as amended, provides:

B. Schedule for Implementation of WWIP

On January 6, 2010, the United States/State/ORSANCO approved the Final Wet Weather Improvement Program (Final WWIP). The deadline for completion of all remedial measures specified in the Final WWIP must be as expeditious as practicable, but the remedial measures may be implemented in phases consistent with the deadlines and approach set forth in the Final WWIP. Except as set forth in the Final WWIP, Phase 1, which includes the projects set forth in Attachments IA, 1B, and IC of the Final WWIP, must be completed by December 31, 2018. By June 30, 2017, Defendants shall submit a schedule that is as expeditious as practicable to the United States/State/ORSANCO for additional Final WWIP projects to be constructed (Phase 2). Defendants may propose a Phase 2 schedule for only a subset of the remaining Final WWIP projects (phase 2A) with construction of the remainder of the Final WWIP projects to be scheduled as part of an additional final phase (phase 2B), with the schedule for Phase 2B due at a later date specified in the Phase 2A schedule. provided that the Phase 2B schedule must also be as expeditious as practicable. Defendants may request additional phase(s) beyond Phase 2B only if they can demonstrate that the additional phase is necessary to avoid severe financial hardship and that the schedule for completion of remedial measures in that phase is as expeditious as practicable.

Although the date for submission of the Phase 2 or 2A schedule was subsequently changed, and the United States' request for the Court to approve an extension for the date of submission to June 30, 2018, is currently pending, nothing else in Paragraph IX.B of the CSO Consent Decree as amended has changed.

Paragraph IX.B of the CSO Consent Decree as amended, like other provisions throughout the CSO Consent Decree and the Interim Partial Consent Decree on Sanitary Sewer Overflows, refers to Defendants in plural, but to the deliverable at issue (in this instance, the Phase 2 or 2A schedule) in singular: "Defendants shall submit a schedule that is as expeditious as practicable to the United States/State/ORSANCO for additional Final WWIP projects to be constructed (Phase 2)," "Defendants may propose a Phase 2 schedule." (emphasis added in all instances). The subparagraphs throughout Paragraph B.1 of the WWIP pertaining to the Phase 2 scheduling process similarly refer to Defendants in plural and the deliverable at issue (the proposed Phase 2, 2A or 2B schedule) in singular. The fact that these provisions consistently refer to Defendants in plural, but to the deliverable in singular, means that the consent decree and WWIP require Defendants to submit a single proposed Phase 2 or 2A schedule on behalf of both Defendants to the Regulators for review by the specified deadline.

We hope that Defendants will be able to submit to the Regulators a single proposed Phase 2 or 2A schedule on behalf of both Defendants in the very near future.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patrick Kuefler', with a long horizontal flourish extending to the right.

Patrick Kuefler, Chief
Water Enforcement and Compliance Assurance Branch

cc (via email):

Lou McMahon, Counsel for City of Cincinnati
Ted Boggs and Mark Norman, Counsel for Board of County Commissioners
Marilyn Wall, Sierra Club
David Altman, Counsel for Sierra Club
Leslie Allen, U.S. Department of Justice
Sushila Nanda, OECA
Ohio EPA and ORSANCO Regulator team