

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)
and COMMONWEALTH OF)
PENNSYLVANIA)
)
Plaintiffs,)
)
vs.)
)
CITY OF READING, PENNSYLVANIA)
)
Defendant.)
_____)

Civil Action No. 04-05696

FOURTH MODIFICATION OF CONSENT DECREE

Whereas: The United States of America (“United States”) acting at the request and on behalf of the United States Environmental Protection Agency (“EPA”), the Commonwealth of Pennsylvania (“Commonwealth”) (collectively, “Plaintiffs”), and the City of Reading (“Reading” or “Defendant”), constituting all of the parties (the “Parties”) to the Consent Decree in the above-captioned matter entered by the Court on November 7, 2005, as modified on February 26, 2014, January 11, 2018, and December 30, 2019 (the “Decree”), hereby notify the Court pursuant to Paragraph 91 of the Decree of the following modifications of certain provisions of the Decree, including the extension of certain deadlines. All other commitments and requirements of the Decree remain in full force and effect.

Whereas: The United States filed a complaint against Reading on December 9, 2004, seeking injunctive relief and civil penalties pursuant to Section 309 of the Clean Water Act (“CWA”), 33 U.S.C. § 1319 for Reading’s alleged violations of the CWA, 33 U.S.C. §§ 1251 - 1387.

Whereas: The Commonwealth filed as co-plaintiff a motion for intervention and complaint against Reading on December 16, 2004, pursuant to Federal Rule of Civil Procedure 24, seeking injunctive relief and civil penalties for Reading's alleged violations of the federal CWA, 33 U.S.C. §§ 1251 – 1387, and the Pennsylvania Clean Streams Law, Act of June 22, 1937, P.S. 1987 *as amended*, 35 P.S. §§ 691-1001 (“the Clean Streams Law”).

Whereas: On November 7, 2005, this Court entered the Decree resolving the above-captioned enforcement action brought by Plaintiffs against Reading.

Whereas: On February 26, 2014, the Parties jointly submitted a Notice of Modification of the Consent Decree (the “Modification”).

Whereas: On January 11, 2018, the Parties jointly submitted a second Notice of Modification of the Consent Decree (the “Second Modification”).

Whereas: On December 30, 2019, the Parties jointly submitted a third Notice of Modification of the Consent Decree (the “Third Modification”).

Whereas: Reading operates a sanitary sewer collection system and wastewater treatment plant that serves the residents of Reading and surrounding municipalities. Those municipalities (not parties to this Decree but hereinafter “Contributing Municipalities”) contributing sewage to the Reading sewer collection system and wastewater treatment plant are: Alsace Township, Bern Township, Cumru Township, Kenhorst Borough, Laureldale Borough, Lower Alsace Township, Lower Heidelberg Township, Mohnton Borough, Mt. Penn Borough, Muhlenberg Township, Robeson Township, Shillington Borough, Spring Township, and Wyomissing Borough.

Whereas: The Decree and Modifications contain Reading's commitments to perform certain tasks and the dates by which these tasks are to be accomplished, including deadlines to

meet interim milestones and complete each task. The completion deadlines set forth in the Third Modification, filed December 30, 2019, included the following:

- a. **Wastewater treatment plant liquids process phases A and B:** by no later than June 30, 2020, Reading shall complete the construction of the liquids process phases A and B.
- b. **Wastewater treatment plant liquids process phase C:** by no later than June 30, 2020, Reading shall complete the construction of the liquids process phase C.
- c. **Wastewater treatment plant solids process:** by no later than June 30, 2020, Reading shall complete the construction of the solids process.
- d. **Sixth and Canal Pumping Station replacement of influent screens and grit removal:** by no later than April 30, 2020, Reading shall complete the replacement of the existing influent screens and grit removals for the Sixth and Canal Pumping Station.
- e. **Sixth and Canal Pumping Station replacement of existing pumps:** by no later than March 31, 2022, Reading shall complete the replacement of the existing pumps for the Sixth and Canal Pumping Station.
- f. **Construction of second/parallel 42" force main:** by no later than December 31, 2020, Reading shall complete the construction of the second 42" force main.
- g. **19th Ward pumping station upgrades:** by no later than December 31, 2021, Reading shall complete the construction of the upgrades to the 19th Ward pumping station.

Whereas: Over time, Reading did not meet certain terms and dates contained in the Decree, but did meet others.

