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VIA ELECTRONIC CORRESPONDENCE

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File No: 8.DC.20.52

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Tom Mariani
Washington, D.C. 20044-7611
RE: DOJ No. 90-5-1-1-4022/1
Tom.Mariani@usdoj.gov

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Water Protection Division
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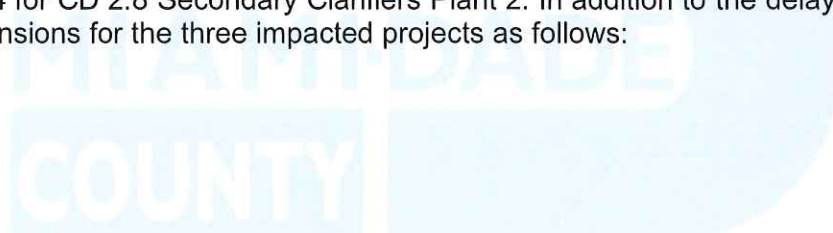
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Attn: Compliance/Enforcement Section
Sirena.Davila@dep.state.fl.us

**RE: Consent Decree (Case: No. 1:12-cv-24400-FAM),
Reference DOJ Case No. 90-5-1-1-4022/1,
Section XI – Paragraph 52 – Delay,
Section XVII, Paragraph 77 – Notices, Delay Notification and Request for Time Extension for
Consent Decree Appendix D-2, Capital Improvement Projects 2.7 Secondary Clarifiers Plant 1, 2.8
Secondary Clarifiers Plant 2, and 2.9 RS Pump Stations Plant 1 at the Central Wastewater Treatment
Plant (CDWWTP)**

Dear Sir or Madam:

In accordance with Section XI, Paragraph 52, of the reference Consent Decree (CD), on November 8, 2023 Miami Dade County (County) electronically notified the United States Environmental Protection Agency (EPA) and Florida Department of Environmental Protection (FDEP) of delays impacting Appendix D Capital Improvement Project (CIP) 2.7 Secondary Clarifiers Plant 1, 2.8 Secondary Clarifiers Plant 2 and 2.9 Return Sludge (RS) Pump Stations Plant 1 at the Central Wastewater Treatment Plant (CDWWTP). These projects are experiencing delays during the procurement and construction phases of the projects. These delays will impact the Consent Decree compliance dates of August 15, 2026 for CD 2.7 Secondary Clarifiers Plant 1 and 2.9 RS Pump Stations Plant 1, and December 1, 2024 for CD 2.8 Secondary Clarifiers Plant 2. In addition to the delay notification, the County is requesting time extensions for the three impacted projects as follows:



Consent Decree Project Number	Description	Current Compliance Date	Proposed Compliance Date
2.7	Secondary Clarifiers Plant 1	08/15/2026	12/31/2027
2.8	Secondary Clarifiers Plant 2	12/01/2024	12/31/2027
2.9	RS Pump Stations Plant 1	08/15/2026	12/31/2027

In accordance with Section XI, Paragraph 52, this letter shall provide the reasons for the delays, the anticipated duration of the delays, all actions taken or to be taken to prevent or mitigate the delays, a schedule for implementation of any measures to be taken to prevent or mitigate the delays or the effect of the delay; the County’s rationale for attributing such delays for a force majeure events if it intends to assert such a claim; a statement as to whether, in the opinion of the County, such event may cause or contribute to an endangerment to public health or the environment, and documentation to support the force majeure claim.

Background

The CD project descriptions for CD 2.7 Secondary Clarifiers Plant 1 and CD 2.8 Secondary Clarifiers Plant 2 is the structural rehabilitation and replacement of sludge collection mechanisms. The CD project description for CD 2.9 RS Pump Stations Plant 1 is the replacement of return sludge pump, piping, motor control centers and structural repairs to pump stations. Construction activities associated with the three projects must be coordinated to maintain plant operations and treatment capacity. To maintain the plant’s operating capacity, construction activities are restricted to the dry weather season and only two clarifiers can be taken out of service at one time. In addition, each of the RS pump stations are dedicated to a set of two clarifier tanks. This interdependency must be prioritized in project scheduling and sequencing.

