

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
NORTHERN DIVISION**

THE UNITED STATES OF AMERICA,)
THE STATE OF TENNESSEE, THE)
TENNESSEE CLEAN WATER NETWORK,)
and THE CITY OF KNOXVILLE)
)
Plaintiffs,)
)
v.)
)
THE KNOXVILLE UTILITIES BOARD,)
)
Defendant.)
)
)
)
)
)
)
)

CIVIL ACTION
NO. 3:03-CV-497 and
No. 3:04-CV-568

FIRST AMENDMENT TO CONSENT DECREE

WHEREAS, on December 1, 2004, the United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), and with the consent of the State of Tennessee (“State”), the Tennessee Clean Water Network (“TCWN”), and the City of Knoxville, Tennessee (“City”) (collectively, “the Parties”); and Knoxville Utilities Board (“KUB”), lodged a Consent Decree resolving claims alleged by the Parties against KUB; and

WHEREAS, on February 11, 2005, the Court entered the Consent Decree, following a period of public comment; and

WHEREAS, Section VII.D.1.(a).(iv). of the Consent Decree obligates KUB to implement a Comprehensive Performance Evaluation (“CPE”) Program to identify flow

and/or loading rate restricted treatment process unit(s) at each of Defendant's wastewater treatment plants ("WWTPs");

WHEREAS, Section VII.D.1.(a).(v). of the Consent Decree requires KUB to submit and implement a Composite Correction Program ("CCP") to identify rehabilitation and/or upgrades to the WWTPs to address problems identified in the CPE;

WHEREAS, KUB submitted a CCP setting forth rehabilitation and upgrades to the Kuwahee and Fourth Creek WWTPs that address problems identified by KUB in the CPE, which consist of high rate clarification ("HRC") and biologically enhanced high rate clarification ("BEHRC") treatment systems; and

WHEREAS, the United States, after consultation with the State, approved the CCP on January 15, 2009, with such approval subject to entry of this First Amendment to the Consent Decree;

WHEREAS, Section XXIV of the Consent Decree requires the Defendant to achieve final compliance with all terms of the Consent Decree no later than December 31, 2016; and

WHEREAS, the Defendant has requested an extension of the final compliance deadline under Section XXIV for the completion of the HRC/BEHRC upgrade Work at the Fourth Creek WWTP by no later than June 30, 2018 and at the Kuwahee WWTP by no later than June 30, 2021; and

WHEREAS, all other Work required under the Consent Decree will continue to be completed no later than December 31, 2016 as provided under Section XXIV; and

WHEREAS, under Section XXIV of the Consent Decree, any Material Modification requires written agreement of the Parties and approval of this Court; and

WHEREAS, an extension of the final compliance date under Section XXI of the Consent Decree constitutes a Material Modification under Section XXI of the Consent Decree;

WHEREAS, the Parties are in agreement that the Consent Decree may be amended as requested by the Defendant;

NOW THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED that the Consent Decree may be modified as follows:

1. Section XXIV shall be removed and replaced with the following language:

XXIV. FINAL COMPLIANCE AND TERMINATION

KUB shall achieve final compliance with all the terms of this Consent Decree as provided below:

A. KUB shall achieve final compliance with, and complete all Work required under, Section VIII (Supplemental Environmental Project) of this Consent Decree by no later than February 11, 2013. Except as specifically set forth in Section XXIV.E below, KUB shall achieve final compliance with, and complete all Work required under, Section VII (Performance of the Work) of this Consent Decree by no later than December 31, 2016.

B. The United States' determination that the Consent Decree should be terminated as to KUB's obligations set forth in Sections VII (except for those obligations described in Section XXIV.E below) and VIII of this Consent Decree, as well as Sections XVIII (Certification of Submissions/Record Retention) and XIX (Reporting

Requirements), as such Sections relate to the completed obligations set forth in Sections VII and VIII of this Consent Decree, shall be based on a consideration of whether all of the following have occurred, after consultation with the State, TCWN and the City:

- 1. KUB has paid all stipulated and civil penalties it is obligated to pay under this Consent Decree;*
- 2. KUB has completed all Work required in Sections VII (except for those obligations described in Section XXIV.E below) and VIII of this Consent Decree; as well as Sections XVIII (Certification of Submissions/Record Retention) and XIX (Reporting Requirements), as such Sections relate to the terminated obligations set forth in Sections VII and VIII of this Consent Decree; and*
- 3. KUB has provided certification of its payment of all outstanding penalties and its completion of performance of the Work described in Section XXIV.B.2 above.*

