

Congress of the United States

Washington, DC 20510

February 6, 2018

Honorable Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20004

Dear Administrator Pruitt:

We are writing to request your assistance with the City of Indianapolis' Combined Sewer Overflow (CSO) Long Term Control Plan (LTCP) that was developed as part of a consent decree with the Environmental Protection Agency (EPA) in 2006. A critical component of the consent decree revolves around the anticipated issuance of the Agency's Use Attainability Analysis (UAA), which will ensure that investments culminate in compliance with stringent state and federal water quality standards. Unfortunately, EPA Region V has thus far been unwilling to honor the terms of the consent decree, and strongly discouraged the City of Indianapolis and State of Indiana from formally requesting the UAA.

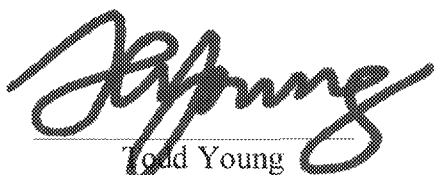
The City of Indianapolis' \$2 billion CSO plan is one of the largest water infrastructure projects in the country and will vastly improve public health and water quality in Central Indiana. We are told that Citizens Energy Group, who is now responsible for executing the LTCP, anticipates to exceed the water quality standards set forth in the consent decree and is projected by 2025 to achieve a 99 percent attainment rate. Additionally, Citizens Energy is ahead of schedule and \$400 million under budget.


It is our understanding there are several steps associated with issuing the UAA, including a formal rule making process by the State of Indiana that could require more than 18 months to finalize. We respectfully request that you work with the State of Indiana and Citizens Energy Group to honor the terms of the consent decree, and consider the issuance of the UAA in a timely and expeditious manner.

Attached you will find a copy of Region V's correspondence regarding the UAA, which threatens to re-open the consent decree if the City requests the UAA. Given the Region V's firm position on the UAA, we believe this matter requires the attention and inclusion of your office.

Thank you for your hard work and service to our country. We are grateful for your leadership and thoughtful consideration of our request. Please do not hesitate to reach out to our offices if we can be of any assistance in this matter.

Sincerely,


Todd Young
United States Senator


Susan W. Brooks
Member of Congress



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

August 5, 2011

C-14J

David Sherman, Director
City of Indianapolis Department of Public Works
2460 City-County Building
200 E. Washington Street
Indianapolis, Indiana 46204

**Re: *United States and State of Indiana v. City of Indianapolis*, No. 1:06-cv
1456-DFH-JMS**

Dear Director Sherman:

This letter is being sent, at Indianapolis' request, to explain how the United States Environmental Protection Agency (U.S. EPA) intends to exercise its prosecutorial discretion under Paragraph 8(a) of the above-referenced consent decree.

Background

At the time that the 2006 consent decree was negotiated, Indianapolis estimated that the cost of the measures required by Sections VI and VII of the consent decree would be approximately \$1,868,000 (in 2005 dollars). Indianapolis also provided estimates at that time regarding the costs of achieving higher levels of control than the Performance Criteria specified in Exhibit 1 to the consent decree. Based in large part on those cost estimates and other information developed by Indianapolis in the course of developing its Long Term Control Plan (LTCP), U.S. EPA and the Indiana Department of Environmental Management (IDEM) agreed with Indianapolis that it was likely there would be adequate information in the administrative record to allow IDEM and the Indiana Water Pollution Control Board to review and act on Indianapolis' request for a revision to water quality standards within five years of the date of lodging of the consent decree (*i.e.*, by October 4, 2011).

However, in the past four-and-one half years, Indianapolis has substantially revised and updated its LTCP. The parties, including U.S. EPA, agreed on amendments to the above-referenced consent decree to incorporate those LTCP revisions. Indianapolis has also substantially revised and updated its estimates as to (a) the cost of the CSO Control Measures required by the consent decree and (b) the costs to achieve higher levels of control than the levels expected to be achieved through construction of the CSO Control Measures. Moreover, Indianapolis is in the midst of transferring its sewer system and wastewater treatment plants and waterworks assets to Citizens Energy Group, a public charitable trust that Indianapolis asserts will serve as the Department of Public Utilities for the City of Indianapolis. Due to the potential synergies of consolidating Indianapolis' five operating utilities, that transaction is expected to reduce the anticipated rate of increase in future user fees for wastewater transport and treatment costs in Indianapolis. The extent of any future savings is not known at this time.

In light of these significant changes to the LTCP and to many of the financial assumptions that had been in place in 2006, and also given the likelihood that the sewer system and wastewater treatment plants will be acquired by the Citizens Energy Group in the near future, it does not appear that there will be adequate information in the administrative record to allow a water quality standards revision by October 4, 2011.

**Indianapolis' Concern Regarding U.S. EPA's Discretionary Authority Under
Consent Decree Paragraph 8(a) to Require a Revised CSO Control Measures Plan**

Indianapolis has expressed concern that, if the water quality standards revision process is not completed by October 4, 2011, U.S. EPA has the authority under Paragraph 8(a) of the consent decree to require Indianapolis to develop and implement a Revised CSO Control Measures Plan to achieve a higher level of control than the Performance Criteria currently specified in Exhibit 1 to the consent decree. Specifically, Indianapolis asserts that the fact that the U.S. EPA has such authority, whether it chooses to exercise it or not, will cause Indianapolis significant uncertainty as it invests hundreds of millions of dollars to design and construct its CSO Control Measures in accordance with the Design and Performance Criteria specified in Exhibit 1.

To provide Indianapolis with greater certainty, this letter clarifies that, as long as Indianapolis (or its successors or assigns) is implementing its CSO Control Measures in compliance with all aspects of Section VII of the consent decree, U.S. EPA does not intend to exercise its authority under Paragraph 8(a) to require Indianapolis to develop and implement a Revised CSO Control Measures Plan. However, if Indianapolis is no longer in compliance with its implementation obligations, or chooses to proceed with a request for a revision to water quality standards and U.S. EPA has reason to believe that Indianapolis' request might not be approved, then U.S. EPA may consider exercising its discretionary authority under Paragraph 8(a) to require Indianapolis to develop and implement a Revised CSO Control Measures Plan.

This letter pertains solely to how U.S. EPA intends to exercise its discretionary authority under Paragraph 8(a) of the consent decree while Indianapolis is implementing the CSO Control Measures in accordance with Section VII of the consent decree. Nothing in this letter is intended to limit in any way the U.S. EPA's exercise of its authority under Section 8(a) of the consent decree after Indianapolis (or its successors or assigns) completes implementation of its CSO Control Measures. Moreover, the United States and U.S. EPA preserve their authority under other provisions of the consent decree, the Clean Water Act and U.S. EPA's implementing regulations, other provisions of federal law, to take action to (a) enforce the Clean Water Act, U.S. EPA's implementing regulations, Indianapolis' National Pollutant Discharge Elimination System permits, and the requirements of the consent decree; and (b) address any imminent or substantial endangerments. Finally, as noted above, nothing in this letter should be construed as limiting Indianapolis' right to pursue revisions to water quality standards in accordance with applicable state and federal laws.

Conclusion

Please contact me if you have any questions.

Sincerely,



Gary Prichard
Associate Regional Counsel

cc: Greg Sukys, DOJ
Beth Admire, IDEM