From:	Spina, Providence
To:	Hoang, Anhthu
Subject:	FW: PI#70508 - ACUA - Stack Test Process Data for Subpart LLL - TST200001 - U5
Date:	Wednesday, June 3, 2020 3:32:38 PM

Providence Spina
202-564-2722

From: Joseph C. Pantalone <jpantalone@acua.com>
Sent: Wednesday, April 01, 2020 11:17 AM
To: Spina, Providence <Spina.Providence@epa.gov>
Cc: Rick Dovey <rdovey@acua.com>; Linda Bazemore <lbazemore@acua.com>; Sal Perillo <sperillo@npdlaw.com>; Tom Ganard <tganard@acua.com>; Joseph Weber <jweber@acua.com>; William Hiller <WHiller@acua.com>; Kevin Whitney <kwhitney@acua.com>
Subject: FW: PI#70508 - ACUA - Stack Test Process Data for Subpart LLL - TST200001 - U5

Providence,

We provided this information to the Government in my latest Progress Report on March 30.

March 30, 2020 - ACUA had been prepping for the Stack Test on A Furnace to be conducted on March 31. Throughout the pandemic issues, we were assuring staff that bringing additional outside services (consultants and stack testers) was not putting them at risk or equally important the outside service concerns with our staff as well. The staff and the consultants were all satisfied with the safeguards to be implemented that we were not placing anyone at extraordinary risk. Notwithstanding that hurdle, since the start of the quarantine edicts (major impact for the Atlantic City because of the casino/tourism industry), there has been a significant impact on flows. To that point for the first time when the A Furnace Stack test has been scheduled, our flows are not producing sufficient and consistent solids to run the test under what would be considered to be normal operating levels. (*See attachment for Flow analysis*)
Hence, under these circumstances, we have decided to delay the stack test a few days to again evaluate the solids mass and we will be regrouping again on Wednesday morning to see if we can proceed. From what our operators are reporting there is a strong possibility that the situation would not change and as a result we could be postponing to a post crises timeframe when situations return to somewhat normalcy. Therefore, we would need a waiver of the 11-13 month requirement for the A Furnace Slack test under an Administrative Defense given the situation that is not only regional but global and unprecedented.

This morning we met again and the situation regarding sludge quantity did not improve. As a result, due to the uncertainty of the solids coming through the plant, we have decided to postpone the stack test and are looking tentatively to September, an actual date to be determined. We have advised the NJDEP accordingly as evidenced below.

Obviously, this situation is the result of the pandemic. Please acknowledge receipt of this notice.

ty

Joseph C Pantalone
Vice President – Wastewater
Atlantic County Utilities Authority
jpantalone@acua.com

p: 609-343-7732
c: (b) (6)

From: Rosania, John <John.Rosania@dep.nj.gov>
Sent: Wednesday, April 1, 2020 10:53 AM
To: Joseph C. Pantalone <jpantalone@acua.com>
Subject: RE: PI#70508 - ACUA - Stack Test Process Data for Subpart LLL - TST200001 - U5

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County Utilities Authority.
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Joe,

Thanks for the update. According to the e-mail from your consultant Albert to Enforcement and Mike Klein of EMS (which you were not copied on) the stack test TST200001 has been postponed due to the covid-19 pandemic. I've reached out to Management to determine if a stack test extension request is needed and will get back to you when I have an answer.

Take care,
John

From: Joseph C. Pantalone <jpantalone@acua.com>
Sent: Wednesday, April 1, 2020 9:11 AM
To: Rosania, John <John.Rosania@dep.nj.gov>
Cc: Joseph Weber <jweber@acua.com>; William Hiller <WHiller@acua.com>; athamfeldt@chavond-barry.com; 'Keith Croly' <kacroly@chavond-barry.com>; Rick Dovey <rdovey@acua.com>; Matthew DeNafo <mdenafo@acua.com>; William Bill <wbill@acua.com>; Kevin Whitney <kwhitney@acua.com>
Subject: [EXTERNAL] RE: PI#70508 - ACUA - Stack Test Process Data for Subpart LLL - TST200001 - U5

John,

Per our conversation of yesterday, due to the uncertainty of the solids coming through the plant, we have decided to postpone the stack test and are looking tentatively to September, an actual date to be determined.

Therefore does this email satify as a request for extension or do you need something else for the ACUA?

