

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

UNITED STATES OF AMERICA and the)	
STATE OF INDIANA,)	
)	
Plaintiffs,)	
)	
v.)	Cause No. 2:17-cv-048-PPS
)	
THE SANITARY DISTRICT OF)	
HAMMOND,)	
)	
Defendant.)	
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**MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE
BY HOOSIER ENVIRONMENTAL COUNCIL**

In late 2024, the Sanitary District of Hammond (“HSD” or the “Sanitary District”) unilaterally and indefinitely stopped construction required by the Consent Decree in this case. Its purported reason for this delay is an internal dispute between its members, the Town of Munster and the City of Hammond, as to financing for the required sewer improvements. Plaintiffs have been aware of this delay for over a year and have done nothing to bring HSD into compliance. Hoosier Environmental Council (“HEC”) only recently learned about the delay, which will indefinitely extend the annual discharge of hundreds of millions of gallons of untreated sewage and other wastewaters into the Little Calumet River. Therefore, HEC moves to intervene in this action, pursuant to Fed. R. Civ. P. Rule 24, to facilitate the Court’s oversight, and the Parties’ fulfillment of the 2017 Consent Decree.

INTRODUCTION

For too long, the Little Calumet River has been used as an open sewer by the Sanitary District of Hammond. HSD has repeatedly fought to continue discharging its untreated sewage

into the Little Calumet River instead of complying with court orders to install the improvements needed to treat all of its wastes. At least since 1993, the United States has been in litigation with HSD over its violations of the Clean Water Act. The parties reached an agreement in 1999, but HSD quickly violated the terms of that consent decree resulting in further litigation and, ultimately, a new consent decree with the United States and the State of Indiana in 2017. And now, HSD has stopped complying with the terms of that consent decree. This time, however, the federal government has drastically cut back on environmental enforcement such that HSD can delay compliance with the Clean Water Act indefinitely and with impunity.

This motion is prompted by HSD's unilateral and unjustified decision to stop construction of the Southeast Cloth Media Disk Filtration ("CMDF") Project that would prevent untreated sewage from pouring into the Little Calumet River. This project is required by the consent decree HSD entered into with the Environmental Protection Agency ("EPA") and the Indiana Department of Environmental Management ("IDEM") in 2017. HSD asserts that a "*force majeure*" event – an internal cost-sharing dispute between the members of the Sanitary District – prevents it from building a new treatment facility. This assertion is directly contradicted by the terms of the 2017 Consent Decree that excludes financial inability as a *force majeure* event. While the Defendant engages in litigation among its members, hundreds of millions of gallons of untreated sewage continue to flow into the Little Calumet River each year. In response to this misuse of the Decree's *force majeure* provision, the Plaintiffs have allowed the delay to continue for more than a year. HEC seeks to intervene to prevent any further delay.

THE PROSPECTIVE INTERVENOR'S INTEREST

The Hoosier Environmental Council is a public interest environmental advocacy organization focused on protecting the environment and public health in Indiana. HEC is a not-

for-profit corporation organized under Indiana law that has members who live near the Little Calumet River in Lake County, Indiana.

HEC has members who use, enjoy, and intend to continue using and enjoying natural resources in and around the Little Calumet River, including the portion near and downstream from HSD's combined sewer outfalls. At least one member lives in a house less than 100 yards from the River. HEC members routinely walk and bicycle along the levees adjacent to the River, and previously have fished and paddled in the River. One member led paddling trips on this stretch of the Little Calumet River from 2011 to 2018 before learning about CSO discharges into the River. Today, HEC members refrain from many of these activities because of the pollution in the Little Calumet River. To the extent that individuals continue to recreate on the Little Calumet River, their use and enjoyment is impaired by high nutrient levels, algal blooms, and reduced oxygen levels caused in part by the Sanitary District's CSO discharges. The continued discharge of untreated sewage into the Little Calumet River by HSD has harmed and continues to harm such HEC members' aesthetic and recreational interests in these natural resources.

HEC did not learn about the Sanitary District's yearlong and indefinite delay in constructing the Southeast CMDF Project until its counsel brought this to HEC's attention last month. None of the three public bodies that are party to the 2017 Consent Decree made the public, that they purport to represent, aware of the delay.¹ On January 24, 2025, HSD sent the Department of Justice a Notice of Force Majeure informing Plaintiffs that it had stopped all work

¹ Consistent with the efforts to prevent the public from learning about the purported basis for the delay, Hammond and the Town of Munster agreed to a protective order preventing disclosure of any document marked as "Confidential" including "written agreements or documents that the parties are required to maintain confidentially." *See* Exh. 5. It is unclear what confidential information may be exchanged between two public bodies that must comply with the Indiana Access to Public Records Act.

on the Southeast CMDF Project until a lawsuit brought by Munster is resolved. *See* Exh. 1. That letter was not made public and was only obtained through a FOIA request to EPA in August 2025. *See* Exh. 2. Even then, HEC was unaware of Plaintiffs' response to the notice. HSD's Consent Decree does not require it to publish the quarterly compliance reports that it submits to Plaintiffs.² It was not until February 25, 2026, in response to an Indiana Access to Public Records Act request, that HEC's counsel received HSD's latest quarterly report. *See* Exh. 3. That report confirmed HSD's continued indefinite work stoppage based on its *force majeure* notice. *See* Exh. 4. While the quarterly report says nothing of Plaintiffs' agreement that the delay is attributable to a *force majeure* event, the lack of any such statement in the quarterly report strongly suggests that Plaintiffs have remained silent in the face of this delay.

