



FINANCE COMMITTEE AGENDA

DATE: July 22, 2021

TIME: 2:00 p.m.

LOCATION: City Hall Conference Room
1 Public Square, 4th floor

- 1) NON-PUBLIC MEETING
 - a) Willis v. City
 - b) Tennessee River Keepers v. City
- 2) PUBLIC MEETING CALL TO ORDER
- 3) ATTENDANCE
- 4) CONSIDERATION OF SETTLEMENTS
 - a) Willis v. City
 - b) Tennessee River Keepers v. City
- 5) ADJOURNMENT

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE RIVERKEEPER, INC.)	
)	
v.)	NO. 3:20-0068
)	Campbell/Holmes
CITY OF CLARKSVILLE, TENNESSEE)	
)	

CONSENT DECREE

I. STIPULATIONS

The City of Clarksville, Tennessee (“City”) owns and operates a wastewater treatment plant (“WWTP”) and associated wastewater collection system (“WWCS”) (collectively, the Facility”) that provides sewer service to approximately 160,000 citizens and discharges treated wastewater into the Cumberland River in accordance with a National Pollutant Discharge Elimination Permit (Permit No. TN0020656) (“Permit”). In May of 2010, the City experienced a catastrophic flood that decimated its WWTP and electrical systems at the plant and a number of lift stations. The flood resulted in water elevations that exceeded the 500 year flood level. The flood caused the WWTP and some lift stations to be submerged by floodwaters.

Tennessee Riverkeeper (“Riverkeeper”) issued a notice of intent to sue letter dated November 15, 2019 (“Notice of Intent”) and filed the complaint in this action on January 24, 2020 under Section 505 of the Clean Water Act (“CWA”), 33 U.S.C. § 1365, alleging that the City is in violation of certain terms of the Permit. Riverkeeper’s complaint seeks declaratory and injunctive relief, imposition of civil penalties, and an award of litigation expenses, including attorney and expert fees. The City denies any and all of Riverkeeper’s claims in its Notice of Intent and complaint.

Solely for the purposes of this Consent Decree, the City and Riverkeeper (collectively, the “Parties”) stipulate that the Court has jurisdiction over the Parties and the subject matter of this action under section 505(a) of the CWA, 33 U.S.C. § 1365(a).

On February 23, 2012, TDEC and the City entered into an administrative Consent Order that addressed the issues set forth in the Notice of Intent and Complaint. A copy of the Consent Order is attached hereto as Exhibit A. The Consent Order requires the City to take numerous actions, by certain specified deadlines over many years, including but not limited to the submission of a corrective action plan/engineering report, sanitary sewer overflow evaluation reports, a long term control plan, and a comprehensive assessment of the City’s collection system. The Consent Order provides specific time frames for compliance with implementation of requirements in the deliverables and for compliance with the requirements of the Permit.

The City has submitted all deliverables required to date in compliance with the Consent Order and TDEC has approved those deliverables. On March 31, 2020, the City submitted to TDEC the final annual comprehensive assessment of collection system (“CACS”) report required by the Consent Order. Pursuant to the Consent Order, the City is obligated to complete all actions in this CACS within ten years from this date.

II. ORDER AND DECREE

THIS MATTER came before the Court upon the foregoing Stipulations of the Parties and joint motion for entry of Consent Decree. Having considered the Stipulations and the terms and conditions set forth below, the Court hereby ORDERS, ADJUDGES, and DECREES as follows:

1. This Court has jurisdiction over the Parties and the subject matter of this action pursuant to section 505(a) of the CWA, 33 U.S.C. § 1365(a).

2. This Consent Decree shall inure to the benefit of, and be binding upon, the Parties and their successors, assigns, officials, agents, representatives, officers, directors, and employees.

Changes in the organizational form or status of a party shall have no effect on the binding nature of this Consent Decree or its applicability.

3. This Consent Decree, and any injunctive relief ordered within, applies solely to the City's wastewater discharges from the Facility subject to the Permit.