Whereas: Reading has made the following progress since the Third Modification:

- Reading achieved substantial completion on the Parallel Force Main project ahead of the December 31, 2020 timeframe required by the Third Modification.
- On July 9, 2020, Reading commenced construction of the Sixth and Canal Pump Station Replacement of Screens and Grit project.

- Reading promptly reacted to the initial emergency closures of non-essential business issued by the Governor of Pennsylvania in March 2020 in response to the COVID-19 pandemic by requesting and receiving one of the first exceptions to the shut-down order which enabled the Consent Decree projects to stay on track rather than wait for the Governor's order allowing construction to resume in May 2020.
- Reading has achieved substantial completion of the Wastewater Treatment Plant projects.
- Reading has achieved substantial completion of the Sixth and Canal Pumping Station projects.
- Reading has completed the design phase of the 19th Ward Force Main project.
- Reading has awarded the design engineer contract for the 19th Ward Pump Station project.
- Reading has implemented process control and procedural improvements to its operations at the Wastewater Treatment Plant and has demonstrated an improved response process to any performance issues as shown by the remedial actions taken and return to compliance following the October 2020 upset of the new microbiological treatment system.

Whereas: With this and other progress, Reading has substantially satisfied all deadlines in the Third Modification except those identified below and modified herein.

Whereas: Reading has experienced delays due to social-distancing-related limitations on staffing and delays in manufacturing due to shutdowns and supply chain delays and expects that the remaining projects will have some level of delays due to these ongoing issues.

Whereas: The Parties acknowledge the 2009 declaration by Pennsylvania’s Secretary of the Department of Community and Economic Development that Reading is a “Distressed Municipality” pursuant to Pennsylvania’s Municipalities Financial Recovery Act, 53 P. S. §§ 11701.101 - 11701.501 (“Act 47”) and further acknowledge Reading remained a “Distressed Municipality” under Act 47 from 2009 until the City exited the program in July 2022.

Whereas: The Parties acknowledge that Section XI of the Decree, regarding Stipulated Penalties for each failure to comply with the terms of the Decree, including the terms of any plans or schedules developed pursuant to and incorporated into the Consent Decree, remains in full force and effect. In particular, the parties agree that paragraph 54, requiring stipulated penalties for Reading’s failure to meet project milestone dates remains in effect, and agree the Plaintiffs have not waived their right to demand stipulated penalties pursuant to Section XI for future delays or other future failures to comply with the terms of the Decree, as modified by the proposed dates included in this Fourth Modification.

Now therefore, in consideration of the agreement amongst the Parties that the following paragraphs of the Decree be modified as follows:

I. V. REMEDIAL MEASURES, D. Collection System

The following provisions contained in Section V (Remedial Measures), subsection D (Collection System) of the Consent Decree are hereby modified as follows:

28. Rehabilitation of Priority Areas of Collection System. Except as otherwise agreed to by the Parties in writing or as set forth below, and in accordance with the approved “Rehabilitation Plan” described in Paragraph 27 of this Decree, the Defendant shall complete

the recommendations set forth in that Plan for repair, replacement, upgrade and/or other remediation of the priority areas.

a) Consent Decree 4th Modification Compliance Project #1: 19th Ward Pumping Station Force Main Replacement Project:

Summary: The City will design and construct a new force main, with a maximum capacity of 5 MGD, between the existing 19th Ward Pump Station and the new discharge manhole on the eastern side of the Schuylkill River, which will be located between the Schuylkill River and Opportunity Boulevard (“New 19th Ward Pumping Station Force Main”). The new force main will be connected with the New 19th Ward Pumping Station, further described below. The force main will be routed through several properties including Berks County-owned Stonecliff Park, a private business, railways owned by Norfolk Southern, and under the Schuylkill River. The City will develop a detailed map depicting the current proposed location of the New 19th Ward Pumping Station Force Main, and revise such map as necessary to accurately depict the location of the New 19th Ward Pumping Station Force Main. The City will also revise the GIS Sewer Mapping System required pursuant to Paragraph 25 of the Consent Decree to reflect any changes to the sanitary and storm water sewer collection systems.

The City will timely submit all required information and apply for all necessary permits as required to complete the 19th Ward Pumping Station Force Main Replacement Project, including the following permits: Pennsylvania Department of Environmental Protection Water Quality Management Part II Permit, Pennsylvania Department of Environmental Protection Water Obstruction and Encroachment Permit, Berks County Conservation District NPDES Stormwater Discharges Associated with Construction Activities

Permit, Norfolk Southern Occupancy Agreement Permit, and City of Reading building code permits. Additionally, the City will obtain, as necessary, approval from the City of Reading Planning Commission.