BACKGROUND

Structure of the Sanitary District of Hammond

The Sanitary District maintains over 274 miles of pipe that convey sewage and other pollutants to its wastewater treatment facility on the Grand Calumet River. HSD's service area includes all of Hammond and some or all of the towns of Munster, Griffith, Whiting, and Highland. Some of HSD's sewer system have separate sanitary and stormwater pipes, while other, typically older parts of the system have "combined sewers" carrying both sewage and stormwater. During rainstorms, these combined sewers can become full. To prevent widespread flooding, combined sewers are designed with outfalls to relieve pressure on the system, resulting in the discharge of a mixture of untreated sewage and stormwater into local streams.

² In contrast, the CSO Consent Decrees with Highland and Griffith both require their semi-annual CD compliance reports to be published on their respective websites. *See United States v. Sanitary District of Highland and Town of Griffith*, 2:22-cv-086-PPS-APR (N.D. Ind. Dec. 9, 2022) ([DE 29] ¶ 41 & [DE 30] ¶ 46).

HSD currently has ten combined sewer outfalls (“CSOs”) that discharge untreated sewage during significant rain events. Two of these CSOs (Outfalls 005 and 022) discharge to the Grand Calumet River and eight to the Little Calumet River. Due to human engineering, the Little Calumet River flows both east and west from its confluence with Hart Ditch in Highland. As a result, two of HSD’s CSOs (Outfalls 006 and 007) discharge to the Little Calumet River flowing east and entering Lake Michigan through Burns Ditch in Porter County. HSD’s six other CSOs (Outfalls 008, 009, 010, 011, 012, and 014) discharge to the Little Calumet River flowing west into Illinois before joining the Cal-Sag Channel, the Des Plaines River, and beyond.³ In 2025, HSD discharged over 250 million gallons of untreated sewage from CSOs into the Grand Calumet River and over 300 million gallons into the Little Calumet River.

Hammond Sanitary District’s History of Noncompliance With the Clean Water Act

HSD has a long history of failing to comply with the Clean Water Act. In 1993, EPA sued HSD alleging that it had violated terms of its National Pollutant Discharge Elimination System (“NPDES”) permit including unpermitted discharges and unauthorized combined sewer overflows. In 1999, after six years of highly contentious litigation, HSD entered into a Consent Decree with the United States and Indiana. *United States v. Sanitary District of Hammond*, 93-cv-225 (N.D. Ind. June 17, 1999).

HSD did not comply with the 1999 Consent Decree, so the United States sought stipulated penalties to enforce the Decree. Negotiations over penalties for those violations and what remained to be done to bring the system into compliance with its NPDES permit resulted in

³ Under certain high flow conditions, the Little Calumet River flows to Lake Michigan through the O’Brien Locks and Dam. See Metropolitan Water Reclamation District of Greater Chicago (available at: <https://mwrđ.org/what-we-do/stormwater-management/watersheds/little-calumet-river-watershed>).

the entry of the 2017 Consent Decree. [DE 10] The 2017 Consent Decree required HSD, among other things, to prepare and obtain Plaintiffs' approval of a Long Term Control Plan ("LTCP") that would greatly reduce if not eliminate discharges from its CSOs. One of the most significant aspects of the LTCP is the construction of a second treatment facility on the Little Calumet River. The Southeast Cloth Media Disc Filtration ("CMDF") Project would treat CSO discharges from Outfalls 006, 007, and 008, and handle increased volumes from Highland and Griffith.

The United States negotiated separate consent decrees with the Towns of Griffith and Highland that were dependent, in part, on HSD's construction of the Southeast CMDF Project. *United States v. Highland and Griffith*, 2:22-cv-086-PPS-APR (N.D. Ind. Dec. 9, 2022).

Hammond filed an objection to entry of those Decrees arguing that the settlements required the towns to send additional wastewater to Hammond before they reached an agreement with Hammond to do so. In denying Hammond's objections and entering the Decrees, the Court reasoned that:

Hammond's contractual concerns do not really address the "technical adequacy" of the terms of the decrees as a means to protect the environment. Rather, they go to whether the three communities will ever be able to execute private agreements necessary to comply with those terms. That is and should remain an issue for the three communities to resolve among themselves. If they cannot hash out the terms, the decrees are designed to induce an agreement within a specified timetable.

Id., slip op. at 26. HSD appears to have eventually hashed out acceptable terms of cost-sharing agreements with both Highland and Griffith in May and December 2023, respectively. *See* Exh. 6, at 1.

Hammond Sanitary District's Delay of the Southeast CMDF Project

In August 2023 HSD's quarterly report inexplicably noted that it had placed the preliminary engineering report for the Southeast CMDF Project "ON HOLD." *See* Exh. 7, at 2.

HSD completed the preliminary design for the CMDF Project at the end of 2023 but continued to list the preliminary engineering report for the CMDF Project as being on hold through at least May of 2024. *See* Exh. 8, at 2.

On November 1, 2024, the Town of Munster sued HSD in Lake County Superior Court over its cost-sharing agreement. *Munster v. HSD*, 45D11-2411-PL-687 (Lake Sup. Ct.). According to Munster’s complaint, HSD planned to fund its capital investments to pay for the LTCP in part through taxation and rate increases on residents in Munster. In its suit, Munster took issue with the methods that HSD was using to conduct a Cost-of-Service Study, and alleged that HSD was using Munster tax revenue to fund improvements of no benefit to Munster residents. *See* Exh. 9, ¶¶ 33-58. On November 8, 2024, HSD’s quarterly report noted that Munster had “advised HSD that it will not agree to any rate increases necessary to raise funds in connection with the work under the Long-Term Control Plan.” *See* Exh. 6, at 2.

HSD asserts that Munster’s lawsuit prevents it from completing work on projects required by the 2017 Consent Decree, including the Southeast CMDF Project. On January 24, 2025, it wrote to the Department of Justice stating that

Munster’s cooperation for a rate increase is necessary to obtain financing for HSD’s LTCP projects, and this lawsuit makes clear Munster will not cooperate in a rate increase. As a result, HSD has determined that the CMDF project cannot proceed and is therefore claiming Force Majeure pursuant to Section XVI of the Consent Decree.

