

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
STATE OF NEW HAMPSHIRE,)	
)	
Plaintiff-Intervenor)	Civil Action No.
v.)	09-cv-283-PB
)	
CITY OF PORTSMOUTH,)	
NEW HAMPSHIRE,)	
)	
Defendant.)	

NOTICE OF LODGING OF PROPOSED CONSENT DECREE MODIFICATION

Plaintiff United States hereby lodges the accompanying proposed Consent Decree Modification concerning the Consent Decree (docket no. 8) entered by the Court on September 24, 2009, resolving the claims of the United States and State of New Hampshire, pursuant to Section 301(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1301(a), against defendant City of Portsmouth. Consistent with 28 C.F.R. § 50.7, the United States shall publish a Notice of Lodging of the Consent Decree Modification in the Federal Register. The United States will then receive public comments upon the proposed Consent Decree Modification for a period of thirty days. During the thirty day comment period, the United States respectfully requests that this Court not sign or enter the Consent Decree Modification.

At the close of the public comment period on the proposed Consent Decree Modification, the United States will inform the Court regarding the nature of any public comments regarding the Consent Decree Modification. Depending upon the nature of the comments received, if any,

the United States will move to enter, modify, or withdraw the Consent Decree Modification. Accordingly, the United States requests that no further action be taken by the Court with respect to this Consent Decree Modification until close of the public comment period.

Respectfully submitted,

IGNACIA MORENO
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice
Washington, D.C. 20530

/s/ Peter M. Flynn
PETER M. FLYNN
Senior Attorney
Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-4352; peter.flynn@usdoj.gov

JOHN P. KACAVAS
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District of New Hampshire

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OF COUNSEL:
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5 Post Office Square - Suite 100
Boston, MA 02109-3912
(617) 918-1735

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF PORTSMOUTH, NEW HAMPSHIRE

Defendant.

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Civ. No.

PLAINTIFF'S NOTICE OF
LODGING CONSENT
DECREE

CERTIFICATE OF SERVICE

The undersigned certifies, under penalty of perjury, that on August 17, 2009, he caused a true copy of the attached "Notice of Lodging of Consent Decree" to be served upon Counsel of Record at the addresses set forth below, by United States mail, postage prepaid:

Suzanne M. Woodland
Assistant City Attorney
City of Portsmouth
Municipal Complex
1 Junkins Ave.
Portsmouth, NH 03801

E. Tupper Kinder, Esq.
Nelson, Kinder, Mosseau & Saturley, PC
99 Middle Street
Manchester, NH 03101

Lauren J. Noether
Senior Assistant Attorney General
Environmental Protection Bureau
33 Capital Street
Concord, NH 03301

/s/ Peter M. Flynn
PETER M. FLYNN
Senior Attorney
Environmental Enforcement Section
U.S. Department of Justice
Ben Franklin Station
P.O. Box 7611
Washington, DC 20044-7611
(202) 514-4352

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Lodging of Proposed Consent Decree Modification was filed and served electronically through ECF and sent to the following counsel, by United States mail, postage prepaid on this 2nd day of July, 2012:

Suzanne M. Woodland
Assistant City Attorney
City of Portsmouth
Municipal Complex
1 Junkins Ave
Portsmouth, NH 03801

E. Tupper Kinder, Esq.
Nelson, Kinder, Mosseau & Saturley, PC
99 Middle Street
Manchester, NH 03101

Lauren J. Noether
Senior Assistant Attorney General
Environmental Protection Bureau
State of New Hampshire
33 Capital Street
Concord, NH 03301

/s/ Peter M. Flynn
PETER M. FLYNN

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA,)	
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Plaintiff,)	
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STATE OF NEW HAMPSHIRE,)	
)	CIVIL ACTION
Plaintiff-Intervenor,)	NO. 09-cv-283-PB
)	
v.)	
)	
CITY OF PORTSMOUTH, NEW HAMPSHIRE,)	
)	
Defendant.)	
)	

CONSENT DECREE MODIFICATION

WHEREAS, Plaintiff, the United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("EPA"), filed a Complaint in this action alleging that Defendant, the City of Portsmouth, New Hampshire ("the City") violated Section 301(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1301(a).

