



U.S. Department of Justice

United States Attorney  
District of New Hampshire

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Federal Building  
53 Pleasant Street, 4<sup>th</sup> Floor  
Concord, New Hampshire 03301

603/225-1552

February 11, 2009

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City of Nashua  
P.O. Box 2019  
Nashua, NH 03061-2019

Richard Head, Esq.  
Environmental Protection Bureau  
N.H. Attorney General's Office  
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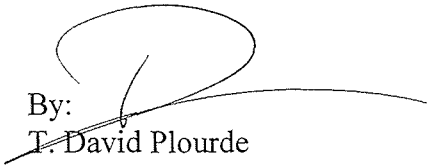
Re: United States, et al. v. City of Nashua  
Civil No. 05-376-PB, U.S.D.C., D.N.H.

Dear Ms. Clark and Mr. Head:

Enclosed for your information are copies of the Court's February 5, 2009 endorsed order granting the motion to enter Consent Decree Modification and the Modification of Consent Decree endorsed by Judge Barbadoro.

Sincerely,

THOMAS P. COLANTUONO  
United States Attorney

By:   
T. David Plourde  
Assistant U.S. Attorney

TDP:djh

cc: Peter Flynn, Esq.  
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Enclosures

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

|                                |   |                     |
|--------------------------------|---|---------------------|
| UNITED STATES OF AMERICA,      | ) |                     |
|                                | ) |                     |
| Plaintiff,                     | ) |                     |
|                                | ) |                     |
| STATE OF NEW HAMPSHIRE,        | ) |                     |
|                                | ) | Civil No. 05-376-PB |
| Plaintiff-Intervenor,          | ) |                     |
|                                | ) |                     |
| v.                             | ) |                     |
|                                | ) |                     |
| CITY OF NASHUA, NEW HAMPSHIRE, | ) |                     |
|                                | ) |                     |
| Defendant.                     | ) |                     |

MODIFICATION OF CONSENT DECREE

WHEREAS, on December 26, 2005, this Court entered a Consent Decree in this action resolving the claims of Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency (EPA), and of Plaintiff-Intervener, the State of New Hampshire, on behalf of the New Hampshire Department of Environmental Services (NH DES), against Defendant, City of Nashua, New Hampshire, in connection with the City's combined sewer overflows and requiring a substantial investment by the City in its combined sewer overflow controls;

WHEREAS, it has come to the attention of the parties that completion of a treatment plant in accordance with Paragraph 7 of the Consent Decree could cost approximately twice the costs estimated at the time the parties executed the Consent Decree;

WHEREAS, the increased costs for the treatment plant warrant an analysis to determine whether alternative mitigation efforts could achieve the objectives of the Clean Water Act and Consent Decree at a lower cost;

WHEREAS, the United States, the State of New Hampshire, and the City of Nashua, New Hampshire have agreed on a proposed modification to the Consent Decree that will require the City to conduct an evaluation of alternatives and establish a schedule for doing so;

WHEREAS, in Paragraph 51 of the Consent Decree the Court retained jurisdiction to, among other things, modify the Consent Decree; and

WHEREAS, the parties are authorized in accordance with Paragraph 52 of the Consent Decree to modify the Consent Decree with approval of the Court;

IT IS HEREBY AGREED as follows:

Paragraph 7 of the Consent Decree is amended by substituting the language attached hereto as Attachment I.

The signatures attached hereto of the United States, the State of New Hampshire, and the City of Nashua constitute their written approvals of the material modification.