See Exh. 1. The Lake County Court hearing the lawsuit between Munster and HSD recently extended the date for trial to September 2027.

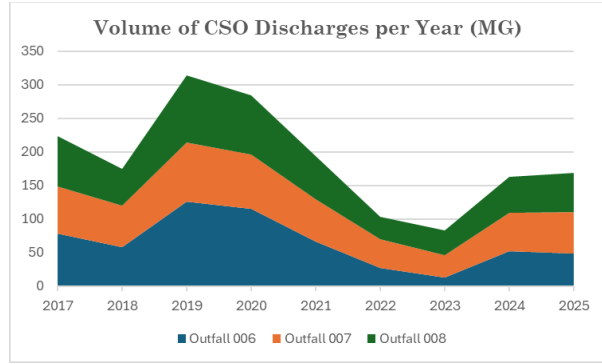
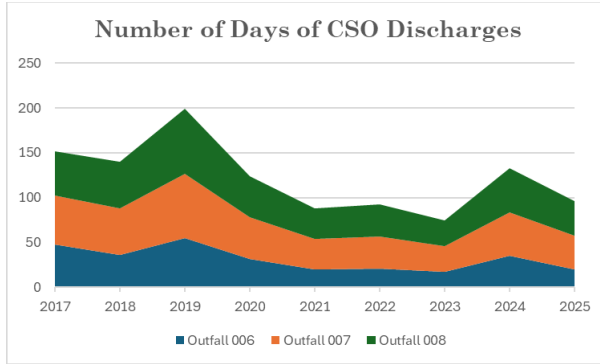
The Environmental Harm Caused By Hammond Sanitary District’s Continuing Delay

The Little Calumet River stretches from headwaters in La Porte County, Indiana, into Illinois. Over the years it has been channelized and controlled by levees to prevent flooding in

the communities that have sprung up along its path. In recent years, however, there has been a growing interest in developing the Little Calumet River for recreation and wildlife habitat. EPA has designated the water quality of the Little Calumet River as “impaired” primarily due to E. coli contamination caused by CSO discharges. *See* EPA Waterbody Report for Little Calumet River (available at: https://mywaterway.epa.gov/waterbody-report/21IND/INK0335_01/2026). HSD’s *force majeure* notice relies on its own use of the Little Calumet River as an open sewer to dismiss the harm caused by its continuing delay. “Because receiving streams from HSD’s sewer system are not used for recreation, particularly during wet weather events for which these projects are intended, HSD does not believe that any further delays to the LTCP caused by Munster will endanger public health, welfare, or the environment.” *See* Exh. 1, at 2.

The most environmentally significant project being delayed is the Southeast CMDF Project. That project is intended to treat wet weather flows from the Walnut, Indianapolis, and Kennedy Ejector CSO pump stations (Outfalls 008, 007, and 006, respectively) and the communities of Griffith and Highland. *See* Exh. 4, at 4, n.1. Those communities have ceased work on their own sewer systems because the work required by their Consent Decrees rely on HSD’s construction of Southeast CMDF Project. *See* Exhs. 10 and 11. By indefinitely delaying the Southeast CMDF Project, HSD has ceased any efforts to reduce CSO discharges from Outfalls 006, 007 and 008. During each of the last two years, those three CSOs have discharged more than 100 times, dumping over 150 million gallons of untreated sewage into the Little Calumet River. The following graphs illustrate the number of discharge days and the discharge volume for each of these three Outfalls during the last nine years.⁴

⁴ These graphs are assembled from HSD’s daily monitoring reports. Data for February 2023 is missing and has been requested through an IAPRA request.



ARGUMENT

HEC meets the requirements for intervention. Rule 24(a)(2) permits HEC to intervene as of right because its interest in the subject of this action could be impaired by the disposition of the case, and because the Plaintiffs no longer adequately represent HEC’s interest. However, if this Court finds that Plaintiffs adequately represent HEC’s interest, Rule 24(a)(1) allows HEC to intervene as of right because the Clean Water Act grants “any citizen” an unconditional right to intervene. *See* 33 U.S.C. § 1365(b)(1)(B). Alternatively, HEC satisfies the requirements for permissive intervention under Rule 24(b) because HEC asserts no claims different than Plaintiffs, but seeks only to facilitate the Court’s oversight of HSD’s compliance with the terms of the 2017 Consent Decree. HEC’s motion is timely because it is being filed just weeks after HEC confirmed the status and Plaintiffs’ tacit acceptance of HSD’s indefinite delay.

I. HEC SEEKS TO INTERVENE TO FACILITATE THE COURT’S OVERSIGHT OF THE CONSENT DECREE THAT PLAINTIFFS ARE NOT ENFORCING

To understand why intervention is appropriate here, it is important to recognize the limited purpose for which HEC seeks to intervene. This motion is filed under unusual circumstances more than eight years after the Court entered the 2017 Consent Decree. HEC did not submit comments on the Consent Decree nor object to its entry. Like all CSO consent decrees, the 2017 Decree is a compromise between cleaning up waterways and the cost of doing

so. With the indefinite work stoppage, however, HSD rewrites this compromise to enable it to continue polluting the Little Calumet River over a longer period of time.

HEC seeks to advocate for the previously settled expectations of all parties and the public. The 2017 Consent Decree crystallized the compromises and obligations of the parties after years of litigation arising from the 1999 Consent Decree. The public's interest in this litigation is reflected by the notice and comment afforded the lodging and entry of the 2017 Consent Decree. As such, "any citizen" has settled expectations that the terms of the 2017 Consent Decree will be carried out in a timely manner unless circumstances occur that require modification. Any material modification of the 2017 Consent Decree requires approval of this Court. *See* [DE 10] CD, ¶ 113. HSD has not sought modification but has simply stopped performance of its obligations based upon litigation *between its two members*. Given this unilateral modification and Plaintiffs' failure to enforce the terms of the 2017 Consent Decree for more than a year, the parties have effectively modified the Consent Decree behind closed doors.

