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VIA ELECTRONIC CORRESPONDENCE

September 20, 2017

CCN: 61333

File No: 8.DC.52 & 77

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

Chief, Clean Water Enforcement Branch
Water Protection Division
Attn: Brad Ammons
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
Ammons.Brad@epa.gov

Rachael Amy Kamons
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
Rachael.Kamons@usdoj.gov

Florida Department of Environmental Protection
Southeast District – West Palm Beach
3301 Gun Club Road, MSC 7210-1
West Palm Beach, FL 33406
Attn: Compliance/Enforcement Section
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
Force Majeure Notification Letter for Consent Decree Appendix D-2, Capital Improvement Projects

Dear Sir/Madam:

In accordance with the provisions of Section XI, Paragraph 52 of the above referenced Consent Decree (CD), Miami-Dade (County) notified EPA and FDEP via email on September 6, 2017, of a force majeure related to the threat of Hurricane Irma.

In accordance with Section XI, Paragraph 52, this notification letter shall further describe and explain the reasons for the delay; the anticipated duration of the delay; 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; 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, welfare or the environment, and documentation to support the force majeure claim.

Explanation and description of the reasons for the delay

The County and Water and Sewer Department (WASD) have hurricane preparedness guidelines designed to maximize the safety of the public and employees and mitigate potential damages due to hurricanes. The threat of Hurricane Irma and the associated activities conducted to minimize the potential risk to public safety and of damage to property resulted in delays up to fourteen (14) days for all CIP projects in construction on the three (3) regional WWTP's, and multiple pump station and force main projects.

On September 5, 2017, all contractors performing CIP construction work were instructed to immediately secure job sites, materials, maintenance of traffic (MOT) and equipment (which can become potential projectiles) in preparation for Hurricane Irma (see Attachment A). Commencing September 12th, 2017, WASD mobilized assessment teams to survey each of the active construction projects to assess their suitability to recommence construction activities. Following this assessment, work activities on the construction sites at the North District WWTP, the Central District WWTP, all pump stations, and a number of force main projects resumed on Thursday, September 14, 2017. The South District WWTP and additional force main projects resumed on Friday, September 15, 2017. Remaining projects (all of CD 4.01) were released by WASD to resume work on September 18, 2017.

In addition, in preparation for Hurricane Irma, on September 4, 2017, Florida Governor Rick Scott declared a thirty (30) day State of Emergency across all 67 Counties (Executive Order 17-235). As part of this declaration, the County shifted all permitting and procurement activities to those areas necessary to support the preparation and readiness for Hurricane Irma. During this period, the County is responding to the recovery needs of the respective Departments within the County and is providing assistance to those local municipalities requesting it. As a result of this action, routine permitting and procurement activities associated with the CD will be delayed for by 30 days unless the specific project was impacted by the storm or is required to re-establish service to the residents. Further complicating this issue, is the fact that many of the contractors that would normally be bidding on these types of projects are currently engaged in the recovery efforts, not only in Miami-Dade County, but also providing assistance throughout the State of Florida. This shift in priorities remains in effect and is anticipated to continue for the full thirty (30) day emergency period. In light of this fact, WASD will be assessing the delay impact that this will have on those CIPs in permitting and procurement and will update EPA and FDEP in a following letter.

Anticipated duration of the delay

The County anticipates the delays of up fourteen (14) days on projects in construction because of Hurricane Irma. Delays for those projects in permitting and procurement will be assessed and provided in a follow-up letter.

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

WASD has been working closely with their contractors, keeping them apprised of the damage assessments, field conditions and other prerequisites that are needed to allow construction activities to resume. This effort has assisted in mitigating the time required to remobilize back to the field, thereby reducing the time needed to return construction activities to their pre-hurricane conditions. There are no further actions that could prevent or minimize the delays.

The EPA CD compliance date for each project listed in Appendix B is the same as substantial completion. Therefore, there is no construction float that can be applied to compensate for the delays caused by the force majeure.

The County believes the emergency preparation activities were appropriate in order to, prevent damage, and mitigate further delays.