4. This Consent Decree is a full and complete settlement and release of any and all claims and demands of any kind, nature, or description whatsoever, and from any and all liabilities, damages, injuries, costs, attorneys' fees or expenses, actions or causes of action of any nature whatsoever, either at law or in equity, known or unknown, fixed or contingent, which Riverkeeper may have against the City and its respective affiliates, divisions, insurers, successors, assigns, and current and former employees, attorneys, officers, directors and agents arising from, or related to, the discharge of wastewater from the Facility that are subject to the Permit and/or the acts, facts, or transactions described or alleged in Riverkeeper's notice of intent to sue letter and complaint. Upon termination of this Consent Decree pursuant to Paragraph 10, these claims shall be released and dismissed with prejudice.

5. This Consent Decree is a settlement of disputed facts and law. It is not an admission or adjudication regarding any allegations by Riverkeeper in this case or of any fact or conclusion of law related to those allegations. Neither this Consent Decree nor any payment pursuant hereto shall constitute evidence or be construed as a finding, adjudication, or acknowledgment of any fact, law or liability, nor shall it be construed as an admission of violation of any law, rule or regulation.

6. The City agrees to the following terms and conditions in full and complete satisfaction of all the claims covered by this Consent Decree:

(a) The City shall fully comply with all outstanding obligations under the TDEC Consent Order in accordance with its terms upon entry of this Consent Decree by the Court, including but not limited to the completion of all corrective actions listed in the last annual CACS report that the City filed with TDEC on March 31, 2020, no later than March 31, 2030. In the event of any dispute as to whether the City has complied with its obligations under the Consent Order, TDEC's decision shall control.

(b) Upon completion of the measures required by the TDEC Consent Order, the City shall provide written notification thereof to Riverkeeper.

(c) During the period between the entry of this Consent Decree and its termination, the City shall provide to Riverkeeper the same information concerning sanitary sewer overflows that is contained on the City's sanitary sewer overflow reports provided to TDEC.

7. Within fourteen (14) calendar days of entry of this Consent Decree, the City shall pay Riverkeeper's attorney fees and costs in the amount of \$21,288.00 in full and complete satisfaction of any claims Riverkeeper may have under the CWA for all costs of litigation, including investigative, expert and attorneys' fees and costs incurred by Riverkeeper that have or could have been claimed now or in the future in connection with Riverkeeper's claims, up to and including the entry of this Consent Decree. Such payments shall be made by check payable to "Tennessee Riverkeeper" and mailed to its attorney, Mark E. Martin at the address below in Paragraph 12. Riverkeeper's above-signed counsel hereby certifies that the actual costs and fees incurred in this matter equal or exceed \$21,288.000. The payment of this sum as part of the compromise and settlement is meant to be a total amount of investigative, expert and attorney fees and cost incurred in this matter.

8. This Court retains jurisdiction over this matter and, while this Consent Decree remains in force, this case may be reopened without filing fee so that the Parties may apply to the Court for any further order or relief that may be necessary regarding compliance with this Consent Decree or to resolve any dispute regarding the terms or conditions of this Consent Decree until it is terminated. A precondition to any application to the Court under this paragraph is that the Parties must first seek to resolve the dispute themselves as follows: (1) the party identifying or wishing to raise an issue or dispute must provide the other party a written notice detailing the nature of the issue or dispute; and (2) within thirty (30) calendar days of receipt of such notice, the Parties shall meet and confer regarding the issue or dispute. If no resolution is reached at that meeting or within thirty (30) calendar days of the written notice, whichever occurs first, either party may file a motion with this Court to resolve the dispute. In any action to enforce this Consent Decree, the Court shall apply the same standard applied by courts in awarding fees and costs under section 505(d) of the CWA, 33 U.S.C. 1365(d), but the Parties otherwise reserve all rights and arguments concerning the right to and the allocation of attorneys' fees and costs in connection with the resolution of any such dispute.

9. This agreement shall take effect upon entry of the Consent Decree by the Court.

10. The obligations set forth in this Consent Decree shall terminate ninety (90) days after the written notification to Riverkeeper of the City's notification of completion to TDEC pursuant to Section XXIII, Paragraph 7 of the Consent Order.

11. During the effective period of this Consent Decree and prior to its termination pursuant to Section 10, above, Riverkeeper shall not support other lawsuits, by providing financial assistance, personnel time or other affirmative actions, against or relating to the Facility that may be proposed by other groups or individuals who would rely upon the citizen suit

provision of the CWA to challenge the Facility's compliance with the Permit or any successor thereto.