To achieve the settled expectations documented in the 2017 Consent Decree, HEC seeks to intervene to see that its terms are carried out. HEC does not seek to impose new terms, alter schedules, or seek stipulated penalties. Nor is HEC asking this Court to resolve the financing dispute between Munster and HSD as this Court is not the proper venue for ratemaking. *See City of Gary v. City of Lake Station*, Case No. 16cv512, 2026 WL 406684 at *4 (N.D. Ind. Feb. 12, 2026). HEC seeks only to see the 2017 Consent Decree carried out as originally agreed to by the parties and ordered by this Court. As relief, HEC seeks to receive reports required to be submitted to Plaintiffs under the 2017 Consent Decree and any other necessary information so that it can monitor and, if necessary, seek the Court's involvement to ensure the timely completion of the Decree's Compliance Requirements in Section VI.

II. HEC SATISFIES THE INTERVENTION STANDARD OF RULE 24(a)(2)

HEC may intervene as of right under Rule 24(a)(2) of the Federal Rules of Civil Procedure. Upon timely motion, courts must permit anyone to intervene (1) who “claims an interest relating to the property or transaction that is the subject of the action,” (2) who “is so situated that disposing of the action may as a practical matter impair or impede the movants ability to protect its interest,” and (3) whose interest is not “adequately represent[ed]” by existing parties. Fed. R. Civ. P. 24(a)(2). HEC must be granted intervention because it satisfies each of these requirements, and its motion is timely.

A. HEC’s Use and Enjoyment of the Little Calumet River is an Interest that Relates to the Transaction That Gave Rise to this Action and May Be Impaired Absent HEC’s Intervention

HEC has a “direct, significant, [and] legally protectable” interest related to the same pollution that prompted Plaintiffs’ 2017 suit and the 2017 Consent Decree. *See Chao v. Harris N.A.*, No. 2:07-cv-068-RL, 2008 U.S. Dist. LEXIS 33054, at *9 (N.D. Ind. Apr. 21, 2008) (“The applicant’s interest must be something more than a ‘betting’ interest but need not amount to a property right.”) Plaintiffs alleged in their complaint that HSD had, “[f]or many years... illegally discharged pollutants from its sewage collection systems and wastewater treatment plant to the Grand Calumet and Little Calumet Rivers.” [DE 1], at 2. Through the Consent Decree, Plaintiffs sought to definitively address “HSD’s failure to comply with CWA requirements related to the operation of its sewer collection and wastewater treatment system.” [DE 9], at 2. HEC seeks to protect its members’ use and enjoyment of the Little Calumet River and of the natural resources that surround it from the harm caused by HSD’s ongoing discharges of untreated sewage. That use and enjoyment is both legally protectable and inseparable from the subject matter of this suit.

HEC must show that, if excluded from the litigation, “its interest in this matter . . . might be impaired[.]” *United States SEC v. Salis*, No. 2:16-cv-231, 2016 U.S. LEXIS 173237, at *3 (N.D. Ind. Dec. 14, 2016) (citing *Ligas ex rel. Foster v. Maram*, 478 F.3d 771, 773 (7th Cir. 2007)). HEC can make such a showing for several reasons. First, excluding HEC from this litigation would prevent it from being able to advocate for HSD’s compliance with the 2017 Consent Decree, further delaying the remedial measures needed to reduce the amount of raw sewage entering the Little Calumet River. Second, if HEC were to attempt to protect its interests in a separate action, it may need to overcome arguments that this government enforcement action triggers the Clean Water Act’s diligent prosecution bar. Third, the 2017 Consent Decree addresses HSD’s CSO exceedances through infrastructure development approved through its Long-Term Control Plan. [DE 10] CD, ¶¶ 21, 26-29 (describing design and construction projects). If that development proceeds in a deficient manner, and if the original parties lack the motivation to fully inform the Court of such deficiencies, reversing course later could prove costly and impractical.

B. The Plaintiffs no Longer Adequately Represent HEC’s Interests

Courts presume that government plaintiffs charged with protecting a prospective intervenor’s interests adequately represent those interests. *See Driftless Area Land Conservancy v. Huebsch*, 969 F.3d 742, 747 (7th Cir. 2020). Where those interests overlap, intervenors can only rebut that presumption by showing “gross negligence or bad faith,” or “some adversity of interest, collusion, or nonfeasance[.]” *Id.*; *United States v. S. Bend Cmty. Sch. Corp.*, No. 3:30-cv-035-PPS, 2023 U.S. Dist. LEXIS 186078, at *12 (N.D. Ind. Oct. 16, 2023); *see also United States v. Bd. of Sch. Comm’rs*, 466 F.2d 573, 575 (7th Cir. 1972) (identifying collusion, adversity of interest and failure “in the fulfillment of a duty” as criteria to rebut the presumption). These

standards rebuff intervenors who are merely “less prone to agree to the facts and might take a different view of the applicable law[.]” *United States v. S. Bend Cmty. Sch. Corp.*, 692 F.2d 623, 627 (7th Cir. 1982) (quoting *Bd. of Sch. Comm’rs*, 466 F.2d at 575).

The 2017 Consent Decree imposes obligations for the public benefit that the Plaintiffs have failed to meet. This Court determined that the 2017 Consent Decree reflected not merely the agreement between the parties but also “the public interest[.]” [DE 10] CD at 3. It binds the United States and Indiana as much as it binds HSD. *Id.* at ¶ 7. It clearly defines *force majeure* and requires EPA, “after a reasonable opportunity to review and comment by IDEM,” to determine and notify HSD of whether the claimed reason for a delay constitutes a *force majeure* event. *Id.* at ¶ 98. It provides a procedure for modification, requiring “a subsequent written agreement signed by all of the Parties” and approval by the court “[w]here the modification constitutes a material change to this Decree[.]” *Id.* at ¶ 118.

HEC initially had no reason to doubt that Plaintiffs would adequately represent its interests, but that is no longer the case. For over a year, Plaintiffs have failed to enforce the terms that this Court determined would serve the public interest. To date, HEC is unaware of a response from EPA to HSD’s *force majeure* notice, nor has there been any request to modify the Consent Decree. The Plaintiffs’ lack of commitment to the 2017 Consent Decree and their failure to perform their obligations under it reflects nonfeasance, not merely disagreement between HEC and the Plaintiffs, and makes the presumption of adequate representation inappropriate.

C. HEC’s Motion to Intervene is Timely

HEC’s motion meets the timeliness requirements for intervention. “The test for timeliness is essentially one of reasonableness,” and considers whether the would-be intervenor moved to intervene reasonably promptly after learning that the litigation could impact their interests.

Lopez-Aguilar v. Marion Cnty. Sheriff's Dep't, 924 F.3d 375, 388 (7th Cir. 2019) (quoting *Reich v. ABC/York-Estes Corp.*, 64 F.3d 316, 321 (7th Cir. 1995)). While there is no precise formula, the Seventh Circuit has outlined four guiding factors: “(1) the length of time the intervenor knew or should have known of his interest in the case; (2) the prejudice caused to the original parties by the delay; (3) the prejudice to the intervenor if the motion is denied; [and] (4) any other unusual circumstances.” *Id.* (quoting *Sokaogon Chippewa Cmty. v. Babbitt*, 214 F.3d 941, 949 (7th Cir. 2000)). If circumstances warrant, courts may allow intervention long after judgment is entered. *See, e.g., South v. Rowe*, 759 F.2d 610, 614 (7th Cir. 1985) (2 years after entry of consent decree); *Jeffries v. Swank*, 317 F.R.D. 543, 552 (N.D. Ill. 2016) (over 40 years after judicial order); *Green v. Seilaff*, 71-c-1403, 1992 U.S. Dist. LEXIS 11038, at *1 (N.D. Ill. July 23, 1992) (16 years after judicial order). When intervention of right is sought, “courts should be reluctant to dismiss such a request for intervention as untimely[.]” *Lopez-Aguilar*, 924 F.3d at 388 (quoting 7C Charles Alan Wright *et al.*, *Federal Practice & Procedure: Civil* § 1916 (3d ed. 2018)).

1. HEC Acted Promptly After Learning of HSD’s Work Stoppage

HEC and its counsel learned just over a month ago that the Sanitary District had stopped all work on the Southeast CMDF Project in late 2024 and that the Plaintiffs were doing nothing to curtail this indefinite extension. This information was only obtained through records requests to the agency Plaintiffs. Rule 24 requires a prospective intervenor to move to intervene “as soon as it knows or has reason to know that its interests might be adversely affected by the outcome of the litigation.” *Heartwood, Inc. v. U.S. Forest Serv., Inc.*, 316 F.3d 694, 701 (7th Cir. 2003); *see also United States v. Atlantic Richfield Co.*, 324 F.R.D. 187, 192 (N.D. Ind. 2018) (timeliness under Rule 24 turns on when the applicant knew or should have known that there might be an

adverse impact). Surely HEC was not required to intervene when the complaint and proposed consent decree were filed in 2017, when HEC believed the government Plaintiffs adequately represented its interests. Indeed, courts identify the moment “when the intervenor became aware that its interest would no longer be protected adequately by the parties” as a key benchmark in the timeliness inquiry. *Legal Aid Soc’y v. Dunlop*, 618 F.2d 48, 50 (9th Cir. 1980); *see also Pub. Citizen v. Liggett Grp., Inc.*, 858 F.2d 775, 786 (1st Cir. 1988) (finding intervention timely when measured against party’s decision not to pursue claim); *see also United Airlines, Inc. v. McDonald*, 432 U.S. 385, 394 (1977) (finding intervention timely when “as soon as it became clear... that the interests of the unnamed class members would no longer be protected by the named class representatives”). HEC did not submit comments on the proposed decree and had no reason to anticipate that the terms of the 2017 Consent Decree would not be enforced by the Plaintiffs. Nothing in the Consent Decree allows HSD to unilaterally cease compliance with its terms. And HEC had no reason to foresee that the Plaintiffs would be silent in response to an unjustified *force majeure* notice of an indefinite delay.

Rather, it was not until February 25, 2026, that HEC was made aware that its interest in the reasonable enforcement of the 2017 Consent Decree was being adversely affected by HSD’s work stoppage and Plaintiffs’ silent complicity. *Jeffries v. Swank*, 317 F.R.D. at 551-552 (timeliness of intervention triggered by intervenor’s knowledge gained through FOIA request). The delay between first learning of HSD’s *force majeure* notice and filing this motion was spent by HEC and its counsel confirming the indefiniteness of the delay, the failure of the Plaintiffs to agree or disagree that the delay is caused by a *force majeure* event, and the significance of the environmental consequences resulting from the delay. As such, HEC has acted promptly in

seeking to intervene as soon as it knew that its interests in the timely completion of the 2017 Consent Decree's compliance requirements were being adversely affected.

2. The Parties Are Not Prejudiced by HEC's Delay in Moving to Intervene

The brief period between the time that HEC learned of this indefinite delay and today could not have prejudiced the Parties. They have continued to operate outside the review of the public and this Court for more than a year. In so doing, the parties have effectively modified one of the most material terms of the Consent Decree – the time in which HSD will complete its Compliance Requirements. Yet material modifications must be approved by the Court. [DE 10] CD, ¶ 113. In any event, any prejudice has been caused by the parties' own failure to make public this indefinite delay.

