

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

UNITED STATES OF AMERICA and the
STATE OF INDIANA,

Plaintiffs,

v.

The SANITARY DISTRICT OF HIGHLAND,
and the TOWN OF GRIFFITH, INDIANA,

Defendants.

Judge

Civil Action No.

CONSENT DECREE WITH TOWN OF GRIFFITH

WHEREAS:

A. Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), and the State of Indiana (the “State”), on behalf of the Commissioner of the Indiana Department of Environmental Management (“IDEM”), have filed a Complaint in this action concurrently with this Consent Decree, alleging that Defendant, the Town of Griffith, Indiana (“Griffith”), violated Section 301(a) of the Clean Water Act (the “CWA”), 33 U.S.C. § 1311(a), the federal regulations adopted thereunder, Title 13 of the Indiana Code, and the State regulations adopted thereunder.

B. The Complaint alleges that Griffith: (1) violated the CWA and Indiana law by discharging untreated sewage from its separate sanitary sewer system into a navigable water on several occasions since April 2013; and (2) failed to comply with a 2012 Administrative Order issued by EPA pursuant to Section 309(a) of the CWA to Griffith to eliminate all sanitary sewer overflows, among other requirements.

C. A related action (2:17-cv-00048) was filed in this district by the United States and the State against the Hammond Sanitary District (“HSD”) in 2017, alleging that HSD violated the CWA by, among other things, exceeding numeric and narrative effluent limits set in HSD’s National Pollutant Discharge Elimination System (“NPDES”) Permit, including discharging untreated storm water and sanitary wastewater through its combined sewer overflow (“CSO”) outfalls into the Grand Calumet and Little Calumet Rivers.

D. The allegations against HSD in the complaint were resolved through a consent decree that was filed simultaneously with the complaint (the “HSD Consent Decree”). The HSD Consent Decree was entered by this Court on May 8, 2017, and required HSD to, among other things, develop and implement a Long Term Control Plan over an 18-year period to

move to terminate the 1997 Griffith Decree upon entry by the Court of this new Decree.

H. Under this Consent Decree, Griffith will implement a plan to be approved by EPA and IDEM designed to eliminate and prevent SSOs. As part of the plan, Griffith will send an increased maximum peak flow of 15.5 million gallons per day to HSD for treatment. Griffith and HSD will execute a contract consistent with this Consent Decree and HSD's 2017 Consent Decree to establish the terms under which HSD will accept Griffith's maximum peak flow of 15.5 million gallons per day. In order for HSD to accept this increased flow, HSD will make the necessary improvements within its combined sewer system as required by HSD's 2017 Consent Decree and the Long Term Control Plan being implemented thereunder.

I. Griffith does not admit any liability to the United States or the State arising out of the transactions or occurrences alleged in the Complaint.

J. The Parties recognize, and the Court by entering this Decree finds, that this Decree has been negotiated by the Parties in good faith and will avoid litigation among the Parties, and that this Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and CWA § 309(b), 33 U.S.C. § 1319(b), and over the Parties. This Court has supplemental jurisdiction over the State law claims alleged here pursuant to 28 U.S.C. § 1367(a), because the State claims are related to the federal claims and form part of the same case or controversy. Venue lies in this District pursuant to CWA § 309(b), 33 U.S.C.

District of Indiana, IDEM, and the United States Department of Justice, in accordance with Section XV (Notices). Any attempt to transfer ownership or operation of the SSCS without complying with this Paragraph constitutes a violation of this Decree.

8. Griffith shall provide a copy of this Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Decree. The foregoing requirement may be satisfied by providing a hard copy, electronic copy, or online access to this Decree. Griffith shall condition any such contract upon performance of the work in conformity with the terms of this Decree.

9. In any action to enforce this Decree, Griffith shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Decree.

IV. OBJECTIVE

10. All plans, measures, reports, construction, maintenance, operational requirements, and other obligations in this Decree, or resulting from the activities required by this Decree, shall have the objective of causing Griffith to achieve and maintain full compliance with the CWA.

