

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 STATE OF MARYLAND, )  
 )  
 Plaintiff-Intervenor, )  
 )  
 and )  
 )  
 ANACOSTIA WATERSHED SOCIETY )  
 AUDUBON NATURALIST SOCIETY OF )  
 THE CENTRAL ATLANTIC STATES, INC., )  
 FRIENDS OF SLIGO CREEK, and )  
 NATURAL RESOURCES DEFENSE COUNCIL, )  
 )  
 Plaintiff-Intervenors, )  
 )  
 v. )  
 )  
 WASHINGTON SUBURBAN SANITARY )  
 COMMISSION, )  
 )  
 Defendant. )

Civil Action No. PJM-04-3679

Judge Peter J. Messitte

**SECOND AMENDMENT TO CONSENT DECREE**

WHEREAS, on December 7, 2005, the Court entered a Consent Decree in the above-captioned matter resolving the United States', Maryland's, and the Intervenor Citizens Groups' claims that WSSC violated the Clean Water Act and state water pollution control, health and nuisance laws through the date of entry of the Consent Decree;

WHEREAS, on January 19, 2006, the Court entered the First Amendment to the Consent Decree to add Patuxent Riverkeeper to the definition of Citizens Groups;

WHEREAS, Defendant WSSC has requested a modification of certain deadlines in the Consent Decree and, upon consideration of the facts, Plaintiffs United States and State of Maryland agree that a modification is appropriate;

WHEREAS, the United States and Maryland believe that WSSC's request for a modification of deadlines to complete injunctive relief constitutes a request for a material modification to the Decree under Section XV (Modification), Paragraph 60 of the Decree;

WHEREAS, all the definitions and other terms of the Consent Decree except those designated below remain unchanged and are incorporated by reference into this Second Amendment;

WHEREAS, pursuant to Article Two (Collection System Evaluation) of Section V (Remedial Measures), WSSC was required to complete evaluations known as Sewer System Evaluation Surveys ("SSESs") of nine Sewer Basins within eight years from the Date of Entry, or by December 7, 2013;

WHEREAS, WSSC was required pursuant to Section V (Remedial Measures), Article Six (Sewer Basin Repair, Replacement, Rehabilitation Plan and Schedule), Paragraph A to submit a plan, known as the SR<sup>3</sup> Plan, for each Sewer Basin listed in Section V, Article Two, B.1 and B.4 (both SSES and non-SSES Sewer Basins), prioritizing the work to repair, replace or rehabilitate the collection system;

WHEREAS, Article Six, Paragraph B.3.h required WSSC to include in each SR<sup>3</sup> Plan a schedule "not to exceed two years" from completion of the final SSES to perform such work;

WHEREAS, pursuant to its SR<sup>3</sup> Plans, and updated information, WSSC proposed to repair, replace, or rehabilitate a total of 301.3 sewer miles;

WHEREAS, WSSC certifies that it is on track to complete 169.3 sewer miles on or before the December 7, 2015 deadline;

WHEREAS, WSSC advises that there are remaining 132.0 sewer miles consisting of 3,216 separately numbered "sewer assets" including "sewer segments" ("SS") and "manholes"

(“MH”) regarding which the approved SR<sup>3</sup> Plan schedules cannot be met due to delays in obtaining permits and approvals from several regulatory agencies and delays in obtaining private rights of entry or rights of way to perform the necessary work. The work previously approved by EPA and MDE on these 3,216 sewer assets, along with the Broad Creek Pump Station Facility Plan, constitute the “Delayed Work” under this Second Amendment. WSSC has requested a modification of previous deadlines to complete the Delayed Work;

WHEREAS, tables listing the Delayed Work on sewer segments and manholes are attached to this Second Amendment as Appendix A-1 (including 3,139 assets) and Appendix A-2 (including 77 assets). Maps depicting the locations of the Delayed Work listed in Appendices A-1 and A-2 appear as Appendices B-1 and B-2. Appendices A-2 and B-2 identify assets associated with Delayed Work requiring permits or approvals from the National Park Service (NPS) of the U.S. Department of the Interior;

WHEREAS, WSSC represents that as of June 30, 2015, it has expended in excess of \$809 million in connection with the injunctive relief required under the Consent Decree;

WHEREAS, many of the projects in the Delayed Work are located in wetlands, stream crossings, federal, state and local parkland, or similarly sensitive areas that are subject to additional protective regulatory requirements;