TY

Joseph C Pantalone
Vice President – Wastewater
Atlantic County Utilities Authority
jpantalone@acua.com

p: 609-343-7732
c: (b) (6) [redacted]

From: Rosania, John <John.Rosania@dep.nj.gov>
Sent: Tuesday, March 31, 2020 3:09 PM
To: Joseph Weber <jweber@acua.com>; Joseph C. Pantalone <jpantalone@acua.com>
Subject: PI#70508 - ACUA - Stack Test Process Data for Subpart LLL - TST200001 - U5

WARNING: **External Email -** This email originated from outside of the Atlantic County Utilities Authority.
DO NOT CLICK links or attachments unless you recognize the sender and *are expecting the email.*

Hi Joe,

Please collect the following process data every ½ hour during the stack test on Incinerator A, scheduled for April 1-3, 2020, for the above. Send all collected data to me when stack test is completed.

Thanks,
John

From: Buettner, Robert
To: Cardile, Joseph; Ritz, Phillip
Cc: LaVigna, Gaetano; Ihlenburg, Erick
Subject: FW: ACUA incinerator B stack test reschedule
Date: Friday, May 29, 2020 7:09:53 PM

FYI

Robert Buettner
Chief, Air Compliance Branch
US EPA Region 2 DECA/ACB
290 Broadway, 21st Floor
New York NY 10007
buettner.robert@epa.gov
(212) 637 5031
CONFIDENTIAL: This transmission may contain deliberative and/or enforcement confidential, attorney-client, or otherwise privileged material. Do not release under FOIA without appropriate review. If you have received this message in error, you are asked to notify the sender and to delete this message.

From: athamfeldt@chavond-barry.com <athamfeldt@chavond-barry.com>
Sent: Friday, May 29, 2020 4:39 PM
To: Buettner, Robert <Buettner.Robert@epa.gov>
Subject: ACUA incinerator B stack test reschedule

Robert,

I know you have been copied on previous emails regarding the ACUA incinerator B stack test but please let this email serve as formal notice that the incinerator B stack test at ACUA must be rescheduled due to the lack of sludge available to perform the stack test – a ramification of the covid-19 pandemic. We are attempting to reschedule the stack test for the week of October 19, 2020.

I will keep you updated as this continues to develop.

Sincerely,

Albert Hamfeldt P.E.
Chavond-Barry Engineering Corp
P.O. Box 205
400 Route 518
Blawenburg, NJ 08504
Office: (609) 466-4900 ex 208
Fax: (609) 466-1231
athamfeldt@Chavond-Barry.com

From:	Bragan, Mary Jo
To:	White, Aubrey
Cc:	Campbell-Dunbar, Shawneille; Hall, Renea; Castillo, Jairo; Bragan, Mary Jo; Chavez, Araceli; Driskell, Amanda
Subject:	RE: CCR
Date:	Tuesday, April 21, 2020 6:18:25 PM
Attachments:	oecamemooncovid19implications Bodine.pdf

Hey Aubrey -

Hope you are doing well and staying safe. Brian Smith and Renea forwarded your question to me regarding a reporting violation due to the late submittal of monitoring results for a water system in Alabama. Per the attached *COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program* policy signed on 3/26/2020 by Susan Bodine, Assistant Administrator for EPA's Office of Enforcement and Compliance Assurance, the EPA expects operators of public water systems to continue normal operations and maintenance as well as required sampling to ensure the safety of our drinking water supplies. The EPA also expects laboratories performing analysis for water systems to continue to provide timely analysis of samples and results.

In the specific situation concerning the water system with the monitoring violation, the system should follow the guidelines set out in Subpart A (General Requirements) and Subpart E (Public water systems regulated under the Safe Drinking Water Act) of the EPA policy. Specifically, the system should report the violation on the CCR and follow the steps below:

1. Act responsibly under the circumstances in order to minimize the effects and duration of any noncompliance;
2. Identify the specific nature and dates of the noncompliance;
3. Identify how COVID-19 was the cause of the noncompliance, and the decisions and actions taken in response, including best efforts to comply and steps taken to come into compliance at the earliest opportunity;
4. Return to compliance as soon as possible; and
5. Document the information, action, or condition specified in a. through d.

I also do not see any reason why they could not follow your recommendation below and add information to the CCR explaining the circumstances leading to the violation.

