

On motion of Mr. Monzel, seconded by Mr. Hartmann, the resolution was adopted.

**RESOLUTION PROVIDING NEW OR REPEATED INSTRUCTIONS FROM THE
PRINCIPAL TO THE AGENT REGARDING METROPOLITAN SEWER DISTRICT
OF GREATER CINCINNATI POLICY ISSUES**

WHEREAS, the Board of County Commissioners, Hamilton County, Ohio (“Board” or “County”) entered into two Consent Decrees (“Consent Decree”) on June 9, 2004 in a matter pending in the United States District Court for the Southern District of Ohio, Case No. C-1-02-107, captioned *United States of America, et al. v. The Board of County Commissioners of Hamilton County, Ohio, et al.*; and

WHEREAS, the Metropolitan Sewer District of Greater Cincinnati (“MSDGC”) is a County Sewer District organized under Chapter 6117 of the Ohio Revised Code;

WHEREAS, the County owns the MSDGC and the City of Cincinnati (“City”) operates the MSDGC, subject to the exclusive control and direction of the Board, under the terms of an agreement (“Agreement”) entered into in 1968;

WHEREAS, in the Consent Decree, the Board is the lead Defendant and is defined as the principal of MSDGC, while the City is also a Defendant, and is defined as the agent for the Board (“County”) in the management and operation of MSDGC;

WHEREAS, in an Order dated June 26, 2014, the U.S. District Court confirmed the principal-agent relationship between the County and City and found that the Consent Decree recognizes but does not modify that relationship;

WHEREAS, the Consent Decree Plaintiffs are the United States Environmental Protection Agency (“USEPA”), the Ohio Environmental Protection Agency (“OEPA”) and the Ohio River Valley Water Sanitation Commission (“ORSANCO”) (collectively, the “Regulators”);

WHEREAS, the Regulators have approved a Final Wet Weather Improvement Program (“WWIP”), dated November 9, 2009, which sets forth certain projects and terms for implementation of certain aspects of the Consent Decree;

WHEREAS, the Board has responsibility under law to set policy to ensure that the WWIP and Consent Decree are implemented, and to oversee expenditures for the benefit of MSDGC ratepayers;

WHEREAS, the Board has implemented MSDGC Rules and passed several Resolutions during the past three-plus years which provided instructions and directions to the City in its operation of MSDGC regarding several policy matters, many of which are related to the Consent Decree;

WHEREAS, the Board has become aware that the City in its operation of MSDGC has not fully implemented said Rules, instructions and directions from the Board, in some cases

actually acting contrary to those instructions to the detriment of its principal, the County, and in other cases partially or entirely ignoring the Board's Rules and Resolutions;

WHEREAS, since the U.S. District Court's Order of June 26, 2014, the County Administrator and his staff have provided instructions and directions to the City on multiple occasions regarding policy matters related to MSDGC and the Consent Decrees, which County instructions and directions to the City have been ignored in whole or in part;

WHEREAS, the actions of the agent to ignore and act outside the instructions and directions of its principal is causing actual and growing, potential harm to MSDGC ratepayers, including threats to the expeditious implementation of the Consent Decree;

WHEREAS, the Board desires to affirm its prior Resolutions, indicating that the Board intends to fully comply with the Consent Decree and WWIP, that all Consent Decree/WWIP work must be completed "on time and on budget" unless otherwise directed by the Board, and that the Board will aggressively oversee the work of MSDGC to ensure such work meets the Board's policy directives, including compliance with all applicable laws;

WHEREAS, the Board desires to affirm the County Administration's prior instructions and directions to the City in its operation of MSDGC;

WHEREAS, the Board desires to set forth certain new instructions and directions to the City in its operation of MSDGC;

WHEREAS, because time is of the essence in the agent's carrying out of its principal's instructions and directions with regard to MSDGC, and the Board has tired of waiting for MSDGC management to follow its and its Administration's instructions on many matters with multi-million dollar consequences.

NOW THEREFORE BE IT RESOLVED, that the following are policy directives from the Board to the City, as its agent, to be followed immediately and completely by MSDGC:

1. The Board affirms and ratifies the following Resolutions in which it provided instructions and directions to the City in its operation of MSDGC, including but not limited to the following key instructions/directions:

Date	Topic of Resolution	Summary of Instructions/Directions from Principal to Agent
12/21/11	Modifying and Amending the Resolution Enacting the 2012 CIP for MSDGC and Establishing Various Policies Relating to the Execution of the MSDGC CIP	MSDGC is to only undertake the planning, design and construction of those sustainable or alternative projects which have been explicitly approved by the Board of County Commissioners. MSDGC shall obtain Board approval before proceeding with the planning, design or construction of any WWIP project (1) which varies from the scope of that identified in the WWIP or (b) when a WWIP project is shifted from one Phase of the

	Program	WWIP to another Phase of the WWIP.
7/18/12	MSDGC Consent Decree Wet Weather Implementation Program	<p>In implementing the Final WWIP, specific projects and project bundles should be managed by MSDGC, to the greatest extent practicable within the limits of applicable law, to be planned, designed and constructed in all circumstances “on or under budget.” The phrase “on or under budget” in this Resolution means the total amount spent on each Final WWIP project and project bundles shall not exceed the total projected costs listed in the Final WWIP for that project or project bundle, except as compelled by applicable law and clear engineering requirements.</p> <p>Except where contrary to applicable law and approved by the Board, projects and project bundles which exceed their Final WWIP cost projections at any time during planning or design must be re-evaluated, re-planned, re-designed or construction must be changed, to achieve the needed cost savings to be on or under budget. MSDGC is to immediately report to the Board if spending estimates project that a project or project bundle may be over-budget and provide management corrective action options or plans.</p> <p>The risk of cost over-runs shall be borne, where reasonably practicable, by MSDGC contractors, not MSDGC ratepayers, through procurement procedures and contracts, and MSDGC management thereof, which shall be consistent with Ohio law for procurement by county sewer districts.</p> <p>In implementing the Final WWIP, all MSDGC budgets, cost projections, and spending records for projects and project bundles should clearly identify all project elements and costs which are not required solely for Consent Decree compliance, including but not limited to roadwork, parks, waterways, and other amenities (“Amenities”). MSDGC shall not spend funds on planning, design, or construction of any Amenities without Board approval.</p>
12/19/12	Submission of the Final LMCPR Study Report and conditions	<p>MSDGC shall, unless expressly authorized otherwise by the Board, substantially complete the Revised Original LMCPR by December 31, 2018 for no more than \$244.3 million (2006 dollars)(now \$276.0 in 2012 dollars), while controlling approximately 1.78 billion gallons of CSO overflow annually.</p> <p>MSDGC shall construct and operate a representative number of projects that validate and demonstrate the performance of the storm sewer separation projects and the water quality best</p>

		management practices/equipment (“BMPs”) to be used in the Revised Original LMCP, in order to verify actual in-field CSO reduction and stormwater quality treatment performance against MSDGC’s current (2011-12) modeling results and estimations used to plan the Revised Original LMCP (“Verification Projects”).
1/16/13	Establishing Procurement Policies for MSDGC	MSDGC is to cease implementation of the Local Hire policy and the Local Business Preference policy.
6/26/13	Establishing Policies on the Revised Original Lower Mill Creek Partial Remedy (LMCP)	<p>The Board authorized MSDGC to commence implementation of the Approved LMCP Alternative subject to MSDGC following several policy requirements, including:</p> <p><u>Design and Performance Criteria:</u> The Approved LMCP Alternative is to be completed in a manner which follows and achieves the design and performance criteria for the Approved LMCP Alternative.</p> <p><u>Water Quality:</u> the Approved LMCP Alternative is to be completed in a manner that does not cause or contribute to new exceedances of any applicable water quality standards.</p> <p><u>Verification Projects:</u> the Board revised its 12/19/12 Resolution (above) to extend deadlines for MSDGC’s Verification Projects as follows:</p> <p>By March 1, 2013, Verification Projects are to be planned.</p> <p>By August 1, 2013, MSDGC is to provide monthly reports to the County, including detail on costs, schedules, and CSO annual volume capture.</p> <p>By August 1, 2013, MSDGC to provide monthly reports to the County, including detail on the results of stormwater separation projects and on stormwater separation projects that MSDGC is considering or planning.</p> <p>By September 1, 2013, Verification Projects are to be in operation.</p> <p>By August 1, 2014, MSDGC is to begin providing monthly reports to the County on the status of Verification Projects.</p> <p>By September 1, 2014, MSDGC is to verify the current scientific and engineering assumptions and cost estimates to the County’s reasonable satisfaction.</p>