12. All notices and other communications regarding this Consent Decree shall be in writing and shall be fully given by mailing via first-class mail, postage pre-paid; by delivering the same by hand; or by sending the same via e-mail to the following addresses, or to such other addresses as the Parties may designate by written notice, provided that communications that are mailed shall not be deemed to have been given until three (3) business days after mailing:

For Riverkeeper:

Mark E. Martin
P.O. Box 1486
Oneonta, AL 35121
mmartin@markemartin.com

For City of Clarksville:

INSERT

13. This Consent Decree constitutes the entire agreement between the Parties. There are no other or further agreements, either written or verbal. This agreement may not be modified or amended except by a writing signed by both Parties and entered by the Court.

14. Each party acknowledges that it has sought and obtained the advice of its own independent legal counsel before executing this Consent Decree. The Parties acknowledge that they have had the opportunity to freely negotiate the terms of this Consent Decree.

15. If any term, covenant, or condition of this Consent Decree is held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision included in this Consent Decree.

16. If for any reason the Court should decline to approve this proposed Consent Decree in the form presented, this Consent Decree is voidable at the discretion of either party.

The Parties agree to continue negotiations in good faith in an attempt to cure any objection raised by the Court to entry of this Consent Decree.

17. Each party shall, at the request of the other, execute, acknowledge, and deliver whatever additional documents, and do such other acts, as may be reasonably required in order to accomplish and/or carry out the intent, spirit, and purposes of this Consent Decree.

18. If any event occurs that is outside of the reasonable control of the City (a “force majeure event” as further defined below), which causes a delay in performing tasks required by this Consent Decree, the delay shall not constitute a failure to comply with the terms of this Consent Decree, provided that the City has submitted written notification to Riverkeeper no later than seven (7) calendar days after the date that the City first concludes that such event has caused or will cause noncompliance, describing the length or anticipated length of non-compliance, the precise circumstances causing non-compliance, the measures taken or to be taken to prevent or minimize non-compliance, and a schedule for implementation of the measure to be taken.

19. A force majeure event shall include, but not be limited to the following, to the extent they are outside the reasonable control of the City and cannot be overcome by diligence:

- (a) Acts of God, war, insurrection, or civil disturbance;
- (b) Earthquakes, landslides, fire, floods;
- (c) Actions or inactions of third parties over which the City of Clarksville has no control;
- (d) Adverse weather conditions or unusual delay in transportation;
- (e) Restraint by court order or order of public authority;
- (f) Governmental approvals and authorizations;
- (g) Strikes; and

(h) Any other litigation or arbitration that causes delay.

Provided that the City complies with the notice provision of this paragraph, then in the event that the City fails to comply or anticipates failing to comply with the requirements of this Consent Decree because of a force majeure event, the City's failure to comply, as described in the written notice to Riverkeeper under this paragraph, shall not be a violation of this Consent Decree and shall not result in any liability or other sanctions. In such event, the milestone date(s) shall be extended for a reasonable period of time following the force majeure event.

20. The Parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), no consent judgment can be entered in a CWA suit in which the United States is not a party prior to forty-five (45) calendar days following the receipt of a copy of the proposed consent judgment by the U.S. Attorney General and the Administrator of the U.S. Environmental Protection Agency ("U.S. EPA"). Therefore, no later than five (5) calendar days after the execution of this proposed Consent Decree by the Parties, Riverkeeper shall serve copies of this Consent Decree via certified mail, return receipt requested, upon the Administrator of the U.S. EPA and the U.S. Attorney General. Riverkeeper shall provide copies of the return receipts to the City upon receipt by Riverkeeper. Thereafter, the Parties shall lodge this Consent Decree with the Court and request that its entry be delayed by a period of sixty (60) days to allow adequate time for any objection by the U.S. Attorney or the Administrator of the U.S. EPA.

DATED this ____ day of _____, 2021

IT IS SO ORDERED.

William L. Campbell, Jr.
United States District Judge

Approved for Entry:

/s/ Garry K. Grooms

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