As for enforcement, the EPA does not expect to seek penalties for violations of routine compliance monitoring in situations where the EPA agrees that COVID-19 was the cause of the noncompliance and the entity provides supporting documentation to the EPA upon request. In this situation, the EPA will consider the circumstances, including the COVID-19 pandemic, when determining whether any enforcement response is appropriate.

Please feel free to reach out to me should you have any additional questions.

Sincerely-

Mary Jo Bragan
Chief, Water Enforcement Branch

Enforcement and Compliance Assurance Division
US Environmental Protection Agency, Region 4
61 Forsyth Street , Atlanta, GA 30303
404-562-9275, bragan.maryjo@epa.gov

From: White, Aubrey <AHW@adem.alabama.gov>
Sent: Tuesday, April 21, 2020 1:58 PM
To: Hall, Renea <Hall.Renea@epa.gov>
Subject: CCR

Hi Renea, I have a question. A water system has incurred a reporting violation because their laboratory submitted their monitoring results late. Apparently, this occurred because the person tasked with uploading the data was in quarantine. We issued the system a reporting violation, and reminded them that the violation needs to be listed on their CCR.

The system has requested 1) that we retract the violation, and if we cannot do that - 2) waive the requirement to list the violation in the CCR. I do not know of any way to "forgive" a violation so that it goes away, and I do not see any way out of listing the violation in the CCR, though I have told them they can certainly add other information explaining the circumstances leading to the violation. We do not plan to take any enforcement, other than the violation letter we sent them.

My position has been that violations that occur during the pandemic are still violations, and any actions specified by the rules are still requirements. But given the circumstances we can consider using enforcement discretion – such as not issuing a formal NOV or order. Is this how EPA looks at it as well, or is there some way I can forgive a violation and/or get them out of listing the reporting violation in the CCR?

I owe the system a response, so if there is any way you could get back with me on this quickly it would be greatly appreciated. Thank you.

4666 Faries Parkway
Decatur, Illinois 62526
217-424-5200

May 28, 2020

Certified Mail
7004 2510 0001 6674 3439

Mr. Stephen Jann, Chief
Permits Branch (WP-16J), Water Division
U.S. Environmental Protection Agency – Region V
77 West Jackson Boulevard
Chicago, IL 60604

Dear Mr Jann:

ADM is submitting this letter to report our inability to complete fluid sampling associated with Permit No. IL-115-6A-001, Attachment C: Testing and Monitoring Plan, Table 5, due to delays related to the COVID-19 pandemic. As described more fully below, ADM was set to meet the sampling deadline of April 7, 2020. However, midway through the project, government restrictions to limit the spread of COVID-19 prevented the project's completion. While we remained hopeful that the second part of the project could be completed promptly, CDC recommendations, government restrictions and our testing partner's related responses to the pandemic resulted in an ongoing delay.

Under these circumstances, we respectfully request USEPA to exercise its enforcement discretion in accordance with its COVID-19 guidance. To support our request, we address each of the five points in the COVID-19 guidance as follows:

a. *Act responsibly under the circumstances in order to minimize the effects and duration of any non-compliance caused by COVID-19.*

   ADM arranged for required sampling operations of verification well #1 on March 11, 2020. Commencement of the test on that date provided ample time to complete all of the sampling activities by April 7, 2020. On March 17, 2020, before the sampling protocol could be completed, Illinois State Geological Survey (ISGS), the testing company tasked with completing the sampling protocol, was forced to cease their activities due to COVID-19 transmission concerns and associated government orders. Since that time, ADM remained committed to ISGS' completion of the required fluid sampling. However, ISGS' availability continued to depend on the status of the COVID-19 pandemic restrictions imposed by government entities.

   Although testing could not be completed during this period, ADM has continued to closely monitor the injection operation. No anomalous operating or reservoir parameters have been observed during the current monitoring period.

Additionally, there is no monitoring data indicating any problems with the mechanical integrity of the injection well or associated equipment. Moreover, the shallow groundwater data show no changes in groundwater chemistry that would indicate movement of fluids or CO2 out of the injection zone. Finally, the current temperature and pressure data show no significant changes during the current monitoring period (pre-injection vs. current), indicating no movement of fluids or CO2 above the confining zone. Therefore, the current operation without the short-term completion of this periodic sampling activity does not present an environmental harm.

b. *Identify the specific nature and dates of the non-compliance.*

ADM attempted to meet the specified April 7, 2020 deadline; however, there has been a delay due to the COVID-19 pandemic. In complying with restrictions related to COVID-19, representatives from the ISGS are restricted from being onsite to complete the sampling.

