

Consent Decree/Clean Water Act: US Department of Justice and Fort Smith, Arkansas Submit Agreed Modification to US District Court



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The United States Department of Justice (“DOJ”) on May 19th lodged a proposed Agreement and Order on Modification to Consent Decree (“Modification”) with the United States District Court for the Western District of Arkansas in the lawsuit entitled United States and State of Arkansas v. City of Fort Smith, Arkansas, Civil Action No. 2:14-cv-002266-PKH.

DOJ submitted a notice of this action in the May 22 Federal Register. See 91 Fed. Reg. 30326.

Fort Smith and DOJ, on behalf of the United States, entered into a Consent Decree in 2015 to resolve alleged Clean Water Act violations by the City of Fort Smith, Arkansas.

Fort Smith owns and operates a separate sanitary sewer system which includes wastewater treatment plants and a wastewater collection and transmission system. This system consists of 500 miles of sewer lines and 23 pump stations.

The previously referenced lawsuit alleged that Fort Smith violated Section 301 of the Clean Water Act in terms and conditions of its National Pollutant Discharge Elimination Permits. The alleged violations included:

- Discharges of raw sewage to the Arkansas River;
- Failure to prevent proper overflows through proper operation and maintenance of the system.

The original Consent Decree includes specific requirements to address sanitary sewer overflows (“SSOs”) and occasional unintentional discharges of raw sewage from the municipal sanitary sewer. It requires that Fort Smith undertake a number of actions over a time period. At one point, the cost of implementing these measures was estimated to exceed \$255 million plus the cost of routine operation and maintenance.

The State of Arkansas was a co-plaintiff in the enforcement action.

The modification executed on May 19 notes among other things:

- Assessment and remediation of condition defects and capacity restraints must be completed within 12 years (January 2, 2027);
- SSOs have continued to occur.
- Fort Smith has not met deadlines for work under the Decree since 2019 and the work is falling farther behind;

- Fort Smith contends it cannot meet the 12 year schedule and sought a modification of the Consent Decree to extend the schedule for work;
- Fort Smtih experienced a historic 500-year flood in 2019 which is stated to have resulted in approximately 14.2 million dollars in damage to key wastewater infrastructure which was out of service for 22 months;
- Fort Smith contends that the 2019 flood coincides with the City falling behind the deadlines for work;
- Funds reimbursed by the Federal Emergency Management Agency were not disbursed until 2023 and the final payment not until 2025;
- Work has been affected by the effects of global Covid-19;
- DOJ contends that Fort Smith did not provide adequate information to support its force majeure;
- Fort Smith has spent approximately 136 million between 2015 to the end of 2024 toward Modification requirements.
- The estimated total cost of the Modification and National Pollutant Discharge Elimination Permit compliance has increased, indexed for inflation, to almost 800 million through 2038;
- Fort Smith has agreed to withdraw its dispute resolution;
- The parties have agreed to modify the interim deadlines and extend the final deadline for completion of work by 11 years and six months, subject to conditions set forth in the Modification.
- The modification requires that Fort Smith prioritize efforts to eliminate recurring and high volume SSOs consistent with the provisions in the Modification.
- Fort Smith raises sewer rates during the period of 2015 – 2017;
- Adopt a sales and use tax in 2022 to help fund the Consent Decree;
- DOJ's agreement to the set of Modifications is in reliance on Fort Smith's commitment to raise additional funding adequate to complete the Consent Decree requirements in accordance with the modified schedule;
- Fort Smith Board of Directors passed a resolution in 2025 addressing funding;
- Fort Smtih Board of Directors in 2025 submitted to a public vote an ordinance authorizing the issuance of bonds to finance the cost of betterments and improvements to the City's sewer system.

The Modification also includes revisions to the dispute resolution process requested by Fort Smith.

A copy of the Modification can be [downloaded here](#).