APPROVED ON THIS 5 DAY OF February, 2009

/s/ Paul Barbadoro  
**Paul J. Barbadoro**  
**United States District Court Judge**

cc: Counsel of Record

## ATTACHMENT 1

7. a. Milestones

Except with regard to controls for outfalls 005 and 006, the City shall construct CSO controls identified in the January 2003 Report on Baseline Conditions Update and Development and Evaluation of Alternatives to the City's Current CSO Control Plan, as amended June 4, 2003, prepared for the City by Metcalf & Eddy (the "2003 LTCP"). With regard to controls for outfalls 005 and 006, the City shall construct controls identified in the alternatives analysis submitted in accordance with Paragraph 7.b., below. The City shall achieve the milestones set forth in the following table:

| <b>Date</b> | <b>Scheduled CSO Project</b>   |
|-------------|--|
| 2/1/06      | Begin design of CSO 005/006 screening/disinfection facility  |
| 6/1/06      | Install and operate South Main Street/Main Street SW outfall/SW detention ponds                    |
| 6/25/06     | Complete separation of Ledge Street subarea  |
| 7/31/06     | Begin construction of a NWTF wet weather bypass and treatment facility                             |
| 8/1/07      | Begin design of system optimization/infrastructure improvements                                    |
| 1/1/08      | Begin Re-evaluation Study of Scheduled Project for CSO 005/006                                     |
| 8/1/08      | Begin construction of system optimization/infrastructure improvements                              |
| 1/1/09      | Complete Re-evaluation Study of Scheduled Project for CSO 005/006                                  |
| 1/31/09     | Complete construction and begin operation of the of NWTF wet weather bypass and treatment facility |
| 3/31/09     | Submit Alternatives Analysis of alternatives identified in Re-evaluation Study                     |
| 5/1/09      | Resume design of CSO 005/006 control(s) based on results from Re-evaluation Study                  |
| 8/1/09      | Begin design of CSO 003 and CSO 004 Storage facilities   |

|        |  |
|--------|--|
| 2/1/10 | Complete construction of system optimization/infrastructure improvements |
| 8/1/10 | Begin construction of CSO 005/006 control(s)                             |
| 2/1/11 | Begin construction of CSO 003 and CSO 004 Storage facilities             |
| 8/1/12 | Complete construction of CSO 003 and CSO 004 Storage facilities          |
| 8/1/15 | Complete construction of CSO 005/006 control(s)                          |

b. Outfalls 005/006 Re-Evaluation and Alternatives Analysis

By January 1, 2009, the City shall complete a re-evaluation of alternatives to address overflows from outfalls 005 and 006. By March 31, 2009, the City shall submit an alternatives analysis that describes controls identified during that re-evaluation along with proposed alternatives that the City is recommending and a proposed schedule for implementing the selected controls on the shortest practical schedule that can be achieved (“Outfalls 005/006 Alternatives Analysis”). The selected alternatives must achieve the level of control established in the 2003 LTCP. Upon approval by EPA and DES, the schedule proposed in the Outfalls 005/006 Alternatives Analysis shall be incorporated herein.

**Healy, Daryl (USANH)**

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**From:** ecf\_bounce@nhd.uscourts.gov  
**Sent:** Thursday, February 05, 2009 10:54 AM  
**To:** nef@nhd.uscourts.gov  
**Subject:** Activity in Case 1:05-cv-00376-PB United States of America v. Nashua, City of Order on Motion for Miscellaneous Relief

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**U.S. District Court**

**District of New Hampshire**

**Notice of Electronic Filing**

The following transaction was entered on 2/5/2009 at 10:54 AM EST and filed on 2/5/2009

**Case Name:** United States of America v. Nashua, City of

**Case Number:** 1:05-cv-376

**Filer:**

**WARNING: CASE CLOSED on 12/28/2005**

**Document Number:** No document attached

**Docket Text:**

**ENDORSED ORDER** granting [11] Motion to Enter Consent Decree Modification. *Text of Order: Granted.* So Ordered by Judge Paul J. Barbadoro. (jna)

1:05-cv-376 Notice has been electronically mailed to:

Jennifer J. Patterson jennypatterson2003@yahoo.com, colleen.mcduffee@doj.nh.gov

T. David Plourde david.plourde@usdoj.gov, daryl.healy@usdoj.gov, judy.prindiville@usdoj.gov, USANH.ECFCivil@usdoj.gov

1:05-cv-376 Notice, to the extent appropriate, must be delivered conventionally to: