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**VIA ELECTRONIC CORRESPONDENCE**

September 9, 2020

CCN: 63371  
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  
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Chief, Clean Water Enforcement Branch  
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Florida Department of Environmental Protection  
Southeast District – West Palm Beach  
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West Palm Beach, FL 33406  
Attn: Compliance/Enforcement Section  
[Jason.Andreotta@dep.state.fl.us](mailto:Jason.Andreotta@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 – Force Majeure,  
Section XVII, Paragraph 77 – Notices,  
Failure to Meet Compliance Date and Update on Delay for Consent Decree Appendix  
D-2, Capital Improvement Project 3.6 Disinfection**

Dear Sir/Madam:

In accordance with the provisions of Section XI, Paragraph 52 of the above referenced Consent Decree (CD), on May 5, 2020, Miami-Dade County (County) notified the United States Environmental Protection Agency (EPA) and Florida Department of Environmental Protection (FDEP) of a Force Majeure for CD Capital Improvement Project (CIP) 3.06 Disinfection, located at the North District Wastewater Treatment Plant (NDWWTP), 2575 NE 156<sup>th</sup> Street, North Miami Beach, 33160. Delays occurred in the execution of this project during the construction phase including Force Majeure COVID-19 Pandemic impacts. These delays impacted the project's CD compliance date of September 9, 2020.

In accordance with Section XI, Paragraph 52, this update letter shall further describe and explain the reasons for the delay and Force Majeure; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the anticipated duration of the delay; County's rationale for attributing such delay to a force majeure event 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 Exhibit D-1 project description for 3.6 is the replacement of existing chlorine gas storage, liquid chlorination, and dosing system with a new bulk sodium hypochlorite storage and dosing system in the location of the existing gas chlorine system. Since 2010, WASD had planned to replace the existing gas chlorination system with a bulk sodium hypochlorite system and had initiated the design of new facilities. Construction was deferred until the CD was negotiated and was incorporated as a CD project. In the interim, a temporary bulk sodium hypochlorite storage and dosing system was designed and constructed in June 2013 which allowed for the existing chlorine gas system to be removed from service and decommissioned. Disinfection at the NDWWTP will continue to be provided by the temporary system until the permanent sodium hypochlorite system is constructed and commissioned under CD 3.6.

The contractor's scope of work includes the rehabilitation of the Main Disinfection Building for the installation of the new Sodium Hypochlorite Storage and dosing system, construction of a new Electrical Room Building, construction of a new Sodium Hypochlorite Satellite Facility at the Pretreatment and Sludge Transfer Building, and associated piping, trenches, mechanical and electrical equipment and materials. CD 3.6 is currently 90% complete.

### **Explanation and description of the reasons for the delay**

On April 9, 2020, the Contractor notified the County of potential impacts due to COVID-19. The notification covered the availability of labor (including subcontractors), professional services and materials. Since the May 5, 2020, Delay Notification Letter, the contractor on this project has confirmed 4 positive cases of COVID-19.

In addition, the Contractor encountered multiple unforeseen field conditions with the existing underground utilities which conflicted with the scope of work and resulted in delays. The unforeseen complexity of the Electrical and Mechanical switchover, after the new Electrical Building is built, warranted a careful more phased approach of a longer duration than anticipated during the planning and design phases of this projects. The Contractor continues the evaluation

of a time-impact analysis for this switchover which has been compounded by the challenges of the isolation of the underground distribution piping system.

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

Additionally, the County will take the following steps:

1. Continue with preventative safety measures to limit the spread and impacts of COVID-19.
2. Closely monitor construction progress.

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

The County is proactively implementing actions to minimize any further delays and will continue to implement all necessary measures to substantially complete CD 3.6.

**Anticipated duration of the delay**

Even though the County has implemented proactive public health safety measures to limit the spread of the pandemic, this situation and the inherent consequences are still developing. The County will closely monitor construction progress and report any further delay to EPA and FDEP when it becomes known to the County and as required by Section XI, Paragraph 52.

**Force majeure rationale**

On March 11, 2020, the World Health Organization (WHO) declared COVID-19 a pandemic. National, state and local agencies are taking actions to suppress and control the spread of COVID-19. The County is taking preventative measures to contain the spread and the impacts of the virus. The County attributes any delays resulting from impacts of COVID-19 as a force majeure event.

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

Because WASD took measures to replace the existing gas chlorination system with a temporary bulk sodium hypochlorite and dosing system in 2013, the potential for an unregulated discharge of chlorine gas and exposure of plant personnel and the nearby community to chlorine gas was eliminated. There is no indication that delays in CD 3.6, Disinfection at NDWWTP, present an immediate endangerment to the public health, welfare or the environment since a temporary system exists and is operational.

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) 552-8571.

Sincerely,

  
Lynnette M. Ramirez P.E.  
Senior Advisor, Capital Improvement Programs & Regulatory Compliance

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