Explanation and description of the reasons for the delay

The structural rehabilitation work for the CD 2.8 project was awarded in December 2018 to a contractor. By June 2022, the structural rehabilitation and coating of five of the ten clarifiers at Plant 2 (Tanks No. 2, 3,8,9,10) was completed.

In August 2022, a mechanical failure occurred in Tank No. 2 which led to dewatering and cleaning of the tank for an inspection. The inspection found that select areas of the tank coating were loose and peeling. An assessment was conducted to determine the cause and extent of the defects in the tank rehabilitation work at Tank 2. The other tanks were also assessed, and the following discrepancies were identified in one or more clarifiers:

- the contractor-selected coatings did not meet the specifications,
- the presence of Moisture Vapor Transmission (MVT) and the coating selection caused the floor coating to fail, and
- the manufacturer instructions for the application time window and application methodology were not followed.

As a result, four (4) out of the five (5) clarifier tanks completed by the contractor require warranty repairs. The remobilization of the contractors to complete the required repairs impacted the schedule and sequencing of the remaining work. In an effort to mitigate project delays and ensure quality work, the County concluded that the remainder of work should be completed by the in-house rehabilitation unit.

On May 15, 2023, the County acknowledged and accepted the AFSCME Local 121 Union Proposal to perform the rehabilitation work at Plant 2 Clarifiers. One tank was completed using in-house County staff. The work performed was of higher quality and was completed more expeditiously with comparative cost savings. Additionally, completing the work in-house allowed for greater flexibility in coordinating with on-going plant operation to maintain the plant capacity and efficiency.

Action taken or to be taken to prevent or minimize the delay

The County continues to monitor all work related to these projects and remains proactive in tacking actions to minimize and mitigate delays through the following:

- The County has procured the in-house Local 121 Union to complete the remaining tank rehabilitation work for CD 2.8 Secondary Plant 2.
- The County continuously monitors plant influent trends to allow for additional tanks out of service when possible.
- The County streamlined the project sequencing, material procurement, and close-out process by working with the Union to complete the rehabilitation work.

Anticipated duration of the delay

The CD 2.7, 2.89, and 2.9 projects are expected to be substantially completed by December 31, 2027.

Schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay

The County will take the following steps to mitigate the delay or the effect of the delay:

1. Continue to work closely with the Contractor during the design and construction activities.
2. Implement a recovery strategy and accelerate the schedule where possible.
3. Make provisions to accelerate work and extend work hours.
4. Monitor the ongoing construction and promptly respond to issues as they arise.
5. Continue to keep EPA and FDEP apprised of progress and report any further delays if/when issues arise.

Rational for attributing such delay to a force majeure event

As defined in CD Section XI, Paragraph 51, a force majeure is defined as any event arising from causes beyond the control of Miami-Dade, of any entity controlled by Miami-Dade, or of Miami-Dade's consultants and contractors that delays or prevents the performance of any obligation under this Consent Decree despite Miami-Dade's best efforts to fulfill the obligation. The requirement that Miami-Dade exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible.

Based on the unforeseen warranty repairs required on the tanks that were completed for CD 2.8 Secondary Clarifiers Plant 2, the County is conducting a review of the cause for the coating failure. Since the tank assessment and warranty claim, the coating manufacturer discontinued the product that was initially applied to the clarifiers. Upon review, the County will report to EPA and FDEP the findings of the assessment and the potential of the failures to be reported as a force majeure.

Cause or contribution to an endangerment to public health, welfare, or the environment

The improvements performed under CD 2.7, 2.8 and 2.9 are needed to maintain sludge settling capacity and proper aeration process. Plant Nos. 1 and 2 Secondary Clarifiers and Plant 1 RS Pump Stations continue to operate while the rehabilitation and the construction work progresses. There is no indication that delays to project completion will pose an immediate endangerment to the public health, welfare, or the environment.

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Should you have any questions regarding this matter, please call me at (786) 552-8894.

Sincerely,



Marisela J. Aranguiz-Cueto, P.E.
Deputy Director
Miami-Dade Water and Sewer Department

cc:

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