V. DEFINITIONS

11. Terms used in this Consent Decree that are defined in the CWA or in regulations promulgated under the CWA shall have the meanings assigned to them in the CWA or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Decree, the following definitions shall apply:

a. "Building/Property Backup" means a wastewater release or backup into a building or onto private property that is caused by blockages, flow conditions, or other conditions

- i. “Deliverable” means any written document required to be submitted by Griffith to EPA and IDEM for review and approval under this Consent Decree;
- j. “EPA” means the United States Environmental Protection Agency and any of its successor departments or agencies;
- k. “Effective Date” has the definition provided in Section XVI (Effective Date);
- l. “Force Main” means any pipe that receives and conveys, under pressure, wastewater from the discharge side of a pump. A Force Main is intended to convey wastewater under pressure;
- m. “Gravity Sewer Lines” means pipes that receive, contain, and convey wastewater not normally under pressure, but is intended to flow unassisted under the influence of gravity, including trunk sewers. Gravity sewers are typically not intended to flow full under normal operating conditions;
- n. “HSD Consent Decree” means the consent decree signed by the United States, on behalf of EPA, and the State of Indiana, on behalf of IDEM, and the Hammond Sanitary District, and entered on May 8, 2017, which requires, among other things, that the Hammond Sanitary District develop and implement a Long Term Control Plan consistent with EPA’s CSO Control Policy found at 59 Fed. Reg. 18,688 (April 19, 1994) and the terms of that consent decree;
- o. “HSD’s Approved Long Term Control Plan (“LTCP”)” means the Long Term Control Plan submitted by HSD under the HSD Consent Decree, conditionally approved by EPA on March 17, 2021;
- p. “IDEM” means the Indiana Department of Environmental Management and

y. “Pump Station” means a facility comprised of pumps that lifts wastewater to a higher hydraulic elevation, including all related electrical, mechanical, and structural systems necessary to the operate that Pumping Station;

z. “Sanitary Sewer Collection System” or “SSCS” means the municipal wastewater collection and transmission system, including all pipes, interceptors, Force Mains, Gravity Sewer Lines, lift stations, Pumping Stations, wastewater storage basins/structures, manholes, and all appurtenances to the foregoing, that are owned or operated by Griffith;

aa. “Sanitary Sewer Overflow” or “SSO” means an overflow, a reportable spill pursuant to 327 IAC 2-6.1, diversion, or release of wastewater from or caused by Griffith’s SSCS that: a) discharges to waters of the State or United States from Griffith’s SSCS; or b) releases to public or private property that does not reach waters of the United States or the State, such as a release to a land surface or structure; provided, however, that such releases that are caused solely by conditions in a Private Service Connection Lateral are not SSOs for the purpose of this Decree. As such, the term SSO includes Building/Property Backups caused in whole or in part by conditions in Griffith’s SSCS;

bb. “SSO Locations” means the locations where SSOs have regularly occurred in or related to Griffith’s SSCS, which currently includes the Cline Avenue equalization basin. A list of the SSO Locations that have been identified as of the Date of Lodging is included in Appendix B of this Consent Decree;

cc. “Section” means a portion of this Decree identified by a Roman numeral;

dd. “State” means the State of Indiana, acting on behalf of IDEM;

ee. “United States” means the United States of America, acting on behalf of

EPA.

owed pursuant to the Consent Decree in *United States of America and the State of Indiana v. the Sanitary District of Highland and the Town of Griffith, Indiana* (N.D. Ind.), the assigned CDCS Number, and DOJ case number 90-5-1-1-3308/3.

15. Payment to the State shall be made by certified check payable to:

Cashier:
Indiana Department of Environmental Management
100 N. Senate Ave.
MC 50-10C
Indianapolis, IN 46204-2251

Griffith shall notify the State of this payment in accordance with Section XV (Notices) of this Decree, by correspondence including the following: *United States of America and the State of Indiana v. The Sanitary District of Highland and the Town of Griffith, Indiana* (N.D. Ind.).

VII. COMPLIANCE REQUIREMENTS

16. SSOs occurring in or from Griffith's SSCS are prohibited.

A. Implementing SSO Remedial Measures

17. SSO Remedial Measures Plan. By July 29, 2022, Griffith shall submit an SSO Remedial Measures Plan, consistent with the requirements of Appendix A of this Decree. Within 30 Days of approval of the SSO Remedial Measures Plan, Griffith shall begin implementing the Plan. The purpose of the SSO Remedial Measures Plan is to eliminate all SSO Locations and prevent SSOs in Griffith's SSCS. The SSO Remedial Measures Plan shall be completed no more than two months after the time that HSD is prepared to accept an increased maximum peak flow of 15.5 million gallons per day from Griffith and no later than October 1, 2026, unless this date is extended pursuant to Appendix A of this Consent Decree.

