

Springfield, Mo

State Amended Consent Judgment

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City of Springfield, MO

- 3rd largest city in Missouri
- Sanitary sewer system
- Two treatment plants
- Peak flow clarifier at the treatment plant to process and discharge peak wet weather flows (Outfall 002)

Amended Consent Judgment

- Follow-on to 1995 state Consent Judgment
- Earned amendment by fully complying with the '95 decree
- Excellent relationship with Missouri Department of Natural Resources (MDNR)

MDNR's side of the enforcement ledger

- Keeps third party (citizen) groups at bay
- Resolves all past violations up to date of entry!
- No civil penalty

Key Aspects of the ACJ

1) EAP implementation

- \$50 million over 7 years

2) Development of long-term OCP

- OCP due 12/31/13*
 - Extended to 12/31/14 due to drought conditions

Implementation Note - OCP Extension

- Missouri has experienced severe drought from late 2011 through present
 - This was our period to do flow monitoring....
- City requested extension of OCP deadline from 12/31/13 to 12/31/14
 - Request submitted on 10/30/12
 - Granted on 11/2/12

Key Aspects of the ACJ: Schedule

- No fixed end date for completion of all sewer overflow controls
 - City refused to commit to an end date before knowing the big picture plan
- Target end date of 12/31/31 but we can propose longer when OCP is submitted

Key Aspects of the ACJ: Level of Adequate Capacity

- City worked into the OCP plan concept of an approved level of sewer system service/capacity
 - Will limit the wet weather sewer flows we have to manage
 - No pre-ordained level of capacity/service

Key Aspects of the ACJ: Outfall 002

- 2014 OCP will contain a plan re: Outfall 002:
 - Eliminate in 10 years (12/31/21)
 - Up to the approved level of service
 - With a schedule
 - Retain it through a “no feasible alternative” analysis
 - Limited use under specific conditions
 - Use will be in permit

Key Aspects of the ACJ: Outfall 002 (con't)

- Allows City to address system strategically
 - Prevent major capacity upgrades up front (to enable elimination of Outfall 002)
 - Lets us evaluate subsequent major investments to get the right size
 - Currently conducting pilot scale public and private I/I removal to determine right size investment in upgrades

Key Aspects of the ACJ: Outfall 002 (con't)

- NPDES operating Permits
 - State that Outfall 002 discharges are addressed by the ACJ....

Key Aspects of the ACJ: Affordability

- HB 89 (***644.145 MoRS***) Affordability Analysis
 - requires MDNR to make an affordability finding for:
 - Permits with new requirements
 - Enforcement of the new permit provisions
 - Orders
 - Decrees

Key Aspects of the ACJ: Affordability (con't)

- City Stipulated affordability of the ACJ
 - For the EAP
 - Not for the OCP due 2014
 - There will be a subsequent affordability analysis with OCP submittal and approval
 - This maintains critical leverage to ensure the State does not seek to impose unaffordable or non-cost-effective SSO reduction mandates

Key Aspects of the ACJ: Miscellaneous

- Right to periodic reevaluations of both our OCP and schedule in the ACJ, with dispute resolution of DNR does not agree
- Ability to invoke dispute resolution if the State rejects a proposed City modification
 - No 60(b) relief from judgment as with federal decrees
- Excluded basement backups from required reports we have to send to DNR
- Relatively modest stipulated penalties (particularly as compared to federal consent decrees)

Key Aspects of the ACJ: Miscellaneous

- Favorable boilerplate provisions (force majeure, dispute resolution (i.e. preponderance of the evidence standard, information retention, etc.)
- Favorable language regarding future SSO enforcement while OCP being implemented
- Change in law or requirements - Ability for the City, at its sole election, to propose to conform the ACJ to any change in law or requirements, including additional time to incorporate/address any such new requirements

Key Aspects of the ACJ: Miscellaneous

- Automatic extension of deadlines if State fails to act on City submittals within 90 days
- City right to propose schedule changes for significant unanticipated financial constraints
 - With dispute resolution if the State declines
- Favorable WHEREAS clause memorializes City met all obligations of the 1995 Consent Jmt
- Planning time allows us to incorporate integrated planning (IP)
 - City has pitched framework to DNR/EPA Management

Takeaways

- Stay close to your state
- State enforcement can achieve:
 - Same results as a federal consent decree
 - More cooperatively, flexibly, efficiently and affordably