

IN THE UNITED STATES DISTRICT COURT
 FOR THE WESTERN DISTRICT OF TENNESSEE
 (WESTERN DIVISION)

UNITED STATES OF AMERICA and,)	
the STATE OF TENNESSEE, ex. rel.)	
ROBERT E. COOPER, in his representative)	
capacity as the Attorney General and)	
Reporter of Tennessee,)	
Plaintiffs,)	Civil Action No. 2:10-cv-02083-SHM-dkv
)	
and)	
)	
TENNESSEE CLEAN WATER)	FIRST AMENDMENT TO
NETWORK,)	CONSENT DECREE
Intervening Plaintiff,)	
)	
v.)	
)	
)	
THE CITY OF MEMPHIS,)	
Defendant.)	
_____)	

WHEREAS, Plaintiff, the United States of America (“United States”), by the authority of the Attorney General of the United States and through its undersigned counsel, acting at the request and on behalf of the United States Environmental Protection Agency (“EPA”), filed a Complaint (“Complaint”) on February 5, 2010, alleging that Defendant, the City of Memphis, Tennessee (“Memphis”), had violated and continued to violate Sections 301 and 402 of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1311 and 1342;

WHEREAS, Plaintiff, the State of Tennessee (“State”), acting at the request of the Tennessee Department of Environment and Conservation (“TDEC”), joined in the Complaint and sought injunctive relief and civil penalties for Memphis’ alleged violations of the Tennessee Water Quality Control Act (“TWQCA”), Tenn. Code Ann. §§ 69-3-101 *et seq.*, and the regulations promulgated pursuant thereto;

WHEREAS, on February 12, 2010, Intervening Plaintiff, the Tennessee Clean Water Network (“TCWN”), filed a Motion to Intervene as a Matter of Right seeking to intervene in the action initiated by the United States and the State pursuant to Section 505(b)(1)(B) of the CWA, 33 U.S.C. § 1365(b)(1)(B);

WHEREAS, the United States and the State filed an Amended Complaint (“Amended Complaint”) on April 16, 2012, concurrently with the lodging of a Consent Decree amending the allegations of Memphis’ violations of the CWA and the TWQCA;

WHEREAS, the TCWN filed an Amended Motion to Intervene as a Matter of Right on April 16, 2012, pursuant to Section 505(b)(1)(B) of the CWA, 33 U.S.C. § 1365(b)(1)(B), concurrently with lodging of the Consent Decree which provided for its complaint (“TCWN Complaint”) to be filed upon entry of the Consent Decree;

WHEREAS, the Court approved and entered the Consent Decree on September 21, 2012 (hereinafter the “2012 Consent Decree”);

WHEREAS, Appendix I to the 2012 Consent Decree set forth the M.C. Stiles WWTP [Wastewater Treatment Plant] Foam Study & Outfall Improvements Work Plan (“Work Plan”) and Paragraph 12 of the 2012 Consent Decree sets forth the Parties’ agreement for Memphis to implement said Work Plan with the expectation that the Work Plan, once implemented, would address the underlying cause(s) of the alleged noncompliance associated with foam;

WHEREAS, after the entry of the 2012 Consent Decree the City undertook the additional step of engaging an engineering firm to construct and test a physical model of the outfall to help finalize the outfall design and such testing indicated that limited foam reduction would occur from the alternative set forth in the Work Plan;

WHEREAS, based upon new information, the Parties agree that an alternative approach involving the use of a vortex would likely have the intended results;

WHEREAS, Paragraph 73 of the 2012 Consent Decree specifies that the Court would retain jurisdiction until termination of the Consent Decree;

WHEREAS, Paragraph 74 of the 2012 Consent Decree provides that non-material changes to the Consent Decree, including appendices, may be made by written agreement of the Parties without court approval, and the Parties may by mutual agreement determine whether a modification is non-material;

WHEREAS, the Parties, agree that based upon new information the proposed engineering approach as set forth in Amended M.C. Stiles WWTP Foam Study & Outfall Improvements Work Plan (“Amended Work Plan”) dated January 2, 2014, is now the preferred approach for addressing foam; and,

WHEREAS, the Parties agree that a modification to the 2012 Consent Decree is appropriate to provide for implementation of the Amended Work Plan (in lieu of the alternative provided for in the original Work Plan) and that such change is immaterial since, among other things, it will likely provide for improved results beyond that which would have been provided by the work originally anticipated in the Work Plan.