18. Post-Remedial Measures Monitoring Plan. Griffith shall submit a Post-Remedial Measures Monitoring Plan to EPA and IDEM, for review and approval, no later than 120 days

Monitoring Report, EPA and IDEM determine that Griffith has not eliminated all SSO Locations or has failed to prevent future SSOs consistent with Appendix A and Appendix B, EPA and IDEM will inform Griffith of this determination in writing. Within 90 Days of receiving this determination, Griffith shall submit to EPA and IDEM, for review and approval, a Supplemental SSO Remedial Measures Plan that describes the additional measures that Griffith will undertake to eliminate SSO Locations and prevent SSOs within the SSCS consistent with Appendix B, and a schedule for those additional measures. Upon written approval by EPA and IDEM, Griffith shall implement the approved Supplemental SSO Remedial Measures Plan under the approved schedule.

21. Supplemental SSO Post-Remedial Measures Monitoring Plan. No later than 120 days before completion of the Supplemental SSO Post-Remedial Measures Plan, if required, Griffith shall submit to EPA and IDEM, for review and approval, a Supplemental SSO Post-Remedial Measures Monitoring Plan, consistent with all of the requirements of Paragraph 18 of this Decree. The purpose of the Supplemental Post-Remedial Measures Monitoring Plan is to determine whether the Supplemental SSO Remedial Measures undertaken have eliminated all SSO Locations and prevented SSOs in Griffith's SSCS.

22. Supplemental SSO Post-Remedial Measures Monitoring Report. Within 60 Days of completing the monitoring period under the Supplemental SSO Post-Remedial Measures Monitoring Plan, Griffith shall submit a Supplemental SSO Post-Remedial Measures Monitoring Report to EPA and IDEM for review and approval. The Supplemental Monitoring Report shall include:

a. a tabulation of all SSOs that occur in or from Griffith's SSCS from the end date of the original two-year SSO Post-Remedial Measures Monitoring Period through the two-

the body of the email shall include such details as the duration and cause of discharge and will reference the docket number for this Consent Decree as well as the State case identifier number (INU000086). The relevant SSO Report(s) shall be attached to the email.

25. Semi-Annual Overflow Reports. By September 1st (for the reporting period of January – June) and March 1st (for the reporting period of July – December) of each year beginning the calendar year after this Decree is lodged and continuing for 5 consecutive years, Griffith shall submit copies of its final and completed electronic reports to IDEM and EPA using State Form 48373 for each SSO location at which an SSO occurred during the reporting period. Griffith shall also complete and submit to IDEM and EPA the SSO Reporting Table attached hereto as Appendix C for every SSO that occurred during the reporting period. After submitting semi-annual overflow reports for 5 years, Griffith may begin submitting annual overflow reports by September 1st every year until this Consent Decree is terminated.

C. Developing and Implementing a Capacity, Management, Operation, and Maintenance (“CMOM”) Program

26. Developing a CMOM Program. Within six months of the Effective Date, Griffith shall submit to EPA and IDEM, for review and approval, a proposed Capacity, Management, Operation, and Maintenance Program (“CMOM”) Program designed to address all parts of Griffith’s SCS consistent with EPA’s Guide for Evaluating CMOM Programs at Sanitary Sewer Collection Systems, EPA 305-B-05-002 (January 2005). Griffith’s proposed CMOM Program shall include a maintenance schedule for Griffith’s entire SCS and a justification for the proposed schedule, to include the following action items:

- a. Sewer televising (expressed in miles or percentage of Griffith’s SCS);
- b. Smoke testing (expressed in miles or percentage of Griffith’s SCS);

elimination measures implemented;

d. additional flow monitoring implemented in Griffith's SSCS, including the location of the additional flow monitor(s) and the amount of time data was gathered; and

e. the number of illicit connections disconnected from Griffith's SSCS, including, but not limited to, downspouts, footing tiles, and/or sump pumps, and the estimated volume of I/I removed.

D. Miscellaneous Compliance Provisions

32. Approval of Deliverables. After review of any Deliverable under this Decree, EPA and IDEM shall in writing: (a) approve the submission; (b) approve part of the submission and disapprove the remainder; or (c) disapprove the submission.

