

*United States and State of Ohio v. Northeast Ohio  
Regional Sewer District*

**Consent Decree**  
**Appendix 6**

**State Supplemental Environmental  
Project**

**APPENDIX 6  
STATE SUPPLEMENTAL ENVIRONMENTAL PROJECT**

**I. Canal Pump Station Operation and Maintenance**

The Brecksville Dam (also known as the Route 82, Station Road or Canal Diversion Dam) is a structure located on the Cuyahoga River at river mile 20.7. The original dam, known as the Pinery Feeder Dam, was initially constructed in 1827 for the purpose of providing additional water to the Ohio and Erie Canal. The original structure was modified and parts rebuilt several times in the ensuing years. The dam was replaced with a new dam in 1951, located approximately 120 feet downstream from the Pinery Feeder Dam.

The Ohio EPA has identified the dam as one of the causes of non-attainment in this section of the Cuyahoga River. The Lower Cuyahoga River TMDL, which was approved by U.S. EPA on September 26, 2003, specifically identified removal of the Canal Diversion Dam as a project needed to implement the TMDL and restoration of the Lower Cuyahoga River. The TMDL does not assign responsibility to an entity for removal of the dam.

On July 24, 2009, the National Park Service (“NPS”) published in the Federal Register a notice of intent to prepare an Environmental Impact Statement (“EIS”), in collaboration with Ohio EPA, the U.S. Army Corps of Engineers, and the Ohio Department of Natural Resources (“Cooperating Agencies”) to evaluate the environmental impacts of modifying or removing the dam. As the EIS is ongoing, a final decision on whether dam removal will occur has not yet been made. It is estimated that the EIS will be completed in late 2011.

If dam removal occurs, a supply of water from the Cuyahoga River to the Ohio and Erie Canal must be provided. If the Canal does not receive the proper amount of water, there could be important social impacts and small, but important, environmental or agricultural impacts. Studies by the NPS have indicated that a flow estimate of 20 ft<sup>3</sup>/sec or 12.9 million gallons per day (“mgd”) from the Cuyahoga River is necessary for proper function of the Ohio and Erie Canal. As a result, construction and operation of a pump station is necessary in order to maintain this flow to the Ohio and Erie Canal.

NEORSD has agreed to implement a Supplemental Environmental Project (“SEP”), for Canal Pump Station Operation and Maintenance. The SEP shall include the operation and maintenance, including assumption of all operating costs, of the pump station constructed and installed to maintain flow from the Cuyahoga River to the Ohio and Erie Canal, provided that the Canal Diversion Dam Removal and the Construction of the Pump Station is selected for implementation following the completion of the EIS and construction of the pump station. Operation and maintenance of the pump station by NEORSD shall be performed for a period of twenty-five (25) years in accordance with Section VIII and this Appendix 6 of the Consent Decree.

Following commencement of operation of the pump station, NEORSD shall submit to the United States and the State, as provided in Section VIII of the Consent Decree, an Annual Report, within thirty (30) days after the end of each year of operation, which includes the following information:

1. A detailed description of the SEP as implemented during the prior calendar year;
2. A description of any problems encountered during operation and maintenance of the pump station and any corrective actions taken in response to such problems;
3. An itemized list of all eligible SEP costs expended;
4. Certification that the pump station has been fully operational throughout the year and has been maintained or had replacement components installed consistent with providing for the continued operation of the pump station as designed throughout the year period so that at the conclusion of that period the pump station continues to be fully operational; and
5. Any other information requested by the United States or the State.

NEORSD shall also submit to the United States and the State, as provided in Section XVI of the Consent Decree, on the date set for completion of the SEP, a SEP Completion Report which contains the following information:

1. A detailed description of the SEP as implemented;
2. A description of any problems encountered in completing the SEP and any corrective actions taken in response to such problems;
3. An itemized list of all eligible SEP costs expended;
4. Certification that the SEP has been fully implemented pursuant to the provisions of the Consent Decree; and
5. Any other information requested by the United States or the State.

Following receipt of the SEP Completion Report, Ohio EPA or the State will notify NEORSD whether the SEP has been satisfactorily completed. Disputes concerning the satisfactory performance of the SEP and the amount of eligible SEP costs may be resolved under the Dispute Resolution provisions in Section XIII of the Consent Decree.

Each Annual Report, SEP Completion Report or any other submission required by this Appendix shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 44 of the Consent Decree. Any public statements made by NEORSD,

whether written or oral, in print, film, or other media, making reference to the SEP under the Consent Decree shall include the following language:

This project was undertaken in connection with the settlement of an enforcement action, *United States and State of Ohio v. Northeast Ohio Regional Sewer District*, taken on behalf of Ohio EPA.

**II. Alternative SEP**

In the event that the Canal Diversion Dam Removal and Construction of the Pump Station is not selected for implementation following the conclusion of the EIS, NEORSD shall implement an Alternative SEP. Under the Alternative SEP, NEORSD shall pay the sum of eight hundred thousand dollars (\$800,000.000) to Ohio EPA for deposit into the Surface Water Improvement Fund for use by Ohio EPA for any project(s) related to water quality protection and/or water quality restoration consistent with the operation and use of that fund as established pursuant to O.R.C. § 6111.0381. Such payment shall be made within sixty (60) days after NEORSD has received notice from Ohio EPA that the Canal Diversion Dam Removal will not be implemented, or by January 31, 2012, whichever occurs later. This money shall be used by Ohio EPA to provide grant funding for water quality improvements within the Chagrin, Cuyahoga, or Rocky River Watersheds; or the watersheds of the Lake Erie Direct Tributaries that are located within the NEORSD service area (including, but not limited to, the watersheds of Euclid Creek, Doan Brook, Dugway Brook and Nine Mile Creek).