c. *Identify how COVID-19 was the cause of the non-compliance, and the decisions and actions taken in response, including best efforts to comply and steps taken to come into compliance at the earliest opportunity.*

This project requires an outside contractor to be physically onsite at the location to complete the sampling and field testing. Historically, ADM would schedule a representative of the ISGS to conduct the sampling and analysis at the injection and monitoring wells. The ISGS stated that due to the COVID-19 pandemic and efforts to minimize exposure to workers, no representatives of its agency could be onsite on ADM property interacting with ADM employees to complete the work until additional guidance and government orders changed. Furthermore, ISGS' familiarity and expertise with this particular sampling activity required by the permit makes it difficult to seek an alternative engineering firm to complete the required tasks. Consequently, recommencement of the work by ISGS is essential to its completion. ADM remains committed to monitor social distancing requirements and recommendations imposed by government entities and work closely with representatives of the ISGS to schedule the work when those government restrictions are lifted.

d. *Return to compliance as soon as possible.*

As stated above, ADM will arrange for the required sampling and testing as soon as reasonably possible while ensuring worker safety. Currently, the ISGS is preparing a return to work application to be submitted to the Prairie Research Institute on June 1, 2020. A decision on the application is expected by June 15, 2020. Based on the anticipated approval of the application, all delayed sampling activities are expected to be completed by ISGS by July 31, 2020.

e. *Document the information, action, or condition specified in items a through d.*

ADM will maintain relevant records related to items a through d above.

For the reasons outlined above, ADM is requesting USEPA to exercise its enforcement discretion and allow the cited sampling activities in the permit to be completed within the additional time requested above. However, the COVID-19 pandemic is changing daily, and there is no way to predict an exact timeline at this point of how it could impact or delay the sampling. If there are any further delays due to the COVID-19 pandemic and the projected sampling activities get pushed back as a result, we will seek a further extension of the sampling date.

I certify that to the best of my knowledge the information contained in this submittal is true, accurate and complete. Please contact Jeff Neisslie at (217) 451-2720 or by email at Jeff.Neisslie@adm.com if you have any questions regarding this submittal.

Sincerely,

Jason Stahr
Plant Manager
ADM Decatur Corn Processing Plant

From:	Murphy, Elizabeth
To:	scott.mcdonald@adm.com
Cc:	Elkins, Timothy; Greenhagen, Andrew
Subject:	FW: [EXTERNAL] Class VI Example Permit App
Date:	Friday, June 12, 2020 3:34:00 PM
Attachments:	20200528 CO2 Fluid Sampling COVID-19 Non-Compliance - SUBMITTED.pdf image001.png

---

Scott,

I was forwarded your request from the UIC Program in Region 5. Thank you for your letter of May 28, 2020. As you are likely aware, EPA issued a Temporary COVID-19 Enforcement Policy and FAQs addressing potential compliance issues during the COVID-19 public health emergency. Thank you for managing your obligations responsibly while continuing to operate your business during extraordinary times.

Beth Murphy

Elizabeth W. Murphy, MPH
Chief, Section 3
Water Enforcement & Compliance Assurance Branch
US Environmental Protection Agency
77 W. Jackson Blvd.
Mail Code ECW-15J
Chicago, IL 60604-3590
Murphy.Elizabeth@epa.gov
phone: (312) 353-4227
1-800-621-8431 x 34227
fax: (312) 980-8745

From: Greenhagen, Andrew <Greenhagen.Andrew@epa.gov>
Sent: Thursday, June 11, 2020 2:35 PM
To: Murphy, Elizabeth <Murphy.Elizabeth@epa.gov>
Cc: Perenchio, Lisa <perenchio.lisa@epa.gov>
Subject: FW: [EXTERNAL] Class VI Example Permit App

Hello Beth,

I'm forwarding an email received yesterday regarding non-compliance caused by COVID-19.

Andrew Greenhagen
U.S. Environmental Protection Agency - Region 5
Underground Injection Control
(312) 353-7648

From: McDonald, Scott <Scott.McDonald@adm.com>
Sent: Wednesday, June 10, 2020 9:53 AM
To: Greenhagen, Andrew <Greenhagen.Andrew@epa.gov>
Subject: RE: [EXTERNAL] Class VI Example Permit App

Hello Andrew,

That is fine.