Interim Work Deadlines for Consent Decree 4th Modification Compliance Project #1:

- 1) Procurement of all required permits and easements no later than: April 30, 2024; the City also agrees to provide to Plaintiffs a status update as to the process for acquiring permits and easements in each ongoing quarterly report.
- 2) Execution of construction contract no later than August 31, 2024.
- 3) Substantial completion of construction no later than February 28, 2026.

b) Deadline for Consent Decree 4th Modification Compliance Project #1 Completion Notification:

By no later than February 28, 2026, Defendant shall submit a Consent Decree 4th Modification Compliance Project #1 Completion Notification, including any relevant information to support a finding that: i) all tasks related to Compliance Project #1 have been completed on or prior to the applicable deadlines, ii) all start-up operations have occurred and iii) the installed 19th Ward Pumping Station Force Main is capable of being operated (force main will be completed prior to the new pump station).

The parties agree that, consistent with Consent Decree paragraphs 53 and 54(a), following written demand by the United States or EPA, the City shall pay stipulated penalties in the amount set forth below for each day the City fails to meet the February 28, 2026, Project #1 Completion Notification deadline for Compliance Project #1.

c) Consent Decree 4th Modification Compliance Project #2: Construction and Operation of a New 19th Ward Pumping Station:

Summary: The City planned to upgrade its existing pump station and was 60% through the design review when structural deficiencies in the original building were discovered. Given this limitation and additional concerns impacting construction of an upgraded pump station, to comply with the Consent Decree, the City will design and construct a new pump station building adjacent to, or in close and functional proximity to, the existing pump station.

While continuing to operate the existing 19th Ward Pump Station, the City will construct a new above grade and larger pump station facility contiguous to the existing 19th Ward Pump Station. Upon completion of this project, the 19th Ward Pumping Station will include a new wet well, new pumps with a firm design capacity of 5.0 MGD, new piping, new mechanical screens, new electrical infrastructure, and necessary related appurtenances.

The City will submit all required information and apply for all permits required to complete such project, including the following permits to complete the work: Pennsylvania Department of Environmental Protection Water Quality Management Part II Permit, Berks County Conservation District NPDES Stormwater Discharges Associated with Construction Activities Permit, City of Reading building code permits, and City of Reading zoning permits. Additionally, the City will obtain, as necessary, approval from the City of Reading Planning Commission.

Interim Deadlines for Consent Decree 4th Modification Compliance Project #2:

- 1) Completion of the design phase: June 30, 2024.
- 2) Procurement of all required permits and easements and land acquisition: September 30, 2024.

- 3) Advertise construction invitation to bid: September 30, 2024.
- 4) Execution of construction contract: January 31, 2025.
- 5) Substantial completion of construction and completion of all training to ensure adequate operation and maintenance of all equipment and processes to be completed prior to: December 31, 2026.

d) Deadline for Consent Decree 4th Modification Compliance Project #2 Completion

Notification:

By no later than, December 31, 2026, Defendant shall submit a Consent Decree 4th Modification Compliance Project #2 Completion Notification, including any relevant information to support a finding that all tasks related to Compliance Project #2 have been completed on or prior to the applicable deadlines.

The parties agree that, consistent with Consent Decree paragraphs 53 and 54(a), following written demand by the United States or EPA, the City shall pay stipulated penalties in the amount set forth below for each day the City fails to meet the December 31, 2026, Consent Decree 4th Modification Compliance Project #2 Completion Notification deadline for Compliance Project #2.

II. Section V. REMEDIAL MEASURES, F. Funding

The Funding provisions contained in Section V (Remedial Measures), subsection F (Funding), Paragraph 40 of the Consent Decree are hereby modified to allow for an increase of the maximum transfer amount from the sewer revenue account to the general fund from \$3,000,000 to \$4,500,000, effective for calendar year 2023.