33. If the submission is approved pursuant to Paragraph 32(a), Griffith shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is approved only in part pursuant to Paragraph 32(b), Griffith shall, upon written direction from EPA and IDEM, take all actions required by the approved plan, report, or other item that EPA and IDEM determine are technically severable from any disapproved portions, subject to Griffith's right to dispute only the disapproved portions, under Section XI (Dispute Resolution).

34. If the submission is disapproved in whole or in part pursuant to Paragraph 32(b) or (c), Griffith shall, within 45 days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, Griffith shall proceed in accordance with the preceding Paragraph.

Annual Report that shall: (a) describe all the work, and associated deadlines, that Griffith completed under this Decree during the preceding six-month period; (b) include documentation (e.g., as-built diagrams, photographs, affidavits, etc.) demonstrating that Griffith completed all necessary work and met all deadlines; and (c) describe any non-compliance with any requirement of this Decree, explaining the likely cause of the non-compliance and the remedial steps taken, or to be taken, to minimize such violation or prevent its recurrence.

39. If Griffith violates, or has reason to believe that it may violate, any requirement of this Decree, Griffith shall notify the United States and the State of such violation and its likely duration, in writing, within ten Days of the Day Griffith first becomes aware of the violation, with an explanation of the likely cause of the violation and the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Griffith shall so state in the report. Griffith shall investigate the cause of the violation and shall then submit an amended report that includes a full explanation of the cause of the violation, within 30 Days of the Day Griffith becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Griffith of its obligation to provide the notice required by Section X (Force Majeure).

40. Whenever any violation of this Decree or of any applicable permits or any other event affecting Griffith's performance under this Decree, or the performance of its SSCS, may pose an immediate threat to the public health or welfare or the environment, Griffith shall notify EPA and IDEM orally or by electronic means as soon as possible, but no later than 24 hours after Griffith first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

41. All reports shall be submitted to the persons designated in Section XV (Notices).

Sections VII (Compliance Requirements) and VIII (Reporting Requirements). Documents requiring EPA and State approval shall be posted within seven days of approval. All other documents shall be posted within 30 days of submissions to EPA and IDEM.

c. SSO Public Notification. Within 30 Days of the Effective Date of this Decree, Griffith shall begin posting on its Website a completed State Form 48373 after each SSO that occurs. These reports shall be posted on the Website within 24 hours of the time that Griffith becomes aware of the SSO or the Building/Property Backup. Once posted, Griffith shall not remove any of the State Forms from the website; if Griffith needs to amend a report, it will post the original report and any amendments to that report.

47. Other Public Presentations and Education Materials. Griffith shall post to its Website materials used in presentations to the public related to the work required under this Consent Decree and other relevant educational materials identified by Griffith, IDEM, or EPA.

IX. STIPULATED PENALTIES

48. Griffith shall be liable for stipulated penalties to the United States and the State for violations of this Consent Decree as specified below, unless excused under Section X (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

49. Late Payment of Civil Penalty. If Griffith fails to pay the civil penalty required to be paid under Section VI (Civil Penalty) when due, Griffith shall pay a stipulated penalty of \$1,000 per Day for each Day that the payment is late.

Volume of SSO (in gallons)	If <i>not in compliance</i> with all schedules in Section VI (Compliance Requirements)
500 or less	\$500
501 to 10,000	\$2,000
Greater than 10,000	\$4,000

53. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Paragraphs 19 and 22 (SSO Post-Remedial Measures Monitoring Report and Supplemental SSO Post-Remedial Measures Monitoring Report, if necessary); 24 (Reporting all SSOs); 25 (Semi-Annual Overflow Logs); 31 (CMOM Report); 38 (Semi-Annual Report); 39 (Reporting non-compliance with Decree); and 40 (Reporting immediate threats to public health):

<u>Period of noncompliance</u>	<u>Penalty Per Violation Per Day</u>
1 st through 14 th day of violation	\$250
15 th through 30 th day of violation	\$500
31st day and beyond	\$1,000

54. The following stipulated penalties shall accrue per violation per Day for each violation not included in Paragraphs 50-53.

<u>Period of noncompliance</u>	<u>Penalty Per Violation Per Day</u>
1 st through 14 th day of violation	\$250
15 th through 30 th day of violation	\$500
31st day and beyond	\$1,000

55. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Decree.

decision or order by the United States or the State that is not appealed to the Court, then Griffith shall pay the accrued stipulated penalties associated with the resolved violations, together with interest, to the United States and the State, within 30 Days of such resolution.

