

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR SUSSEX COUNTY**

CITY OF REHOBOTH BEACH, a  
Municipal Corporation of the State of  
Delaware,

Plaintiff,

v.

C.A. No. 98C-12-023-THG

DAVID S. SMALL, Secretary of the  
DEPARTMENT OF NATURAL  
RESOURCES AND ENVIRONMENTAL  
CONTROL, and the DEPARTMENT  
OF NATURAL RESOURCES AND  
ENVIRONMENTAL CONTROL OF  
THE STATE OF DELAWARE,

Defendants.

SECOND STIPULATION TO AMEND CONSENT ORDER

Plaintiff City of Rehoboth Beach (“City”), and Defendants Secretary Small and the Delaware Department of Natural Resources and Environmental Control (collectively “DNREC”), through their undersigned attorneys, respectfully request a second amendment to the Consent Order in this case. In support of this request, the City and DNREC (collectively “Parties”) state as follows:

1. A Consent Order in this case was entered by the Court on December 11, 2002.

2. A Stipulation to Amend the Consent Order was entered by the Court on June 28, 2005. The Stipulation to Amend the Consent Order added a new paragraph as follows:

“34. Except as provided for in paragraph 29, the final completion date of any elimination in fact project shall not be later than December 31, 2014, or ten years after the effective date of the next NPDES permit, whichever occurs first. If, through no fault of the City, permitting for an elimination in fact project (as contemplated in paragraph 24) takes in excess of two years to obtain all necessary Federal, State, and local permits, the deadlines provided for in this paragraph shall be tolled for a period equal to the excess.”

3. David S. Small is currently the Secretary of DNREC, and the Parties have amended the caption of this case accordingly, pursuant to Rule 25(d) of the Rules of Civil Procedure for the Superior Court, which provides that Secretary Small may be automatically substituted as a party to this action in his official capacity, as the successor to the previous Secretary who has ceased to hold the office.

4. Paragraph 31 of the Consent Order provides that the Consent Order shall not, with exceptions not applicable here, be modified without the written agreement of the Parties and by order of the Court.

5. Paragraph 32 of the Consent Order provides that the Court retains jurisdiction of this matter in the event and or in regard to the enforcement of this Consent Order.

6. The Parties have engaged in numerous actions to achieve the requirements and objectives of the Consent Order. Despite these actions, the City will not be able to achieve the final completion date of an “elimination in fact” project, as defined in paragraph 18 of the Consent Order, by December 31, 2014.

THEREFORE, the Parties respectfully move this Honorable Court to amend the Consent Order by striking paragraph 34 in its entirety and substituting in lieu thereof the following:

“34. Except as provided for in paragraph 29, consistent with the schedule attached hereto as Exhibit A, the final completion date of any elimination in fact project shall not be later than June 1, 2018. The parties shall provide the Court with periodic status reports on the Parties’ progress in finally resolving this matter.”

As stipulated by the Parties, this 5<sup>th</sup> day of January, 2015.



Glenn C. Mandalas, Esquire (#4432)  
Attorney for Plaintiff City of Rehoboth Beach



David L. Ormond, Jr. (#3018)  
Deputy Attorney General  
Attorney for Defendants Secretary Small and  
DNREC

It is so ORDERED  
This 8 day of JAN, 2015



J.

FILED PROTHONOTARY  
SUSSEX COUNTY  
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