III. Section VI. REPORTING REQUIREMENTS

The Reporting provisions contained in Section VI, Paragraph 41 of the Consent Decree are hereby modified as follows to ensure that each Calendar Quarterly Progress Report contains appropriate and adequate information relating to all work required pursuant to this Consent Decree:

Beginning with the first full calendar quarter after the Date of Entry of this Fourth Modified Consent Decree, Defendant shall submit to EPA and Pennsylvania Department of Environmental Protection (PADEP) within thirty (30) days after the end of each calendar quarter until termination of this Consent Decree a Calendar Quarterly Progress Report (“Quarterly Report”) covering the applicable subject(s). Each Quarterly Report shall contain the following:

(a) Progress reports on the City’s compliance with, implementation of, and completion of the requirements of Section V (Remedial Measures) as described in Paragraphs 7 through 40 of the Consent Decree, including the following minimum information:

i) for each Remedial Measure that has not been completed as of submission of the Quarterly Report, a project management timeline (Project Management Timeline) depicting each significant stage, milestone and deadline for such Remedial Measure, and the progress as to completion, by percentage and/or narrative, of the Remedial Measure project’s stages, milestones and/or interim deadlines. Such project stages, milestones and/or interim deadlines shall include each significant project component, including and not limited to permit application submissions and approval processes, easement acquisition processes, review or approval of any design plan, bidding and hiring process steps for contractors, public notice processes, initiation or completion of construction work, and initiation of operations following construction completion;

ii) for each Remedial Measure that has not been completed as of submission of the Quarterly Report, an outline documenting: a) the significant project management tasks (Project Management Outline) that have and have not been completed, within each project stage, b) the status of completion of such tasks and c) the relevant dates of such completion or planned completion for each such significant project management tasks;

iii) a detailed narrative describing any revision to the Project Management Timeline or Project Management Outline set forth in the previous Quarterly Report;

iv) the initial Quarterly Report, submitted subsequent to the Date of Entry of this Fourth Modified Consent Decree, shall include a detailed map depicting the current proposed location of the New 19th Ward Pumping Station Force Main and, subsequent Quarterly Reports shall include any revisions thereto; and,

v) excerpts of each portion of the GIS Sewer Map, which have been revised during the previous calendar quarter or which otherwise reflect any progress related to implementation of the requirements of Section V (Remedial Measures) as described in Paragraphs 7 through 40; and

vi) with respect to the inventory of the storm water collection system components required pursuant to Paragraph 25 of the Consent Decree, a description of any revisions made to such inventory during the past calendar quarter, including any additions, deletions or corrections.

(b) A description of any problems anticipated with respect to meeting the requirements of Section V (Remedial Measures) of this Fourth Modified Consent Decree or any other requirement of the Consent Decree;

(c) Any such additional matters related to Defendant's timely compliance with the terms of this Fourth Modified Consent Decree and any such additional matters as Defendant believes

should be brought to the attention of EPA and PADEP relating to compliance with the Consent Decree; and,

(d) A signed certification, consistent with the requirements of 40 C.F.R. 122.22(a)(3), by the person responsible for compliance or by a person responsible for overseeing implementation of this Consent Decree, which shall state:

“I certify under penalty of law that this information was prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my directions and my inquiry of the person(s) who manage the system, or the person(s) directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete.”

IV. Section XI. STIPULATED PENALTIES

The stipulated penalty provisions of Section XI (Stipulated Penalties), paragraphs 59 and 60, are hereby modified to require that, upon payment of a stipulated penalty, Defendant shall send notice of such payment to: (a) EPA via email to the U.S. EPA Cincinnati Finance Office at CINWD_AcctsReceivable@epa.gov; (b) EPA via email to the U.S. EPA Regional Hearing Clerk at R3_Hearing_Clerk@epa.gov; (c) the United States via email or regular mail in accordance with Section XIX (Form of Notice); and (d) the State in accordance with Section XIX (Form of Notices). Each notice of stipulated penalty payment shall state the Defendant's name, street/P.O. Box address, email address and telephone number; the name of the case; the docket number or civil action number of this Consent Decree; the Consolidated Debt Collection System (“CDCS”) Number and DOJ case number; the amount of the payment; and the method of payment.

V. Section XIX. FORM OF NOTICE

The Notice provisions contained in Section XIX, paragraph 90 of the Consent Decree are hereby modified to require that: all reports, notices, and any other written communications required to be submitted under the Decree shall be sent to the respective Parties at the following email addresses unless physical copies are requested:

As to the United States:

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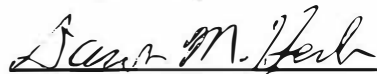
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Jointly submitted this 24th day of January, 2024, by all of the Parties.

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For the U.S. EPA:

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