WHEREAS, Plaintiff-Intervenor, the State of New Hampshire ("State"), filed a Complaint-in-Intervention alleging that the City violated the New Hampshire Water Pollution and Waste Disposal Act, NH RSA 485-A ("New Hampshire Act");

WHEREAS, The Complaint and Complaint-in-Intervention allege that the City is violating its National Pollutant Discharge Elimination System ("NPDES") permit effluent limitations for discharges from the City's wastewater treatment plant and permit

conditions applicable to discharges from overflow points in the City's combined wastewater collection system;

WHEREAS, the Court entered the Consent Decree ("Consent Decree") in this matter on September 24, 2009, requiring combined sewer overflow ("CSO") mitigation and construction of secondary treatment facilities;

WHEREAS, the City encountered unexpected geological conditions that impairs the City's ability to meet the previously-designated CSO mitigation construction schedule;

WHEREAS, the City demonstrated that necessary work related to constructing secondary treatment facilities warrants a change in the CSO mitigation construction schedule;

WHEREAS, the City also proposes a detailed schedule for constructing secondary treatment facilities in accordance with this Consent Decree; and

WHEREAS, the United States, State and City (the "Parties") agree, and the Court by entering this Consent Decree Modification ("Modification") finds, that this Modification is fair, reasonable and in the public interest;

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed that:

1. The Court has jurisdiction over the subject matter of this action and over the Parties to this Modification pursuant to Paragraphs 1 and 65 of the Consent Decree.

2. Pursuant to Paragraph 66 of the Consent Decree material modifications of the Consent Decree may be made by written agreement of the Parties, and shall be effective only upon approval of the Court.

3. The following Paragraph is hereby substituted for Paragraph 10 of the Consent Decree:

Combined Sewer Overflow Facility Upgrades. The City shall implement its April 2005 Final CSO Long Term Control Plan in accordance with the following schedule and shall complete all construction for implementation of the 2005 LTCP projects listed below by October, 2014:

Planning Area I.D.	Contract I.D.	Project Start Date	Project Completion Date
Lincoln 3	Phase I	In Progress	6/1/2012
Lincoln 3	Phase II	In Progress	10/1/2014
Lincoln 3	Phase III	In Progress	10/1/2013
Islington	Islington #2	Under Design	6/1/2013

4. Paragraph 20.a. of the Consent Decree shall be replaced with the following Paragraph:

Within 30 days after the end of each calendar quarter (i.e., by April 30, July 30, October 30, and January 30) after the Effective Date of this Consent Decree, until termination of this Decree pursuant to Section XVI, the City shall submit a written report for the preceding calendar quarter that shall include a description of the following: i) the status of any construction or compliance measures, including whether any such construction or compliance measure could be completed prior to relevant milestones contained herein consistent with sound engineering practice and normal construction practices; ii) the status of all Consent Decree milestones, including whether any have been achieved prior to the date for doing so; iii) any problems encountered or anticipated, together with the proposed or implemented solutions; iv) the status of permit applications; v) operation and maintenance operations; and vi) reports to State agencies.

5. Paragraph 1 of Appendix B.1 to the Consent Decree is hereby modified by adding the following subparagraphs:

g. By June 30, 2012, the City shall complete pilot testing of potential treatment technologies for achieving secondary treatment, including, but not necessarily limited to: Biologically Aerated Filters (BAF), BioMag, Moving Bed Biofilm Reactors (MBBR) w/ Dissolved Air Flotation (DAF), and Conventional Activated Sludge with BioMag. By July 30, 2012, the City shall complete a data summary relative to the pilot testing.

h. By October 1, 2012, the City shall submit a Piloting Technical Memorandum that includes data from piloting and a recommendation on the design and capacity of secondary treatment facilities.

i. By July 1, 2013, the City shall commence final design of secondary treatment facilities.

j. By August 31, 2014, the City shall complete design of secondary treatment facilities.

k. By March 1, 2015, the City shall commence construction of secondary treatment facilities.

l. By March 1, 2017, the City shall complete construction of secondary treatment facilities.

m. By May 1, 2017, the City shall achieve compliance with secondary treatment limits in the Permit.

n. Whenever feasible, the City shall commence work in advance of milestones and complete such work as expeditiously as practicable consistent with sound engineering practice and normal construction practices.