		<p>By September 1, 2014, MSDGC is to provide a summary report to the County, including a report on updated model validation, separation effectiveness, cost verification, and any proposed changes.</p> <p>By October 1, 2014, MSDGC is to present a range of proposed changes to the Approved LMCPR Alternative to the County to cause the project to remain within budget and volume control target, if it failed to timely verify the current assumptions.</p>
9/16/13	Procurement Policies	MSDGC was specifically prohibited from procurement of any project using policies or procedures which deviate from the County's authority under the Ohio Revised Code and which is not authorized by the Board of County Commissioners, including, but not limited to certain City municipal code procurement policies.
12/4/13	Request for Changes in the Werk & Westbourne (W&W) EHRT Consent Decree Project and for a WWIP Alternative for the Muddy Creek Basin	<p>By December 13, 2013, MSDGC was to join with the County to request from the Regulators modifications to the WWIP (and Consent Decree if deemed necessary) to implement the Muddy Creek Basin Alternative, including a delay in, and likely modification to, the W&W Pilot Project.</p> <p>The County was designated by the Board to be the lead governmental agency, between the County and City, in engaging and interacting with the Regulators, watershed partners, local communities, stakeholders, or other entities in connection with the W&W Pilot Project requests noted above, the Muddy Creek Basin Alternative, and related matters, with technical assistance to be provided to the County by the county's agent, MSDGC.</p>
1/8/14	Adding Section 2403 to the MSDGC Rules and Regulations mandating reporting by MSDGC to the County, requiring open access to MSDGC documents and information, requiring certain County approvals.	Section 2403 requires that MSDGC report a wide variety of financial, environmental, and other information to the County, including: Administration, Program Management Activity ("PMA") Reports summarizing the activities completed during each month. And, prior to awarding a WWIP project design contract, and again prior to awarding a construction contract, MSDGC will review with the County Administration the scope of work to confirm that it aligns with the WWIP prescribed scope of work. Further, MSDGC shall immediately, upon MSDGC's receipt of any form of notice of same, provide to the Board notice and copies of all claims, complaints, threats thereof, appeals notices of

		<p>violation from any regulatory agency, compliance reports from any regulatory agency, documents that assert any non-compliance with any consent decree or order, whether against MSDGC itself, the City in its role as operator of MSDGC, and/or the Board in its role as owner of MSDGC.</p> <p>Following a promise made by MSDGC management to the County Administrator several years ago, the Resolution also affirmed that the County shall have unfettered access for review or copying to all documents, information and files, whether electronic, paper or otherwise, maintained by MSDGC.</p> <p>MSDGC is prohibited from entering into any settlement agreement or resolution of any claim or threat of claim, whether initiated by MSDGC or another person, without the prior approval of the board, except for matters which involve in the aggregate a payment of no more than \$25,000 to MSDGC, or the other persons, and do not involve the transfer of other consideration or equitable relief.</p> <p>The County must review and approve all Consent Decree and WWIP reports, WWIP project Permit to Install applications, and other official documents prepared by MSDGC which are due to government agencies, prior to submission of such reports, applications or documents to the relevant government agency.</p> <p>MSDGC shall immediately report to the County when MSDGC learns or determines that any dollar amount estimated to be spent exceeds the applicable WWIP project cost estimate, as set forth in the WWIP. Each report of WWIP cost estimate exceedance, and each subsequent monthly report required herein, shall be accompanied by a corrective action plan to bring the project back under the cost estimate, with subsequent monthly reports providing an update on the effectiveness of the corrective action plan.</p>
1/8/14	Adding Section 2405 to the MSDGC Rules and Regulations creating financial protocols for MSDGC	Section 2405 sets forth financial protocols and performance instructions from the County to MSDGC across several issues, including financial contingencies, de-legislation of prior funding, capitalization rules, the creation and maintenance of a master cash flow schedule, prohibition of transfers of legislated funds, procedures for the spending of so-called "Allowances", the use of Memoranda of Understanding, grants, transfers, payments, and

		disbursements; and public relations funding.
6/26/14	Adding Section 2407 to the MSDGC Rules and Regulations creating a Storm Water Separation Policy	Section 2407 sets forth policies for the evaluation of MSDGC-related stormwater separation projects.

More specifically, the Board directs the City to cause all of its employees, agents, contractors, attorneys, and representatives to adhere to this resolution, the above listed resolutions of the Board, and all other resolutions of the Board.

2. The County Administrator provided instructions and directions to the Interim City Manager, on July 25, 2014, which are repeated below, and are hereby affirmed and ratified by the Board:

“As such, from here on, the County, as lead defendant and principal in the MSD relationship, will be taking the lead on discussions with the Regulators. Specifically, this entails:

1. The County will be the single point of contact with the Consent Decree Regulators (U.S. EPA, Ohio EPA, ORSANCO) on substantive policy and negotiating matters related to consent decree negotiations, WWIP related projects/permit applications, etc.;

2. This will require the City, through MSD, to inform the County (as already required by Board resolution) when WWIP projects are projected to exceed cost or schedule estimates, and to provide a specific remedy plan when that is the case so that the County can determine whether and how regulator communication should occur; and

3. MSD should provide any policy idea recommendations related to the consent decree, negotiations, District finances, NPDES compliance, etc. directly to the County for consideration and should not take any independent action with the Regulators on those ideas prior to receiving direction or authorization from the County.

