

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

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UNITED STATES OF AMERICA and,	)	
the STATE OF TENNESSEE, ex	)	
rel. ROBERT E. COOPER, in his	)	
official capacity as the	)	
Attorney General and Reporter	)	
of Tennessee,	)	
	)	
Plaintiffs,	)	
	)	
TENNESSEE CLEAN WATER NETWORK,	)	No. 10-2083
	)	
Intervening Plaintiff,	)	
	)	
v.	)	
	)	
THE CITY OF MEMPHIS,	)	
	)	
Defendant.	)	

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ORDER GRANTING JOINT MOTION FOR ENTRY OF CONSENT DECREE

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Before the Court is the parties' July 24, 2012 Joint Motion for Entry of Consent Decree. (ECF No. 28.)

The "criteria to be applied when a district court decides whether to approve and enter a proposed consent decree[] are whether the decree is 'fair, adequate, and reasonable as well as consistent with the public interest.'" United States v. Lexington-Fayette Urban Cnty. Cov't, 591 F.3d 484, 489 (6th Cir. 2010) When determining the fairness of a consent decree, the Court considers "the strength of plaintiff[s'] case, the good faith efforts of the negotiators, the opinions of counsel, and

the possible risks involved in litigation if the settlement is not approved,' to be relevant." Id. (quoting United States v. Akzo Coatings of Am., Inc., 939 F.2d 1409, 1435 (6th Cir. 1991). In a Clean Water Act ("CWA") cause of action, "one of the most important considerations when evaluating whether a proposed consent decree is reasonable is the decree's likely effectiveness as a vehicle for cleansing the environment." Id. (internal quotations omitted). When "evaluating the public interest, the district court must consider whether the decree is 'consistent with the public objectives sought to be attained by Congress.'" Id. (quoting Williams v. Vukovich, 720 F.2d 909, 923 (6th Cir, 1983)). The general objective of the CWA is "to restore and maintain the chemical, physical and biological integrity of the Nation's waters." 33 U.S.C. §§ 1251(a).

"Public policy generally supports 'a presumption in favor of voluntary settlement' of litigation." Lexington-Fayette Urban Cnty. Govt., 591 F.3d at 490 (quoting Akzo Coatings, 949 F.2d at 1436). The "presumption is particularly strong where a consent decree has been negotiated by the Department of Justice on behalf of a federal administrative agency like EPA which enjoys substantial expertise in the environmental field." Id. (internal citations omitted).

After considering the proposed consent decree, the public comments, and the responses to those comments, the Court finds

that the consent decree satisfies the applicable criteria. The terms of the consent decree are fair, adequate, and reasonable. They are consistent with the public interest in cleansing the environment and are likely to be effective in furthering that interest. The relief provided is consistent with the purposes of the CWA and Congress' objectives of promoting public health and protecting the environment, specifically restoring and maintaining the integrity of the water system. The consent decree was negotiated by the Department of Justice on behalf of the Environmental Protection Agency. All negotiators were skilled, experienced, adverse, and negotiating in good faith. Further litigation would be protracted and expensive and would be unlikely to produce a more favorable result. All parties recommend entry of the consent decree.

For the foregoing reasons, the Joint Motion for Entry of Consent Decree is GRANTED.

So ordered this 20th day of September, 2012.

s/ Samuel H. Mays, Jr. \_\_\_\_\_  
SAMUEL H. MAYS, JR.  
UNITED STATES DISTRICT JUDGE