6. This 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. Section 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Modification disclose facts or considerations indicating that the Modification is inappropriate, improper, or

inadequate. The City consents to entry of this Modification without further notice and agrees not to withdraw from or oppose entry of this Modification by the Court or to challenge any provision of the Modification, unless the United States has notified the City in writing that it no longer supports entry of this Modification.

7. The Effective Date of this Modification shall be the date upon which this Modification is entered by the Court or a motion to enter the Modification is granted, whichever occurs first, as recorded on the Court's docket.

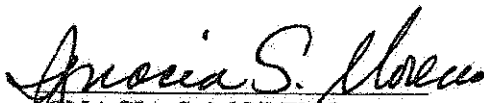
Dated and entered this _____ day of _____, 2012.

UNITED STATES DISTRICT JUDGE
District of New Hampshire

FOR PLAINTIFF THE UNITED STATES OF AMERICA:

Respectfully submitted,

FOR THE UNITED STATES



IGNACIA S. MORENO
Assistant Attorney General
Environmental & Natural Resources Division
United States Department of Justice

Dated: 7/2/12

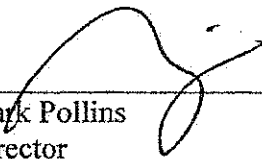


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For the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



Mark Pollins
Director
Water Enforcement Division
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

6.11.12

DATE

For the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION I

Susan Studlien

Susan Studlien

Director, Office of Environmental Stewardship
United States Environmental Protection Agency,
Region I

5 Post Office Square – Suite 100
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05/30/12

DATE

For Plaintiff, the State of New Hampshire

State of New Hampshire
Department of Environmental Services

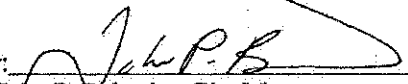
By its attorney,

Michael A. Delaney
New Hampshire Attorney General

By: LSL 5/23/12
Lauren J. Noether, NH Bar 1881
Senior Assistant Attorney General
Environmental Protection Bureau
33 Capitol Street
Concord, NH 03301
603/271-3679

For Defendant, the City of Portsmouth, New Hampshire

By:


John P. Bohenko, City Manager
Pursuant to vote of the City Council
of April 16, 2012.

Dated: 5/16/12

Susan M. Auger

From: ecf_bounce@nhd.uscourts.gov
Sent: Monday, July 02, 2012 10:55 AM
To: nef@nhd.uscourts.gov
Subject: Activity in Case 1:09-cv-00283-PB USA v. Portsmouth, NH, City of Notice (Other)

This is an automatic e-mail message generated by the CM/ECF system. Please **DO NOT RESPOND** to this e-mail because the mail box is unattended.

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U.S. District Court

District of New Hampshire

Notice of Electronic Filing

The following transaction was entered by Flynn, Peter on 7/2/2012 at 10:55 AM EDT and filed on 7/2/2012

Case Name: USA v. Portsmouth, NH, City of

Case Number: 1:09-cv-00283-PB

Filer: USA

WARNING: CASE CLOSED on 09/24/2009

Document Number: 10

Docket Text:

NOTICE of Notice of lodging of proposed consent decree modification by USA. (Attachments: # (1) Proposed Order Proposed consent decree modification)(Flynn, Peter)

1:09-cv-00283-PB Notice has been electronically mailed to:

E. Tupper Kinder ekinder@nkmlawyers.com; rfojo@nkmlawyers.com; sauger@nkmlawyers.com

Mary E. Maloney mary.maloney@doj.nh.gov; jane.watt@doj.nh.gov; manuela.perry@doj.nh.gov

Peter M. Flynn peter.flynn@usdoj.gov

1:09-cv-00283-PB Notice, to the extent appropriate, must be delivered conventionally to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a