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

Due to the clear and measurable impacts of the Hurricane, the County expects to received delay notices from each of the contractors with up to a fourteen (14) day delay due to the event. WASD will review each claim on merit and issue time extensions to the contractors. As more information is obtained, the County will update EPA and FDEP.

Rationale for attributing such delay to a force majeure event

As defined in Section XI, Paragraph 51, "Force Majeure," is defined as any event arising from causes beyond the control of the County. The County believes that Hurricane Irma falls under this description.

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

There is no indication that the delay caused by the preventative hurricane preparedness activities due to the hurricane, as well as the post-hurricane damage assessments and remobilization, presented an immediate endangerment to the public health, welfare or the environment.

Should you have any questions regarding this matter, please call me at (786) 552-8571.

I certify under penalty of law that this document was 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.

Sincerely,



Hardeep Anand, P.E., ENV SP
Deputy Director, Capital Improvement Programs & Regulatory Compliance

Attachment A: WASD Construction Site Closures Directive

ec: Jonathan A. Glogau
Special Counsel
Chief, Complex Litigation
Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32399-1050
850-414-3817
Jon.Glogau@myfloridalegal.com

Florida Department of Environmental Protection
Southeast District – West Palm Beach
3301 Gun Club Road, MSC 7210-1
West Palm Beach, FL 33406
Attn: Compliance/Enforcement Section
Lisa.M.Self@dep.state.fl.us
Mike.Bechtold@dep.state.fl.us
Sed.wastewater@dep.state.fl.us

Mayor Carlos A. Gimenez
Miami-Dade County
111 NW First Street 29th Floor
Miami, Florida 33128

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Miami, Florida 33146

Jack Osterholt, Deputy Mayor/Director
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Economic Resources
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Rolando Roque
Juan Bedoya
Lee N. Hefty (RER-DERM)
Carlos Hernandez (RER-DERM)
Rashid Istambouli (RER-DERM)
David Wood (CD PMCM)
Andrea Suarez Abastida (CD PMCM)
Scott Eckler (CD PMCM)
Abby Diaz (CD PMCM)

Attachment A
WASD Construction Site Closures Directive

Diaz, Abby (Consultant)

From: Fernandez-Cuervo, Victor (WASD)
Sent: Tuesday, September 05, 2017 3:04 PM
To: Howard, Warren (Consultant)
Subject: Fwd: Hurricane Irma - Construction Sites Management

FYI

Thanks!

Victor E. Fernandez-Cuervo, P.E.
Miami-Dade County Water & Sewer
786-442-8450 Cell
www.miamidade.gov/water
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From: Anand, Hardeep (WASD)
Sent: Tuesday, September 5, 2017 3:03:32 PM
To: DeMicco, Frank (Consultant); Eckler, Scott (Consultant); Wood, David M. (Consultant); Edwards, Daniel J. (WASD); Fernandez-Cuervo, Victor (WASD); An, Huren (Jeff) (WASD)
Subject: Hurricane Irma - Construction Sites Management

Good Afternoon,

In view of the State of Emergency declared by the Governor due to Hurricane Irma as well as directives issued by Miami-Dade County, please ensure that we start buttoning up our construction sites and complete all activities by Close of Business tomorrow. Specifically, please ensure the following:

- Construction Managers should physically inspect each active site to ensure that they are properly closed down (equipment anchored, barricades removed or secured, materials relocated which could potentially become barricades, etc.). Take pictures for each site that has been certified as properly shut down or closed.
- Prepare appropriate regulatory correspondence for my review to advise the FDEP and the EPA per the requirements of the CD.

Please send updates on all active project sites being closed and anchored to Dan Edwards so that we can report up as well during our Hurricane Preparedness Progress Meetings.

If you have any questions while we are in this mode, please reach out to Dan and/or myself.

Thanks,

Hardeep Anand, P.E., Deputy Director
Capital Improvement Program
Miami-Dade Water and Sewer Department
3071 SW 38th Avenue, Miami, FL 33146
Phone: 786-552-8571 | Fax: 786-552-8639

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