59. Griffith shall pay stipulated penalties owing to the United States and the State in the manner set forth and with the confirmation notices required by Paragraphs 14 and 15, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

60. If Griffith fails to pay stipulated penalties according to the terms of this Decree, Griffith shall be liable for interest on such penalties, as provided by 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States or the State from seeking any remedy otherwise provided by law for Griffith's failure to pay any stipulated penalties.

61. The payment of penalties and interest, if any, shall not alter in any way Griffith's obligation to complete the performance of the requirements of this Decree.

62. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Decree. Subject to the provisions of Section XIII (Effect of Settlement/Reservation of Rights), the United States expressly reserves the right to seek any other relief it deems appropriate for Griffith's violation of this Decree or applicable law, including but not limited to an action against Griffith for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a violation of this Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Decree.

asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Griffith shall be deemed to know of any circumstance of which Griffith, any entity controlled by Griffith, or Griffith's contractors knew or should have known.

65. If EPA and IDEM agree with the Griffith that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Decree that are affected by the force majeure event will be extended by EPA and IDEM, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA and IDEM will notify Griffith in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

66. If EPA and IDEM do not agree with the Griffith that the delay or anticipated delay has been or will be caused by a force majeure event, EPA and IDEM will notify Griffith in writing of their decision.

67. If Griffith elects to invoke the dispute resolution procedures set forth in Section XI (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA and IDEM's notice. In any such proceeding, Griffith shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Griffith complied with the requirements of Paragraphs 63 and 64. If Griffith carries this burden, the delay at issue shall be deemed not to be a violation by Griffith of the affected obligation of this Decree identified to EPA, IDEM, and the Court.

Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States and the State. The United States and the State's Statement of Position shall be binding on Griffith, unless Griffith files a motion for judicial review of the dispute in accordance with the following Paragraph.

c. An administrative record of the dispute shall be maintained by EPA and shall contain all Statements of Position, including supporting documentation, submitted pursuant to this Paragraph. Where appropriate, EPA may allow submission of supplemental materials by any party to the dispute.

71. Judicial Review. Griffith may seek judicial review of the dispute by filing with the Court and serving on the United States and the State, in accordance with Section XV (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 10 Days of receipt of the United States and the State's Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Griffith's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Decree.

72. The United States and the State shall respond to Griffith's motion within the time period allowed by the Local Rules of this Court. Griffith may file a reply memorandum, to the extent permitted by the Local Rules.

73. Standard of Review.

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Decree, in any dispute brought under Paragraph 70 pertaining to the

- c. obtain samples and, upon request, splits of any samples taken by Griffith or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Griffith's compliance with this Decree.

76. Upon request, Griffith shall provide EPA and IDEM or their authorized representative splits of any samples taken by Griffith. Upon request, EPA or IDEM shall provide Griffith splits of any samples taken by EPA or IDEM.

77. Until five years after the termination of this Decree, Griffith shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Griffith's performance of its obligations under this Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or the State, Griffith shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

78. At the conclusion of the information-retention period provided in the preceding Paragraph, Griffith shall notify the United States and the State at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or the State, Griffith shall deliver any such documents, records, or other information to EPA or IDEM. Griffith may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any

injunctive relief under the CWA or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 81. The United States and the State further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Griffith's SSCS, whether related to the violations addressed in this Decree or otherwise.

83. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, civil penalties, other appropriate relief relating to the SSCS, Griffith shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 81.

84. This Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Griffith is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Griffith's compliance with this Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and the State do not, by their consent to the entry of this Decree, warrant or aver in any manner that Griffith's compliance with any aspect of this Decree will result in compliance with provisions of the CWA, 33 U.S.C. § 1251, *et seq.*, or with any other provisions of federal, State, or local laws, regulations, or permits.

As to EPA by mail:

Chief, Water Enforcement and Compliance
Assurance Branch (WC-15J)
U.S. Environmental Protection Agency, Region V
77 W. Jackson Blvd.
Chicago, IL 60604

As to the State:

Chief, Environmental Section
Office of the Attorney General
Indiana Government Center South, 5th Floor
402 West Washington St.
Indianapolis, IN 46204

As to IDEM:

Chief, Compliance Branch
Office of Water Quality, Mail Code 65-40
Indiana Department of Environmental Management
100 N. Senate Ave.
Indianapolis, IN 46204-2251

and

Office of Legal Counsel
Mail Code 60-01
100 North Senate Street
Indianapolis, IN 46204-2251
badmire@idem.in.gov
Phone: (317) 232-8584