Moreover, HEC's intervention would not disrupt settled expectations, in contrast to prospective intervenors who would attempt to revise a consent decree that has gone into effect. *Compare Jeffries v. Swank*, 317 F.R.D. at 552 (finding post-judgment intervention would not prejudice original parties where movant “does not seek to rewrite the [original] orders”) *with Atlantic Richfield Co.*, 324 F.R.D. at 193 (finding intervention would disrupt “settled expectations” where movant took issue with consent decree). HEC does not dispute that the 2017 Consent Decree reflects the public interest and would not ask the parties or the Court to revise it or to relitigate settled issues. To the contrary, HEC would seek only to ensure that the parties honor the commitments they made in 2017.

3. HEC Will Be Prejudiced if this Motion is Denied

Intervention is the mechanism through which HEC can meaningfully monitor and advocate for timely enforcement of the 2017 Consent Decree if the Plaintiffs continue to refuse to do so. *See United States v. Metro. Water Reclamation Dist. of Greater Chicago*, 792 F.3d 821,

824-25 (7th Cir. 2015) (describing the unique rights of intervenors, including the right to enforce any judgments). It is the most efficient tool HEC has to defend its interest in the Little Calumet River. Additionally, given their proximity to the harm, HEC's members are much better positioned to monitor the effectiveness of consent decree compliance. That is something that the Plaintiffs in Chicago, Indianapolis, and Washington cannot do. *See also Sierra Club v. Hamilton Cnty Bd. of Cnty. Comm'rs*, 504 F.3d 634, 645 (6th Cir. 2007) (describing intervenor Sierra Club's critical contributions to a Clean Water Act consent decree: "Those people affected obviously have the Sierra Club to thank for any relevant improvements in their sewer service.").

Failure to grant intervention would prejudice HEC's members and other local residents who live near and recreate on or near the Little Calumet River. A separate action promises greater costs, further delay, and more uncertainty. That delay could endanger public health by slowing HSD's compliance with the Clean Water Act. *See Atlantic Richfield*, 324 F.R.D. at 193 (denying intervention where it may delay cleanup of the former USS Lead Superfund Site and potentially endanger public health). Furthermore, HEC members and other local residents have settled expectations that the 2017 Consent Decree will reduce the untreated sewage that flows into the Little Calumet River. They are entitled to see the timely completion of the Consent Decree's Compliance Requirements, including the construction of the Southeast CMDF Project. Without intervention, they will remain in the dark with no expectation that the Consent Decree will be honored and no ability to influence its timely completion.

4. Unusual Circumstances Warrant Intervention by HEC

Who is left to defend the Little Calumet River and the people who live nearby? Like many municipalities across the country, Hammond and Munster are left to deal with the short-sightedness of their predecessors who saved money by combining storm and sanitary sewers and

relied on local streams to wash away the overflow. To add insult to this situation, elected officials must ask their constituents for drastically higher sewer fees to pay for work that is largely buried underground. Because cities are part of the State, it is not surprising that IDEM is not clamoring for HSD to continue work. Indeed, the Clean Water Act requires that the respective state be joined as a party when the United States brings a federal action to enforce the Clean Water Act. 33 U.S.C. § 1319(e).

What is unusual here is the federal government's historic silence. The Environmental Enforcement Section of the Department of Justice, which filed this case in 2017, has lost nearly half of its attorneys and EPA's staff has been cut by nearly 23%.⁵ The result is that federal environmental enforcement has been dramatically cut back compared to recent years.⁶ Yet, the federal government remains bound to comply with the terms of the 2017 Consent Decree just like the other parties. [DE 10] CD, ¶ 7. It has failed to do so. For two clear reasons, Plaintiffs should have rejected HSD's assertion of *force majeure* more than a year ago.

(a) The notice of a *force majeure* event was untimely

The 2017 Consent Decree requires HSD to notify Plaintiffs "within seventy-two (72) hours of when HSD first knew that the event might cause a delay" and follow up within ten days thereafter with a written notice. [DE 10] ¶ 97. The purported *force majeure* event is Munster's lawsuit against Hammond filed on November 1, 2024. HSD sent a copy of the Complaint to the

⁵ Thoms, L., "The Laws Still Exist, the Consequences Don't: America's Vanishing Environmental Enforcement" (Earthjustice Dec. 15, 2025) (available at: <https://earthjustice.org/experts/laura-thoms/the-laws-still-exist-the-consequences-dont-americas-vanishing-environmental-enforcement>).

⁶ Thoms, L. "Zeldin wants you to think his EPA is serious about environmental enforcement. The evidence tells a different story" (Earthjustice March 18, 2026) (available at: <https://earthjustice.org/experts/laura-thoms/zeldin-wants-you-to-think-his-epa-is-serious-about-environmental-enforcement-the-evidence-tells-a-different-story>).

Department of Justice three days later, but four days later stated that it was “currently unknown whether this lawsuit will affect HSD’s updated schedule for the Southeast CMDF Project.” *See* Exh. 6, at 2. Nothing in HSD’s notice, submitted over two months later, explains what occurred to give HSD the knowledge that the lawsuit “might cause a delay” other than its “fully assessing Munster’s complaint.” Of course, EPA may waive untimely notice in its unreviewable discretion but must do so in writing. [DE 10] CD, ¶ 97. HEC is unaware of any such written waiver.