This is not intended to prohibit communications by MSD operating personnel with Regulators such as Ohio EPA regarding routine operations, inspections and training, nor with ORSANCO to coordinate Ohio River sampling. If MSD management or staff has questions regarding implementation of this policy, please have [MSD Director]Tony[Parrott] contact [County Utility Oversight Director]Dave [Meyer] directly for clarification. [Chief Assistant Prosecutor] Jim Harper has already communicated this approach to the City Solicitor’s Office. This approach should not impact the communications of our respective outside counsel.

Again, this approach is necessary to streamline communications with the Regulators, avoid any future confusion, and to clarify roles and responsibilities so that negotiations with the Regulators can proceed more productively. This is not a reflection on MSD management; we just need one voice on policy and legal matters with the Regulators."

More specifically, the Board directs the City to cause all of its employees, agents, contractors, attorneys, and representatives to not communicate with the Regulators, in person or otherwise, regarding Consent Decree matters without the consent of the County.

3. The County Director of Utility Oversight has recently provided certain instructions and directions to the Director of MSDGC, certain of which are summarized below, and are hereby affirmed and ratified by the Board:

a. MSDGC is to not intervene in, appeal, interfere with, or otherwise become involved in the County's recent appeals of two Ohio EPA permits, except as specifically requested by the County.

b. MSDGC is to provide an analysis of how to significantly shrink the so-called "Lick Run" Consent Decree project in light of new MSD modeling which projects that the performance of this project will be significantly less than what MSD projected in 2012, in order to prevent wasted money on over-building.

c. MSDGC is to withdraw and revise a recently-issued initial, incomplete consultant report on certain high rate technologies, which revised report shall include comprehensive reviews of the existing technology and alternative technologies, with detailed cost analyses of all technologies, and provide a draft report to the County for its review prior to County delivery of same to the Regulators.

4. The County Prosecutor is requested to enforce these and other Resolutions of the Board with respect to the MSDGC, including the employment of Special Counsel for such enforcement, and to evaluate the potential financial liability of the City, as operator of MSDGC, for *ultra vires* actions taken by MSDGC outside of its authority and in violation of the instructions provided by the County.

5. The County Administrator is directed to notify the Interim City Manager of this Resolution and seek to obtain from the Interim City Manager written confirmation within five (5) business days that the City will cause the County's instructions to the City regarding MSDGC to be complied with immediately and will take corrective action to address damages caused by the ongoing and prior failures of MSDGC to be in compliance with the instructions of the County, as principal.

BE IT FURTHER RESOLVED that this Board finds and determines that all formal actions relative to the adoption of this Resolution were taken in an open meeting of the Board, and that all deliberations of the Board and its committees, if any, that resulted in formal action, were also taken in meetings open to the public, in full compliance with applicable requirements, including section 121.22 of the Ohio Revised Code. Copies of this Resolution shall be sent to the following: Administrator Christian Sigman, Assistant Administrator Jeff Aluotto, Director of Utility Oversight Dave Meyer, County Prosecutor Joseph Deters, Chief Assistant Prosecutor James Harper, Mayor John Cranley, Interim City Manager Scott Stiles, incoming City Manager Harry Black, Interim City Solicitor Terry Nestor, U.S. EPA, Ohio EPA, ORSANCO, and Sierra Club.

ADOPTED at a regularly adjourned meeting of the Board of County Commissioners of Hamilton County, Ohio, this 20th day of August, 2014.

Mr. Monzel YES

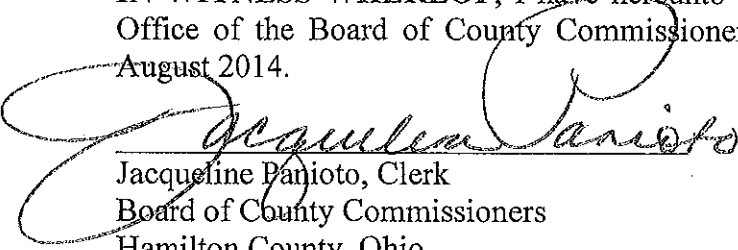
Mr. Hartmann YES

Mr. Portune YES

CERTIFICATE OF CLERK

IT IS HEREBY CERTIFIED that the foregoing is a true and correct transcript of a resolution adopted by the Board of County Commissioners in session this 20th day of August 2014.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of the Office of the Board of County Commissioners of Hamilton County, Ohio, this 20th day of August 2014.


Jacqueline Panioto, Clerk
Board of County Commissioners
Hamilton County, Ohio