WHEREAS, a range of federal, state and county agencies administer these regulations. WSSC has submitted applications for the necessary approvals or permits and coordinated with the regulatory agencies, including meetings, site visits, and other steps, to obtain the necessary approvals;

WHEREAS, the extent and complexity of the federal, state, and local permitting and approval process has required more time than the Parties originally had anticipated;

WHEREAS, WSSC advises that it will not be able to meet the final deadline of December 7, 2015 for the Delayed Work, due to the time that has been required to obtain regulatory approvals from various regulatory agencies, and to obtain private party rights of entry or rights of way needed to perform certain necessary work;

WHEREAS, WSSC requested a six-year extension to the deadline to implement the Delayed Work in the attached Appendix A-1, and further requested that the schedule for completion of the Delayed Work on properties managed by NPS in Appendix A-2 be timed from receipt of the necessary permits from NPS;

WHEREAS, the United States and Maryland agree that a six-year extension to the deadline in Section V, Article Six, Paragraph B.3.h for construction and implementation of the Delayed Work in Appendix A-1 is necessary, and that schedules for the Delayed Work relating to NPS properties appearing in Appendix A-2 should be timed from receipt of the necessary permits from NPS;

WHEREAS, Section V, Article Seven requires WSSC to conduct performance assessments in each Sewer Basin, to be completed 18 months after completion of all SR<sup>3</sup> work for each Basin;

WHEREAS, Section V (Remedial Measures), Paragraph 12 provides that all remedial measures undertaken by WSSC shall be completed no later than 14 years from entry of the Decree;

WHEREAS, Section XV (Modification), Paragraph 60, of the 2005 Consent Decree provides that it may be materially modified by written agreement of the United States, Maryland, and WSSC and approval of the Court, after notice and motion to all Parties;

WHEREAS, Section XV, Paragraph 60, further provides that the Citizen Groups shall have the right to oppose a motion for material modification by filing with the Court and serving on all Parties a statement of position regarding any material modification;

WHEREAS, the United States and Maryland have provided notice of this filing to the Citizen Groups and to the Potomac Riverkeeper as well;

WHEREAS, WSSC, the United States, and Maryland, together and separately, have conducted several conference calls and briefings with Citizens Groups to discuss the requested modification and to obtain their views, including but not limited to a briefing in December 2014;

WHEREAS, this proposed Modification shall be subject to a period for public comment, consistent with Department of Justice regulations and policies;

NOW THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED that:

**Revisions to Schedules:**

1. The first sentence of Section V, Article Six, Paragraph B.3.h. shall be deleted in full, and the second sentence of B.3.h shall remain unchanged.
2. A new paragraph E shall be added at the end of Section V, Article Six of the Consent Decree to read as follows:

**E. Deadlines for Completion of Work under SR<sup>3</sup> Plans**

1. **Non-Delayed Work**- The deadline for the Substantial Completion of any work identified during the Collection System Evaluation and included in the approved SR<sup>3</sup> Plans and which does not appear as "Delayed Work" in either Appendix A-1 or Appendix A-2 of the Second Amendment to the Consent Decree shall be December 7, 2015.

2. **Delayed Work in Appendix A-1 to the Second Amendment to the Consent Decree-** The deadline for the Substantial Completion of the Delayed Work appearing in Appendix A-1 to the Second Amendment shall be February 9, 2022.

3. **Delayed Work in Appendix A-2 to Second Amendment-** With regard to Delayed Work appearing in Appendix A-2 of the Second Amendment to the Consent Decree (Projects on NPS Properties), WSSC shall notify EPA and MDE within 10 calendar days after receipt from NPS of the permit to proceed for the Broad Creek Basin assets (Nos. 55-70), the Northeast Branch Basin assets (Nos. 1-16, and Nos. 26-54), or the Oxon Run Basin assets (Nos. 19-25 and Nos. 71-77). If at the time of receipt of the permit to proceed with work on the assets in any of the above-mentioned basins WSSC still has an Indefinite Delivery/Indefinite Quantity (IDIQ) contract or equivalent contracts in place so that it may immediately proceed with the work without the need for new contractor procurement, WSSC shall complete the Appendix A-2 work in the basin in question within 365 days from receipt of such permit to proceed. However, if WSSC does not have such contracts in place and is required to re-procure contractors at the time of obtaining a final permit to proceed from NPS, WSSC shall complete the Appendix A-2 work in the basin in question within 730 days from receipt of such permit to proceed.

4. **Contingency for Northeast Branch Basin Assets-** Additionally, the deadlines set forth in the preceding subparagraph for the Northeast Branch

**Basin Assets assume that NPS will not require WSSC to relocate such assets from Greenbelt Park. If NPS requires WSSC to relocate some or all of its current assets in Greenbelt Park as a condition of approval of the final permit to proceed, then within 10 calendar days of receipt of the permit to proceed WSSC shall submit to EPA and MDE a revised schedule for completion of the work in the Northeast Branch Basin. The review and approval provisions of Article VI of the Consent Decree shall apply to the EPA/MDE approval process for this revised schedule. WSSC agrees to proceed with the project while any dispute over the completion schedule is being resolved.**

3. With regard to all remaining permits and approvals that WSSC must obtain to complete any of the Delayed Work in Appendix A-1 or Appendix A-2, WSSC shall make all reasonable efforts to promptly obtain these permits and approvals.
4. WSSC shall adhere to the following schedule to complete the Broad Creek Pump Station Facility Plan and amendments thereto approved by EPA on October 9, 2012, and by MDE on October 3, 2012.
  - a. Final Design of the pump station: WSSC shall complete final design of the Broad Creek PS as soon as practicable but no later than four (4) weeks after the date that the NPS issues the necessary Special Use Permit to WSSC.
  - b. Advertisement for construction: WSSC shall advertise bids for construction as soon as practicable but no later than eight (8) weeks after the date that EPA and MDE approve the Final Design of the pump station.

c. Notice to Proceed: WSSC shall issue notice(s) to proceed to the contractor as soon as practicable, but no later than thirty-two (32) weeks after it advertises for construction.

d. Substantial Completion: WSSC shall achieve Substantial Completion of the approved Broad Creek Pump Station Facility Plan as soon as practicable, but no later than one hundred seventy- three (173) weeks from issuance of the Notice to Proceed.

5. The first and third sentences of Section V, Paragraph 12 (on page 16 of the Consent Decree) shall remain unchanged. The second sentence of Section V, Paragraph 12 shall be deleted and replaced with the following sentence:

**With the exceptions of the Broad Creek Pump Station Facility Plan and the Delayed Work in Appendices A-1 and A-2 of the Second Amendment to this Consent Decree and related Performance Assessments required by Article Seven, all other remedial measures required under this Consent Decree (including but not limited to Performance Assessments on basins where there is no Delayed Work) shall be completed no later than fourteen (14) years from the Date of Entry (which date is December 7, 2019).**

6. WSSC shall complete the Delayed Work listed in Appendix A-1, as follows:

- a. Thirty percent (30%, or 942 of the listed assets) on or before February 9, 2019;
- b. Sixty percent (60%, or 1,883 of the listed assets) on or before February 9, 2020;
- c. Eighty percent (80%, or 2,511 of the listed assets) on or before February 9, 2021;



d. One hundred percent (100%, or all 3139 listed assets) on or before February 9, 2022.

e. When the Delayed Work identified in Appendix A-1 and A-2 in a Sewer Basin is completed, then WSSC shall comply with the Performance Assessment requirements of Article Seven (Performance Assessment) for that completed basin.

7. For Delayed Work appearing in Appendix A-1 of this Second Amendment, Section IX (Stipulated Penalties), shall be amended to add a new Paragraph F.1. to follow the existing Paragraph F on page 70 of the Consent Decree, which shall state:

**F.1. WSSC shall pay the following stipulated penalties to the United States and the State of Maryland for failing to meet the milestone percentages established in Paragraph 6 of the Second Amendment to this Consent Decree for the Delayed Work listed in Appendix A-1 to the Second Amendment:**

<u>Period of Non-Compliance</u>	<u>Penalty Per Day Per Missed Milestone</u>
<b>1<sup>st</sup> to 30<sup>th</sup> Day</b>	<b>\$3,000</b>
<b>31<sup>st</sup> to 60<sup>th</sup> Day</b>	<b>\$5,000</b>
<b>After 60 Days</b>	<b>\$ 6,500</b>

8. Regarding stipulated penalties for failing to meet the December 7, 2015 deadline for completion of all "Non-Delayed Work" as set forth in *New Paragraph E.1* of Section V, Article Six of the amended Consent Decree (See Paragraph 2, *supra*), that deadline shall be subject to the existing per day stipulated penalties in Section IX (Stipulated Penalties), Paragraph F, on page 70 of the Consent Decree.

9. Regarding stipulated penalties for failing to meet the deadlines for the Appendix A-2 Delayed Work set forth in Section V, Article Six, *New Paragraph E.3* of the amended Consent Decree (See Paragraph 2, *supra*), these deadlines (365 days from WSSC's receipt of the NPS permit to proceed, or 730 days from WSSC's receipt of the NPS permit to proceed if no IDIQ contract or equivalent contract in place) shall be subject to the existing per day stipulated penalties in Section IX (Stipulated Penalties), Paragraph F, on page 70 of the Consent Decree.
10. Regarding stipulated penalties for failing to meet any future deadline that may be approved by EPA and MDE in the event that the "Contingency for Northeast Branch Basin Assets" occurs, as described in *New Paragraph E.4* of Section V, Article Six of the amended Consent Decree (See Paragraph 2, *supra*), once EPA and MDE approve a new deadline for such work, it shall become incorporated by reference and enforceable under this Second Amendment, that deadline shall be subject to the existing per day stipulated penalties in Section IX (Stipulated Penalties), Paragraph F, on page 70 of the Consent Decree.
11. Regarding stipulated penalties for failing to meet the schedule in Paragraph 4 above for the Broad Creek Pump Station Facility Plan, the existing per day stipulated penalties in Section IX (Stipulated Penalties), Paragraph F (on page 70 of the Consent Decree) shall apply for the failure to meet any interim or final deadlines.
12. All new deadlines for completion of "Delayed Work" established in this Second Amendment are hereby incorporated by reference and enforceable under the 2005 Consent Decree.
13. WSSC shall report the progress of all Delayed Work (as listed in Appendices A-1 and A-2, and as contained in the approved Broad Creek Pump Station Facility Plan) in its Quarterly

Reports, and such reports shall be submitted and certified pursuant to Section V, Article Thirteen of the Decree. With each Quarterly Report due from the Date of Entry of this Second Amendment until the termination of the Consent Decree pursuant to Section XXIV of the Decree, WSSC shall supply an updated Appendix A-1 and Appendix A-2, identifying the specific assets completed in the last calendar quarter and providing the dates of completion of the work on each such asset. Further, in the quarterly report covering the first calendar quarters of 2019, 2020, 2021, and 2022, WSSC shall certify as to whether it met the percentage completion requirements set forth in Paragraph 6 of this Second Amendment. Additionally, in accordance with Section V, Article Six, *New Paragraphs E.3 or E.4* of the amended Consent Decree (See Paragraph 2, *supra*), once NPS issues the necessary permits to proceed and the calendar deadlines are then known for completion of the work on the Broad Creek Basin assets, the Northeast Branch Basin assets, and/or the Oxon Run Basin assets listed in Appendix A-2, WSSC shall report on its progress in meeting those deadlines, and shall certify as to whether it met such deadlines. Finally, WSSC shall also report in the Quarterly Reports on its progress in completing all work on the Broad Creek Pump Station Facility Plan, and on its progress and efforts in obtaining NPS approvals for the Appendix A-2 work and the Broad Creek Pump Station Facilities Plan work.

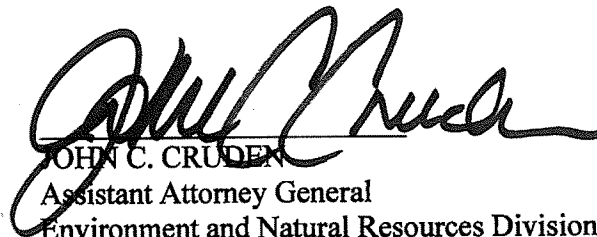
Dated and entered this \_\_\_ day of \_\_\_\_\_.

