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VIA ELECTRONIC CORRESPONDENCE

August 28, 2024

CCN: 65529
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
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RE: DOJ No. 90-5-1-1-4022/1
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Water Protection Division
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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
Sirena.Davila@dep.state.fl.us

**Subject: 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,
Force Majeure Notification for Consent Decree Appendix D-2, Capital Improvement
Project CD 1.3 Oxygenation Trains at the SDWWTP**

Dear Sir/Madam:

In accordance with the provisions of Section XI, Paragraph 52 of the above referenced Consent Decree (CD), on August 14, 2024, Miami-Dade County (County) electronically notified the United States Environmental Protection Agency (EPA) and Florida Department of Environmental Protection (FDEP) of a Force Majeure Delay impacting CD Appendix D Capital Improvement Projects (CIP) CD 1.3 oxygenation trains at the South District Wastewater Treatment Plant (SDWWTP).

In accordance with Section XI, Paragraph 52, this letter shall provide 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 or the environment, and documentation to support the force majeure claim.

Background

The Consent Decree project description for CD 1.3 oxygenation train at the SDWWTP consisted of the retrofit of the aeration mixers and the rehabilitation and surface coating of the structure. The electrical systems needed to be upgraded beyond the original scope of the CD project. The electrical distribution building expansion and the new substations and electrical systems were needed to support mixer upgrades. The project was split into three separate child projects:

- CD 1.3(1): Structural rehabilitation of trains nos. 1,4,5,6, and 7 was completed in July 2020.
- CD 1.3(2): Mixer upgrades, structural rehabilitation of trains nos. 2 & 3, and electrical building expansion (ongoing).
- CD 1.3 (3): New electrical substations 5/6 and 15/16 (on going).

CD 1.3 is also dependent on the completion of CD 1.3(3), electrical substations 5/6 & 15/16, which will provide the power for the improvements made in CD 1.3. The projects are being delivered under separate construction contract using the Design-Bid-Build delivery method.

Explanation and description of the reasons for the delay

CD 1.3 experienced a force majeure delay caused by an 88-week supply chain delay of the four (4) Medium Voltage (MV) 3000 kVA transformers needed to complete the electrical substations that are part of the CD 1.3(3) – new electrical substations 5/6 & 15/16.

The substations in CD 1.3(3) are required to operate the equipment being upgrade in CD 1.3, so any delay in the substations will result in a delay in the completion of CD 1.3.

Anticipated duration of the delay

The County is currently estimating that CD 1.03's substantial completion will be delayed to December 31, 2026. The County will continue to provide updates on the duration of the Force Majeure delays as mitigation efforts are reviewed and implemented.

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

The County has worked with the contractor and the Engineer of Record (EOR) to determine any ways to modify the sequencing of the rehabilitation of the oxygenation trains in order to make up some of the delays. The County is looking at the potential of rehabilitating multiple trains concurrently without impacting the operational risk and considering wet season effects on the operations at the SDWWTP. The contractor investigated alternative supplier and has not been able to source these transformers from any other supplier with an earlier delivery date.

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 additional steps to mitigate the delay or the effect of the delay:

1. Assessing opportunities for accelerated work, extended work hours, and incentives for early completion of the construction work, where applicable.
2. Look at additional opportunities to mitigate the schedule impacts.

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.

The COVID-19 pandemic disruptions and the War in Ukraine have resulted in supply chain issues which have significantly extended the procurement time for low density specialty equipment like electrical transformers. These large-scale items are manufactured by a select number of suppliers and the materials needed to produce them have been in low supply. The result has been significant, unanticipated delays in delivery of these critical items. These delays were beyond the control of the contractors and the County. The delays could not have been reasonably anticipated, and occurred at a time when there was a confluence of market events which contributed to global disruptions. The County therefore attributes these events to Force Majeure.

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

The oxygenation trains at the SDWWTP remain functional, and plant operations can be safely maintained without any risk of overflow, loss of treatment capacity, or endangerment to the public. The delays in implementing CD 1.3 are mitigated through on-going service and equipment repair contracts of the existing equipment. There is no indication that the delays to CD 1.3 present an immediate endangerment to 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
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