(b) Neither the litigation between the members of HSD nor financial hardship in paying for the Southeast CMDF Project is a *force majeure* event

The 2017 Consent Decree defines a *force majeure* event as “any event arising from causes beyond the control of HSD . . . that delays or prevents the performance of any obligation under this Decree despite HSD’s best efforts to fulfill the obligation.” *Id.*, ¶ 96. It expressly “does not include HSD’s financial inability to perform any obligation or achieve any performance standard under this Decree.” *Id.* The Town of Munster is a member of HSD. The lawsuit it filed against HSD is not “beyond the control” of HSD. On the contrary, this is an event caused by one member of HSD. Self-imposed hurdles do not justify delay or other modification of the Consent Decree. *See Thompson v. HUD*, 220 F.3d 241, 248 (4th Cir. 2000) (city officials’ shifting view on housing development insufficient reason to modify consent decree). While HSD does not “control” the Town of Munster, as a member of HSD it cannot create an event that justifies an indefinite delay under the *force majeure* provision.

HSD asserts that the *force majeure* event is not the litigation itself but Munster’s refusal to “cooperate in a rate increase” that “is necessary to obtain financing for HSD’s LTCP projects.” *See* Exh. 1. In other words, HSD needs help from one of its members to finance its obligations under the Consent Decree. The 2017 Consent Decree, however, explicitly exempts HSD’s financial inability as a legitimate *force majeure* event. The Seventh Circuit and this Court

have repeatedly enforced similar *force majeure* provisions in federal consent decrees. *See United States v. Jupiter Aluminum Corp.*, 07-cv-262, 2009 WL 2970385, *9 (N.D. Ind. Sept. 14, 2009) (financial circumstances, including 2008 recession, insufficient to qualify as *force majeure* or justify modification); *see also United States v. Rueth Dev. Co.*, 335 F.3d 598, 606 (7th Cir.2008) (imposing stipulated penalties and declining to adjust them based on defendant's inability to pay for improvements); *United States v. City of Akron*, 09-cv272, 2024 WL 895320, *6 (N.D. Ohio March 1, 2024) (denying Akron's motion to modify its CWA Consent Decree to eliminate the Decree's requirement that it construct a treatment facility for CSO overflows because the *force majeure* provision recognizes that the parties considered the potential for increased costs.).

Of course, there are times when actual financial hardship warrants an extension. That is why Paragraph 30 of the 2017 Consent Decree sets out a detailed method for requesting an extension of the LTCP schedule based on financial circumstances:

The schedule by which HSD shall initiate construction and achieve full cooperation of all Final LTCP Control Measures shall be as expeditious as practicable, but in no event later than March 1, 2035, unless HSD demonstrates in an updated Financial Capability Analysis (prepared in accordance with Appendix B), that the expected per household cost of the Improvements and other Final LTCP Control Measures will cause HSD's cost per household to exceed 2.5% of the Median Household Income ("MHI") for HSD's entire service area which includes the City of Hammond and the Town of Munster, and the customer communities of the Towns of Griffith, Highland, and Whiting, calculated using EPA's "Combined Sewer Overflows Guidance for Financial Capability Assessment and Schedule Development," EPA 8320B-97-004, published February 1997.

HEC is unaware if HSD has sought relief under Paragraph 30. However, unless HSD has prepared an updated Financial Capability Analysis that demonstrates the requisite financial burden, it should not be allowed to unilaterally delay its LTCP schedule. *See United States v. Krilich*, 126 F.3d 1035, 1037 (7th Cir. 1997) (where consent decree offers method for relief, court

refused to allow defendant to “try to do through the back door that which he did not attempt to do through the front door.”).

At its core, HSD’s assertion of *force majeure* boils down to an inter-municipal dispute about the amount each will pay to build the Southeast CMDF Project and other compliance requirements. This is precisely the type of cost-sharing dispute this Court rejected in entering the Consent Decrees for Highland and Griffith. In failing to negotiate between themselves, Munster and Hammond have hidden behind their litigation to delay performing their Consent Decree obligations. While this is not the venue to allocate sewer rates between municipalities, allowing for an indefinite delay does not encourage the parties to come to an agreement and get on with the work. Plaintiffs were required to disagree with HSD’s erroneous assertion of a *force majeure* event. As intervenor, HEC can monitor and seek relief from the Court when Plaintiffs fail to meet their own Consent Decree obligations.

HEC meets the two requirements for intervention under Rule 24(a)(2). HEC has a right to intervene to protect its interests, and HEC filed a timely motion. HEC’s motion for leave to intervene as of right should be granted.

III. IF PLAINTIFFS ADEQUATELY REPRESENT HEC’S INTEREST, HEC SATISFIES THE INTERVENTION STANDARD OF RULE 24(a)(1)

If this Court finds that the Plaintiffs adequately represent HEC’s interest, then it should find that HEC has an unconditional statutory right to intervene under Rule 24(a)(1) and Section 505(b)(1)(B) of the Clean Water Act. Rule 24(a)(1) provides that “[o]n timely motion, the court must permit anyone to intervene who . . . is given an unconditional right to intervene by a federal statute.” Such unconditional right is provided by Section 505(b)(1)(B) of the Clean Water Act, which states that where “the Administrator or State has commenced and is diligently prosecuting a civil or criminal action in a court of the United States, or a State to require compliance with the

standard, limitation, or order, . . . any citizen may intervene as a matter of right.” 33 U.S.C.

§ 1365(b)(1)(B). For the reasons described above in Section II.C, HEC’s motion is timely.

Therefore, HEC must be granted intervention because it has an unconditional right to intervene under the Clean Water Act.

Section 505(b)(1)(B) of the Clean Water Act confers an unconditional right for HEC to intervene in this case. No citizen suit may be commenced for Clean Water Act violations where the EPA or State “has commenced and is diligently prosecuting a civil . . . action” to require compliance with Clean Water Act standards, limitations, or orders, “but in any such action in a court of the United States any citizen may intervene as a matter of right.” 33 U.S.C.