---

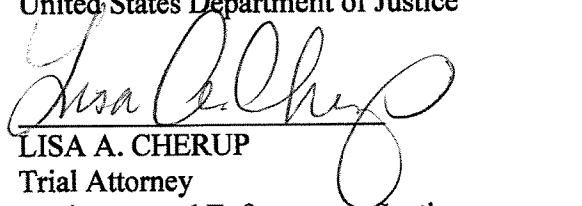
PETER J. MESSITTE  
UNITED DISTRICT COURT JUDGE FOR THE  
DISTRICT OF MARYLAND, GREENBELT DIVISION

WE HEREBY STIPULATE TO THE FOREGOING AND CONSENT to the entry of the  
Second Amendment to the Consent Decree in *United States, State of Maryland, et al. v.*  
*Washington Suburban Sanitary Commission*, Case 8:04-cv-3679 (PJM).

FOR PLAINTIFF UNITED STATES OF AMERICA:




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




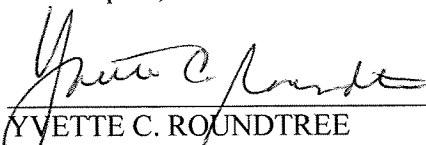
LISA A. CHERUP  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044-7611  
(202) 514-2802  
[lisa.cherup@usdoj.gov](mailto:lisa.cherup@usdoj.gov)

ROD J. ROSENSTEIN  
United States Attorney  
District of Maryland

TARA DESHIELDS  
Assistant U.S. Attorney  
Office of the U.S. Attorney  
6406 Ivy Lane  
Suite 800  
Greenbelt, MD 20770  
(301) 344-4433  
[tarra.deshields@usdoj.gov](mailto:tarra.deshields@usdoj.gov)

  
SHAWN M. GARVIN  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 3  
1650 Arch Street  
Philadelphia, PA 19103-2029

  
MARY B. COE  
Acting Regional Counsel  
U.S. Environmental Protection Agency  
Region 3  
1650 Arch Street  
Philadelphia, PA 19103-2029

  
YVETTE C. ROUNDTREE  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 3  
1650 Arch Street  
Philadelphia, PA 19103-2029

 11/17/15  
MARK POLLINS


Director, Water Enforcement Division  
Office of Civil Enforcement  
U.S. Environmental Protection Agency

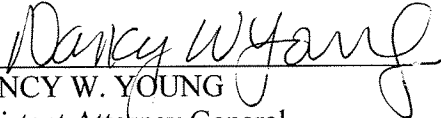
 11/13/15  
LOURDES M. BUFILL

Attorney Advisor  
Office of Enforcement and Compliance  
Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

WE HEREBY STIPULATE TO THE FOREGOING AND CONSENT to the entry of the  
Second Amendment to the Consent Decree in *United States, State of Maryland, et al. v.*  
*Washington Suburban Sanitary Commission*, Case 8:04-cv-3679 (PJM).

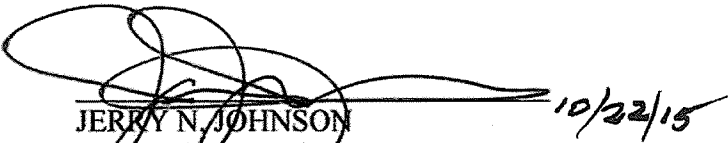
FOR THE STATE OF MARYLAND:

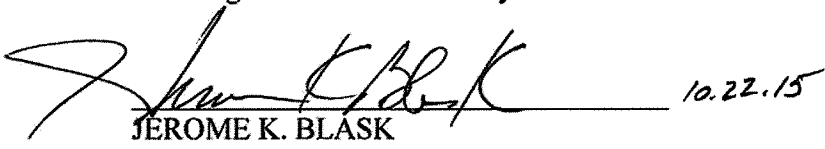
October 29, 2015   
BENJAMIN H. GRUMBLES  
Secretary  
Maryland Department of the Environment

October 29, 2015   
NANCY W. YOUNG  
Assistant Attorney General  
Maryland Department of the Environment  
1800 Washington Blvd.  
Baltimore, Maryland 21230

WE HEREBY STIPULATE TO THE FOREGOING AND CONSENT to the entry of the  
Second Amendment to the Consent Decree in *United States, State of Maryland, et al. v.*  
*Washington Suburban Sanitary Commission*, Case 8:04-cv-3679 (PJM).

FOR THE WASHINGTON SUBURBAN SANITARY COMMISSION:

  
JERRY N. JOHNSON 10/22/15  
General Manager/Chief Executive Officer  
Washington Suburban Sanitary Commission

  
JEROME K. BLASK 10.22.15  
General Counsel  
Washington Suburban Sanitary Commission