As to Griffith:

The Griffith Clerk Treasurer
11 North Broad Street
Griffith, IN 46319
griffithclerk@griffith.in.gov

The Griffith Town Council President
11 North Broad Street
Griffith, IN 46319
griffithtowncouncil@griffith.in.gov

Erika K. Powers
Barnes & Thornburg LLP
1 North Wacker Drive, Suite 4400

modifying this Decree, pursuant to Sections XI (Dispute Resolution) and XVIII (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XVIII. MODIFICATION

93. Except as provided in Paragraph 30 (Revising the CMOM Program), the terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court. The Parties agree that an automatic extension of the final completion date for the SSO Remedial Measures Plan as provided in Appendix A is a non-material change.

94. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XI (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 73(a) and (b), the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XIX. TERMINATION

95. After Griffith has completed the requirements of Section VII (Compliance Requirements), has complied with all other requirements of this Consent Decree, and has paid the civil penalty and any accrued stipulated penalties as required by this Decree, Griffith may serve upon the United States and the State a Request for Termination, stating that Griffith has satisfied those requirements, together with all necessary supporting documentation.

96. Following receipt by the United States and the State of Griffith's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Griffith has satisfactorily complied with the requirements

Department of Justice identified on the DOJ signature page below, certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

101. This Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Griffith agrees to accept service of process by mail with respect to all matters arising under or relating to this Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons. Griffith need not file an answer to the Complaint in this action unless or until the Court expressly declines to enter this Decree.

XXII. INTEGRATION

102. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than Deliverables that are subsequently submitted and approved pursuant to this Decree, the Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Decree.

XXIII. APPENDICES

103. The following Appendices are attached to and part of this Consent Decree:
“Appendix A” is Griffith’s SSO Remedial Measures Plan Requirements;
“Appendix B” is Griffith’s List of SSO Locations and Procedure to Eliminate Subsequently Discovered SSOs;
“Appendix C” is Griffith’s SSO Reporting Table.

The Undersigned Party enters into this Consent Decree between the United States of America, the State of Indiana, and the Town of Griffith, Indiana.

**FOR PLAINTIFF
UNITED STATES OF AMERICA:**

UNITED STATES DEPARTMENT OF JUSTICE

TODD KIM
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date

ALISON C. MCGREGOR
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20044-7611

CLIFFORD D. JOHNSON
United States Attorney
Northern District of Indiana

SHARON JEFFERSON
Assistant United States Attorney
Northern District of Indiana

The Undersigned Party enters into this Consent Decree between the United States of America, the State of Indiana, and the Town of Griffith, Indiana.

**ENVIRONMENTAL PROTECTION AGENCY,
OFFICE OF ENFORCEMENT AND COMPLIANCE
ASSURANCE**

Date

JOSEPH A. THEIS
Acting Division Director
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

The Undersigned Party enters into this Consent Decree between the United States of America, the State of Indiana, and the Town of Griffith, Indiana.

FOR THE TOWN OF GRIFFITH

4/5/22
Date



A handwritten signature in blue ink, appearing to read 'Rick Ryfa', is written over a horizontal line.

RICK RYFA
Town Council President
Town of Griffith
111 North Broad Street
Griffith, IN 46319

Consent Decree in
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the Sanitary District of Highland and the Town of Griffith, Indiana

I. Continued Inflow/Infiltration (I/I) Reduction

By October 1, 2026, Griffith will complete a construction project to address the following direct inflow sources identified in the February 2020 I/I Investigations Study Report:

- Manholes with open pick holes
- Cleanouts with broken or missing caps
- Storm drain cross-connections
- Downspout connections

II. SSO Remedial Measures Plan Requirements: Increased Treatment Capacity from Hammond Sanitary District (HSD) and Other Measures to Address SSOs

Griffith will: (i) coordinate with HSD on the expeditious implementation of the following capital projects to convey increased flows to HSD for treatment; and (ii) submit to EPA and IDEM for review and approval an SSO Remedial Measures Plan that includes the following:

- Upgrades to or replacement of the Cline Avenue Pump Station, Cline Avenue Pump Station force main, and any other construction or work that Griffith determines is necessary to pump wet weather flows of 15.5 MGD to HSD. The implementation schedule will be coordinated with HSD's long-term control plan implementation and will be completed no more than two months after the time that HSD is prepared to accept the additional flow from Griffith and no later than October 1, 2026. If the timeline in HSD's LTCP regarding the corresponding sewer upgrades necessary to accept the 15.5 MGD from Griffith is extended pursuant to its 2017 Decree with the United States and the State, Griffith's completion date will automatically be extended to two months after HSD's new deadline to accept the additional flow.
- Within 30 days of completing the work described above, Griffith shall request and obtain written notice from HSD that confirms that HSD is ready to accept 15.5 MGD from the upgraded Cline Avenue Pump Station (and any additional pump stations, if necessary). Griffith will begin pumping peak flows up to 15.5 MGD, as necessary, to HSD at the upgraded Cline Avenue Pump Station (and additional pump station, if necessary) after obtaining its written notice from HSD.
- Any additional measures that Griffith determines are necessary to include in its SSO Remedial Measures Plan in order to meet the objective of eliminating SSOs, such as additional I/I elimination projects.

Griffith shall submit its SSO Remedial Measures Plan, which shall incorporate the requirements listed above and include an implementation schedule, to EPA and IDEM for approval by July 29, 2022.

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Part 1. SSO Locations List

The definition of SSO Locations for purposes of this Decree currently includes the Cline Avenue equalization basin where SSOs have occurred and could potentially occur as of the Date of Lodging this Decree.

Part 2. Procedure for Newly Discovered SSO Locations

A. When Griffith develops and implements its CMOM Program (pursuant to Paragraphs 26 and 29 of this Consent Decree), Griffith will actively investigate its SSCS in order to identify any additional SSO locations not included in the SSO Locations List set forth in Part 1 above. Any SSO not on the list above will be treated as a newly discovered SSO.

B. Newly discovered SSOs shall be categorized as either maintenance-related or capacity-related. Maintenance-related SSOs are those caused solely by blockages, sewer collapses, and other physical faults within the SSCS. Maintenance-related SSOs are remediated by sewer cleaning, root removal, and/or localized sewer repairs, as appropriate. Capacity-related SSOs are those caused in part or entirely by as-designed inadequate capacity to convey peak flows within the SSCS. Capacity-related SSOs are remediated by measures such as the provision of larger sewers, relief sewers, or the reduction of peak wet weather flows by source control measures.

C. Maintenance-related SSOs. If Griffith determines that a newly discovered SSO is maintenance-related, Griffith shall implement such maintenance and/or repair measures as are necessary to address the SSO as expeditiously as possible and within 30 days of discovery. Griffith shall include relevant information in its subsequent Semi-Annual Report, pursuant to Paragraph 38 of the Consent Decree. That information shall include: a description of the newly discovered SSO's location, the maintenance-related issue(s) causing the SSO, the manner in which it was discovered, the date of discovery, a description of the maintenance and/or repair activities carried out to eliminate the SSO, and the date by which those repairs were completed.

If Griffith cannot eliminate the SSO within 30 days of discovery, then within 10 days of discovery, Griffith shall notify EPA and IDEM and request an extension that eliminates the SSO as expeditiously as possible. Griffith shall include in its notification and extension request all relevant information describing the newly discovered SSO's location; the maintenance-related issue(s) causing the SSO; the circumstances in which the SSO was discovered; the date of discovery; a description of the maintenance and/or repair activities Griffith will implement to eliminate the SSO; the date by which those activities will be completed; and why the maintenance and/or repair activities could not be completed within 30 days of Griffith discovering the SSO. Griffith shall implement the plan to eliminate the SSO, under the schedule provided, as approved by EPA and IDEM.

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Appendix C

Griffith's SSO Reporting Table

**Consent Decree in
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NOAA Atlas 14, Volume 2, Version 3 Location name: Griffith, Indiana, USA* Latitude: 41.8668°, Longitude: -87.4313°
Elevation: 507.38 ft**

POINT PRECIPITATION FREQUENCY ESTIMATES
G.M. Brown, G. Mark, B. Li, T. Ferryback, M. Visha, and D. Hoy NOAA National Weather Service, Silver Spring, Maryland

PDS-based point precipitation frequency estimates with 90% confidence intervals (in inches)¹