§ 1365(b)(1)(B) (emphasis added). A “citizen” is defined as “a person or persons having an interest which is or may be adversely affected.” *Id.* § 1365(g). Thus, the Clean Water Act confers a right for any citizen to intervene to enforce violations of standards, limitations, or orders of the Clean Water Act and participate in the government’s action. *See United States v. Metro. St. Louis Sewer Dist.*, 883 F.2d 54, 56 (8th Cir. 1989) (granting citizen group the right to intervene under § 1365(b)(1)(B)); *Illinois v. Outboard Marine Corp.*, 680 F.2d 473, 480 (7th Cir. 1982) (affirming the unconditional right to intervene and rejecting attempts to narrow it); *Ohio v. Callaway*, 497 F.2d 1235, 1242 (6th Cir. 1974) (stating that 33 U.S.C. § 1365(b)(1)(B) of the Clean Water Act confers “an unconditional right to intervene under Rule 24(a)(1)”); *Dep’t of Nat. Res. & Env’t Control v. Mountaire Farms of Del., Inc.*, 375 F. Supp. 3d 522, 529 (D. Del. 2019) (“§ 1365(b)(1)(B) places no conditions on the ability of citizens to intervene”); *United States v. Metro. Water Reclamation Dist. of Greater Chicago*, No. 1:11-cv-08859, 2012 WL 3260427, at *3 (N.D. Ill. Aug. 7, 2012) (finding an environmental group had an unconditional right to intervene under 33 U.S.C. § 1365(b)(1)(B)).

The right of citizens to intervene in Clean Water Act cases “was granted by Congress on a broad scope.” *United States v. Ketchikan Pulp Co.*, 74 F.R.D. 104, 107 (D. Alaska 1977). The intervention right is consistent with the statute’s recognition of the value of public participation in Clean Water Act enforcement. *See Sierra Club*, 504 F.3d at 637 (“[P]rivate citizens provide a second level of enforcement and can serve as a check to ensure the state and federal governments are diligent in prosecuting Clean Water Act violations.”); *see also Friends of the Earth v. Carey*, 535 F.2d 165, 172 (2d Cir. 1976) (noting, in a Clean Air Act case with a nearly identical citizen suit provision, “Congress made clear that citizen groups are not to be treated as nuisances or troublemakers but rather as welcomed participants in the vindication of environmental interests.”).

Additionally, courts routinely grant citizens intervention in Clean Water Act matters concerning sewage overflows. *See, e.g., Sierra Club*, 504 F.3d at 639 (recognizing that a citizen group intervened in a government Clean Water Act enforcement action for sewage discharges where the government’s complaint and consent decree were filed on the same day); *Metro. St. Louis Sewer Dist.*, 883 F.2d at 56 (ordering that a citizen group be granted leave to intervene in the United States’ action against a sewer district where the group alleged the sewer district’s pollution adversely affected its members’ recreational and observational interests in waters); *Metro. Water Reclamation Dist. of Greater Chicago*, 2012 WL 3260427, at *3-5 (granting citizen groups the unconditional right to intervene in a government Clean Water Act enforcement action to address the discharge of untreated sewage into waters where the groups’ members would swim and boat but for the sewage discharges).

HEC is a citizen as defined by the Clean Water Act, 33 U.S.C. § 1365(g), and this is an action to require compliance with a standard, limitation, or order of the Act. The sewage

pollution resulting from HSD's unlawful discharges has harmed and will continue to harm HEC's members. Accordingly, HEC meets the requirements of CWA Section 505(b)(1)(B), and HEC has an unconditional right to intervene under Rule 24(a)(1).

IV. ALTERNATIVELY, HEC SHOULD BE GRANTED PERMISSIVE INTERVENTION PURSUANT TO RULE 24(b)(1)(B)

HEC meets the requirements for intervention as a matter of right and should therefore be allowed to participate fully in this action. Alternatively, because HEC also meets the requirements of Rule 24(b)(1)(B), the Court should grant permissive intervention. A court may grant permissive intervention on a timely motion to anyone who "has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). In exercising discretion for permissive intervention, courts are required to consider "whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." Fed. R. Civ. P. 24(b)(3). Rule 24(b) is "just about economy in litigation," *City of Chicago v. Fed. Emergency Mgmt. Agency*, 660 F.3d 980, 987 (7th Cir. 2011) (reversing the denial of permissive intervention), and courts often find that judicial economy favors intervention. *See, e.g., Sec. Ins. Co. of Hartford v. Schipporeit, Inc.*, 69 F.3d 1377, 1381 (7th Cir. 1995) (affirming grant of intervention, citing efficiency and consistency as "obvious benefits"); *Melcher v. Cent. States Enters.*, No. 21-cv-00409, 2024 WL 514575, at *13 (N.D. Ind. Feb. 8, 2024) ("[p]ermitting intervention in this case would further judicial economy").

HEC satisfies the standards for permissive intervention. First, HEC's motion does not seek to assert new or different claims from those filed by Plaintiffs in 2017. As such, HEC's claims not only share common issues of fact and law with the main action, they are identical. Second, HEC's motion is timely as explained in Section II.B above, and for the same reasons there is no chance of delay or prejudice stemming from this intervention. HEC is filing this

motion promptly and will comply with all deadlines the Court may set. Intervention here does not introduce any significant legal novelty beyond the need to enforce a government consent decree, but rather constitutes a step towards the timely completion of HSD's Long Term Control Plan and its compliance with the Clean Water Act. The Court should grant HEC permissive intervention if it does not, in the first place, grant HEC intervention as of right.

CONCLUSION

For the foregoing reasons, the Court should grant HEC intervention as a matter of right or, alternatively, allow it to permissively intervene in this proceeding to allow it to monitor and advocate for the timely completion of the Court's 2017 Consent Decree.

Respectfully submitted,

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