C. KUB may request that the United States make a determination pursuant to Section XXIV.B that this Consent Decree may be terminated with regard to KUB's obligations set forth in Sections VII (except for those obligations described Section XXIV.E below) and VIII of this Consent Decree, as well as in Sections XVIII (Certification of Submissions/Record Retention) and XIX (Reporting Requirements), as such Sections relate to the completed obligations set forth in Sections VII and VIII of this Consent Decree. Any such request shall be in writing and shall include a certification of its payment of all outstanding penalties and its completion of performance of the Work described in Section XXIV.B.2 above. KUB shall serve a copy of any such request on all Parties.

D. *If the United States agrees, after consultation with the State, TCWN and the City, that KUB has met the requirements of Section XXIV.A, B and C above, the United States will file a motion with the Court seeking an order terminating the portions of the Consent Decree with regard to KUB's obligations set forth in Sections VII (except for those obligations described in Section XXIV.E below) and VIII of this Consent Decree. If the United States determines not to seek such partial termination of the Consent Decree, the United States shall notify the Parties in writing. The United States' notice shall summarize the basis for its decision and describe the actions necessary to achieve final compliance with the obligations identified in Section XXIV.A, B and/or C. If KUB disagrees with any such determination by the United States not to seek such partial termination of the Consent Decree, KUB must invoke the dispute resolution procedures of Section XII (Dispute Resolution) before filing any motion with the Court regarding the disagreement.*

E. *Pursuant to Section VII.D.1.(a).(v) (Composite Correction Plan for WWTPs) of this Consent Decree, KUB submitted a CCP setting forth rehabilitation and upgrades to the Kuwahee and Fourth Creek WWTPs that address problems identified by KUB in the CPE submitted pursuant to Section VII.D.1.(a).(iv) (Comprehensive Performance Evaluation Program for WWTPs) of this Consent Decree. EPA approved the CCP on January 15, 2009. In Section 5 of the CCP, KUB identifies certain upgrades to the Fourth Creek and Kuwahee WWTPs that consist of the design and construction of high rate clarification ("HRC") and biologically enhanced high rate clarification ("BEHRC") treatment systems. Consistent with the schedule included in the CCP, KUB*

shall complete this HRC/BEHRC upgrade Work at the Fourth Creek WWTP by no later than June 30, 2018 and at the Kuwahee WWTP by no later than June 30, 2021.

F. The United States' determination that the entire Consent Decree should be terminated shall be based on a consideration of whether all of the following have occurred, after consultation with the State, TCWN and the City:

1. KUB has paid all stipulated penalties it is obligated to pay under this Consent Decree;

2. KUB has completed all Work required pursuant to Sections VII (including those obligations described in Section XXIV.E above); VIII; XVIII (Certification of Submissions/Record Retention); and XIX (Reporting Requirements) of this Consent Decree;

3. KUB has provided certification of its payment of all outstanding penalties and its completion of performance of the Work described in Section XXIV.F.2 above.

G. KUB may request that the United States make a determination pursuant to Section XXIV.F that this Consent Decree may be terminated. Any such request shall be in writing and shall include a certification that the requirements of Section XXIV.F have been met. KUB shall serve a copy of any such request on all Parties.

H. If the United States agrees, after consultation with the State, TCWN and the City, that KUB has met the requirements of Section XXIV.F and G above, the United States will file a motion with the Court seeking an order terminating the Consent Decree. If the United States determines not to seek termination of the Consent Decree, the United States shall notify the Parties in writing. The United States' notice shall summarize the

basis for its decision and describe the actions necessary to achieve final compliance. If KUB disagrees with any such determination by the United States not to seek termination of the Consent Decree, KUB must invoke the dispute resolution procedures of Section XII (Dispute Resolution) before filing any motion with the Court regarding the disagreement.

2. Paragraphs X.A.2. and X.A.3 with be removed and replaced as follows:

X. STIPULATED PENALTIES

...

2. Prohibited Bypasses. For each Bypass that is prohibited by 40 C.F.R. § 122.41(m) and that is in violation of the Process Controls Program, EPA may assess a stipulated penalty of \$7,500.