Duration	Average recurrence interval (years)					
	1	2	5	10	20	100
5-min	0.391 (0.342-0.429)	0.462 (0.406-0.520)	0.518 (0.431-0.595)	0.571 (0.463-0.770)	0.609 (0.480-0.859)	0.646 (0.444-0.930)
10-min	0.446 (0.372-0.520)	0.541 (0.432-0.650)	0.618 (0.473-0.773)	0.687 (0.500-0.920)	0.740 (0.530-0.990)	0.786 (0.530-1.040)
15-min	0.478 (0.396-0.560)	0.583 (0.453-0.713)	0.672 (0.500-0.844)	0.750 (0.530-0.970)	0.810 (0.560-1.060)	0.856 (0.560-1.150)
30-min	0.509 (0.402-0.616)	0.627 (0.463-0.791)	0.736 (0.520-0.952)	0.830 (0.570-1.090)	0.900 (0.610-1.190)	0.956 (0.610-1.300)
60-min	0.537 (0.402-0.672)	0.667 (0.473-0.860)	0.796 (0.560-1.030)	0.900 (0.610-1.190)	0.980 (0.660-1.300)	1.046 (0.660-1.430)
2-hr	0.571 (0.381-0.761)	0.709 (0.473-0.945)	0.856 (0.560-1.150)	0.980 (0.660-1.300)	1.080 (0.700-1.460)	1.166 (0.700-1.630)
3-hr	0.583 (0.381-0.785)	0.736 (0.473-0.999)	0.896 (0.560-1.230)	1.030 (0.660-1.400)	1.130 (0.700-1.560)	1.206 (0.700-1.710)
6-hr	0.609 (0.381-0.837)	0.773 (0.473-1.070)	0.946 (0.560-1.330)	1.100 (0.660-1.540)	1.200 (0.700-1.700)	1.286 (0.700-1.870)
12-hr	0.635 (0.381-0.889)	0.810 (0.473-1.140)	0.996 (0.560-1.430)	1.160 (0.660-1.660)	1.260 (0.700-1.800)	1.346 (0.700-1.990)
24-hr	0.661 (0.381-0.941)	0.847 (0.473-1.210)	1.046 (0.560-1.530)	1.230 (0.660-1.800)	1.340 (0.700-1.940)	1.426 (0.700-2.150)
2-day	0.687 (0.381-0.993)	0.884 (0.473-1.280)	1.100 (0.560-1.630)	1.300 (0.660-1.940)	1.420 (0.700-2.140)	1.506 (0.700-2.310)
3-day	0.713 (0.381-1.045)	0.921 (0.473-1.350)	1.160 (0.560-1.730)	1.380 (0.660-2.100)	1.500 (0.700-2.300)	1.596 (0.700-2.490)
4-day	0.739 (0.381-1.097)	0.958 (0.473-1.420)	1.220 (0.560-1.830)	1.460 (0.660-2.260)	1.580 (0.700-2.460)	1.686 (0.700-2.680)
7-day	0.796 (0.381-1.200)	1.030 (0.473-1.520)	1.300 (0.560-1.930)	1.560 (0.660-2.460)	1.680 (0.700-2.660)	1.786 (0.700-2.880)
10-day	0.822 (0.381-1.252)	1.067 (0.473-1.590)	1.360 (0.560-2.030)	1.640 (0.660-2.620)	1.760 (0.700-2.820)	1.876 (0.700-3.100)
20-day	0.879 (0.381-1.355)	1.140 (0.473-1.710)	1.460 (0.560-2.170)	1.760 (0.660-2.860)	1.880 (0.700-3.060)	2.006 (0.700-3.340)
30-day	0.905 (0.381-1.407)	1.177 (0.473-1.780)	1.520 (0.560-2.270)	1.840 (0.660-3.020)	1.960 (0.700-3.220)	2.096 (0.700-3.500)
45-day	0.931 (0.381-1.459)	1.214 (0.473-1.850)	1.580 (0.560-2.370)	1.920 (0.660-3.180)	2.040 (0.700-3.380)	2.186 (0.700-3.660)
60-day	0.957 (0.381-1.511)	1.251 (0.473-1.920)	1.640 (0.560-2.470)	2.000 (0.660-3.340)	2.120 (0.700-3.540)	2.276 (0.700-3.920)

¹ Precipitation frequency (PF) estimates in this table are based on frequency analysis of partial duration series (PDS). Numbers in parentheses are PF estimates at lower and upper bounds of the 90% confidence interval. The probability that precipitation frequency estimates are not checked against probable maximum precipitation (PMP) values and may be higher than century return PMP values. Please refer to NOAA Atlas 14 document for more information.