NOW THEREFORE, pursuant to Paragraph 74 of the 2012 Consent Decree, the Parties hereby agree that the 2012 Consent Decree is AMENDED as a non-material modification as follows:

AMENDED CONSENT DECREE PROVISIONS

1. The 2012 Consent Decree shall remain in full force and effect in accordance with its terms, except that Paragraph 12 and Appendix I are revised as set forth below:

12. M.C. Stiles WWTP Foam Study and Outfall Improvements Amended Work Plan:

To address alleged noncompliance associated with foam discharged from the M.C. Stiles WWTP, Memphis agrees to implement, as an enforceable obligation under this Consent Decree, the Amended M.C. Stiles WWTP Foam Study and Outfall Improvements Work Plan, dated January 2, 2014, which is attached hereto as Amended Appendix I and incorporated by reference herein. It is the expectation of the Parties that this Work Plan, once implemented, will address the underlying cause(s) of the alleged noncompliance with the NPDES Permit for the M.C. Stiles WWTP. In the event EPA and TDEC determine within one (1) year after Memphis' completion of the work under this Amended Work Plan that this Amended Work Plan failed to address alleged noncompliance associated with foam discharge from the M.C. Stiles WWTP, EPA and TDEC shall so notify Memphis in writing. Within ninety (90) days of receiving this notification or such other time as agreed to by EPA and TDEC, Memphis shall submit to EPA and TDEC for review and comment a revised Work Plan to address the alleged noncompliance, subject to Memphis' right to invoke Dispute Resolution under Section XI of this Consent Decree; provided, however, that in any such Dispute, EPA shall bear the burden of proof with respect to its allegation of noncompliance associated with foam discharge from the M.C. Stiles WWTP.

Appendix I: Appendix I as set forth in the 2012 Consent Decree is rescinded and replaced with Amended Appendix I (Amended M.C. Stiles WWTP Foam Study and Outfall Improvements Work Plan, dated January 2, 2014) attached hereto.

2. This First Amendment to Consent Decree shall become effective upon Memphis' receipt of the document with the signatures of all Parties. A copy of this First Amendment to Consent Decree shall be provided to the Court for its records. In addition, a copy shall be deposited in the Memphis Public Document Repository within fourteen (14) days of its execution by the Parties.

No other public participation or related requirements are applicable to this First Amendment to Consent Decree.

THE UNDERSIGNED PARTIES agree that this modification to the Consent Decree is non-material and HEREBY ENTER into this First Amendment to Consent Decree in the matter of *United States of America v. City of Memphis*.

FOR PLAINTIFF UNITED STATES OF AMERICA:

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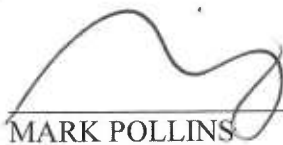


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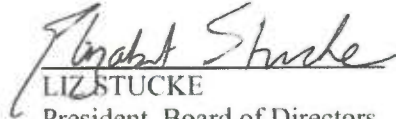


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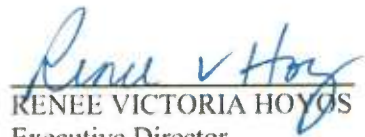
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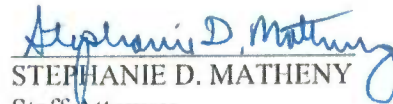
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