



## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Second Amendment to Consent Decree Under the Clean Water Act

On December 11, 2020, the Department of Justice lodged a proposed Second Amendment to Consent Decree (“Second Amendment”) with the United States District Court for the Northern District of Ohio in the lawsuit entitled *United States and the State of Ohio v. Northeast Ohio Regional Sewer District*, Civil Action No. 1:10-cv-02895.

The United States, on behalf of the U.S. Environmental Protection Agency, and the State of Ohio, on behalf of the Ohio Environmental Protection Agency (“Ohio EPA”), filed a complaint under the Clean Water Act asserting claims related to discharges from the Northeast Ohio Regional Sewer District’s (“NEORS”) municipal wastewater and sewer system. The United States sought civil penalties and injunctive relief.

On July 7, 2011, the Court entered a Consent Decree that required that NEORS implement injunctive measures and required payment of civil penalties. The injunctive relief in the Consent Decree requires, *inter alia*, that the District undertake an extensive program of improvements in its combined sewer overflow control infrastructure and that it significantly expand the capacity of its three wastewater treatment plants in order to increase the ability of the plants to treat increased sewer flows during wet weather.

The proposed Second Amendment relates primarily to work that remains to be completed at the Southerly and Westerly wastewater treatment plants (Control Measures 5 and 3 specified in Appendix 1) and proposed changes to the structure of the improvements required by Control Measures 13, 14, 15, 16, 17, 20, 21, 22, and 24 of Appendix 1. The proposed modifications are reflected in changes to the language of the Consent Decree, Appendix 1, and Appendix 2.

With regard to Southerly, the Consent Decree required two significant upgrades to increase the Southerly plant’s peak wet weather capacity: construction of a 125 MGD CEHRT

facility and expansion of secondary treatment capacity from 400 MGD to 615 MGD. To address the District's concerns about constructability and operability of the required expansion of secondary treatment capacity, the proposed modification instead requires the expansion of the secondary system to 480 MGD and an expansion of the capacity of the CEHRT to 255 MGD.

With regard to Westerly, the Consent Decree, in Control Measure 3 of Appendix 1, requires the District to modify and expand an existing wet weather storage and sedimentation facility (the "CSOTF") to provide CEHRT treatment for flows up to 411 MGD. The Parties recognized after entry of the Consent Decree that site space constraints, upstream hydraulic limitations, and the potential for CEHRT infrastructure flooding requires the occasional use of a center channel diversion in such a manner that limits the District's ability to treat 411 MGD at all times and therefore propose to address the limitations of the CEHRT treatment capacity by detailing the infrastructure to be constructed and circumstances under which the use of the center channel diversion is allowed to be used.

Appendix 2 of the Consent Decree presents the requirements for post-construction monitoring of the control measures that the District is required to implement. For both Southerly and Westerly CEHRT systems, the Parties decided to add to Appendix 2 detailed descriptions of the processes and methods for conducting post-construction monitoring of the CEHRT systems instead of those details being addressed through a separate deliverable submitted by the District and subject to Plaintiffs' review and approval.

The proposed modification also updates the Notice requirements of the Consent Decree and makes replacements to Paragraph 18 of the Consent Decree based on the Southerly and Westerly modifications described above.

The publication of this notice opens a period for public comment on the Second Amendment. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and the State of Ohio v. Northeast Ohio Regional Sewer District*, D.J. Ref. No. 90-5-1-1-08177/1. All comments must be

submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by e-mail or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By e-mail	pubcomment-ees.enrd@usdoj.gov
By mail	Assistant Attorney General U.S. DOJ – ENRD P.O. Box 7611 Washington, D.C. 20044-7611

During the public comment period, the Second Amendment may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the Second Amendment upon written request and payment of reproduction costs. Please mail your request and payment to:

Consent Decree Library  
U.S. DOJ – ENRD  
P.O. Box 7611  
Washington, D.C. 20044-7611

Please enclose a check or money order for \$ 59.00 (25 cents per page reproduction cost) payable to the United States Treasury.

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