3. Failure to Timely Implement Certain Interim CCP Milestones. In the event KUB fails to Timely achieve substantial completion of the following tasks identified in Section 5 of the CCP: (a) CCP Task 3 (substantially complete construction of CCP storage facilities for the Kuwahee WWTP) by June 30, 2011; (b) CCP Task 6 (substantially complete construction of Phase I Improvements at the Kuwahee WWTP) by December 30, 2012; (c) CCP Task 8 (substantially complete construction of Phase I Improvements at the Fourth Creek WWTP) by December 30, 2013; or (d) CCP Task 12 (substantially complete construction of Phase II Improvements (BEHRC) at the Fourth Creek WWTP) by June 30, 2018, EPA may assess a stipulated penalty for each such delayed CCP task depending on the extent of the delay as follows:

Period of Delay:

Penalty per Task:

1 - 60 Days

\$5,000

<i>61- 120 Days</i>	<i>\$10,000</i>
<i>more than 120 Days</i>	<i>\$25,000</i>

The Parties agree that EPA may only assess one stipulated penalty per task pursuant to the above table which is dependant upon the total period of delay for the particular CCP task. The penalties are thus not cumulative. For example, if KUB fails to Timely achieve substantial completion of CCP Task 3 by the applicable deadline and is delayed for 75 days, EPA may not assess a stipulated penalty of more than \$10,000 for such failure.

The Parties also agree that upon receipt of a written demand for payment of a stipulated penalty pursuant to this paragraph, KUB may dispute its liability for such stipulated penalty pursuant to the Dispute Resolution provisions of Section XII of this Consent Decree and may invoke its rights under Section XI of this Consent Decree to argue that any delay of such a CCP task is, or was, caused by a Force Majeure event.

...

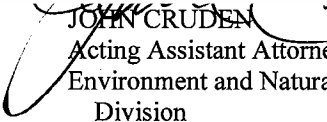
Dated and entered this ___ day of _____ 2009.

UNITED STATES DISTRICT JUDGE


WE HEREBY CONSENT to the entry of this First Amendment to the Consent Decree in United States, et al. v. Knoxville Utilities Board, Civil Action Nos. 3:03-CV-497 and 3:04-CV-568, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR PLAINTIFF THE UNITED STATES OF AMERICA

DATE: 2/5/09


JOHN CRUDEN
Acting Assistant Attorney General
Environment and Natural Resources
Division
United States Department of Justice

DATE: 2/5/09


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DATE: 1/21/09

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DATE: 1/21/09

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DATE: 1/14/08

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DATE: 1/16/09

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WE HEREBY CONSENT to the entry of this First Amendment to the Consent Decree in United States, et al. v. Knoxville Utilities Board, Civil Action Nos. 3:03-CV-497 and 3:04-CV-568.

FOR PLAINTIFF THE STATE OF TENNESSEE

DATE: 1/21/09


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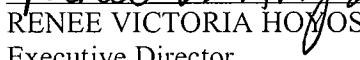
DATE: 1/15/09


JAMES H. FYKE
Commissioner
Tennessee Department of Environment and
Conservation
401 Church Street
Nashville, TN 37243

WE HEREBY CONSENT to the entry of this First Amendment to the Consent Decree in United States, et al. v. Knoxville Utilities Board, Civil Action Nos. 3:03-CV-497 and 3:04-CV-568.


FOR PLAINTIFF TENNESSEE CLEAN WATER NETWORK

DATE: 1/22/09


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OF COUNSEL:

DATE: 1/20/09


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WE HEREBY CONSENT to the entry of this First Amendment to the Consent Decree in United States, et al. v. Knoxville Utilities Board, Civil Action Nos. 3:03-CV-497 and 3:04-CV-568.

FOR PLAINTIFF CITY OF KNOXVILLE

DATE: 1/22/09

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WE HEREBY CONSENT to the entry of this First Amendment to the Consent Decree in United States, et al. v. Knoxville Utilities Board, Civil Action Nos. 3:03-CV-497 and 3:04-CV-568.

FOR DEFENDANT KNOXVILLE UTILITIES BOARD

DATE: 1-14-2009

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OF COUNSEL:

DATE: 1-14-2009

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