Also I have tried to upload some docs to the GS system and still having a couple problems. Please see the attached letter and forward to Steve Jann. I will upload it from home.

Best Regards,

Scott MCDONALD
Biofuels Development Director
Project Director, IL-ICCS Project
Archer Daniels Midland Company
1001 N. Brush College Rd.
Decatur, IL 62521
217-451-5142: Direct
217-451-2457: Fax
(b) (6) [redacted]: Cell
scott.mcdonald@adm.com

Bhatt, Krishna

From: Salgado, Angel
Sent: Thursday, May 14, 2020 6:02 PM
To: Barbagallo, Lydia; Simon, Paul
Cc: Chester, Amy; Cuevas, David; Guerrero, Carmen; Rodriguez, Teresita
Subject: FW: EPA's response to April 8, 2020 Letter from RSI on Sampling During COVID-19

FYI.

-----Original Message-----
From: Salgado, Angel <Salgado.Angel@epa.gov>
Sent: Thursday, May 14, 2020 5:58 PM
To: Garcia, Miguel <MGarciaCampos@republicservices.com>
Cc: Cuevas, David <Cuevas.David@epa.gov>; Chester, Amy <Chester.Amy@epa.gov>; María Coronado Baca <mariacoronado@jca.pr.gov>
Subject: RE: EPA's response to April 8, 2020 Letter from RSI on Sampling During COVID-19

Eng. García-Campos,

The United States Environmental Protection Agency ("EPA") has reviewed your April 8, 2020 submission proposing an alternate schedule for conducting the first 2020 Semi-Annual Groundwater Sampling Event. The proposed change in the sampling schedule established in the landfill's RCRA Post-Closure Permit has been requested due to the Corona virus and current pandemic.

Upon reviewing your request, EPA has determined that the alternate schedule is justified, and hereby approves the facility's proposal to conduct the sampling event in June 2020. If for any reason the postponed sampling activity cannot be conducted on the proposed alternate date, the facility must notify EPA.

In addition, EPA is requesting that the facility updates its Health and Safety Plan (HASP) prior to conducting the sampling in June 2020. The Landfill's HASP must be amended to address facility operations at Ponce under the new conditions/restrictions imposed by the ongoing COVID-19 health emergency, including field/sampling activities. A copy of the HASP must be available at the facility for review at the time of the sampling event.

Should you have any questions regarding this correspondence, please contact me at (787) 977-5854 or via email at salgado.angel@epa.gov.

Angel E. Salgado
Environmental Scientist
Caribbean Environmental Protection Division U.S. Environmental Protection Agency, Region 2 City View Plaza II, Suite 7000 Guaynabo, PR 00968-8069 Tel. 787-977-5854 Salgado.angel@epa.gov

-----Original Message-----
From: Garcia, Miguel <MGarciaCampos@republicservices.com>
Sent: Wednesday, April 8, 2020 3:34 PM
To: Salgado, Angel <Salgado.Angel@epa.gov>
Subject: Emailing: Letter RSI to EPA- Sampling during COVID-19

Angel,

Según discutido adjunto carta dirigida a Carmen Guerrero referente al cambio en fecha del muestreo semi-anual del SRS de Ponce .

Gracias,

Miguel

Your message is ready to be sent with the following file or link attachments:

Letter RSI to EPA- Sampling during COVID-19

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

From:	Chase, Felicia
To:	Maciel, Robert A
Cc:	bill.armstrong@geostocksandia.com; Swanson, Morgan; Pfeifer, Carl; Greenhagen, Andrew; Murphy, Elizabeth
Subject:	Re: Request to delay 2020 MIT's
Date:	Wednesday, April 29, 2020 3:02:09 PM

Thank you for this notification. Take care & be safe!

Best,
Felicia Chase
Underground Injection Control Section
Permits Branch
Water Division (WP-16J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

From: Maciel, Robert A <Robert.Maciel@arcelormittal.com>
Sent: Wednesday, April 29, 2020 2:57 PM
To: Chase, Felicia <chase.felicia@epa.gov>
Cc: bill.armstrong@geostocksandia.com <bill.armstrong@geostocksandia.com>; Swanson, Morgan <morgan.swanson@arcelormittal.com>; Pfeifer, Carl <Carl.Pfeifer@arcelormittal.com>; Greenhagen, Andrew <Greenhagen.Andrew@epa.gov>; Murphy, Elizabeth <Murphy.Elizabeth@epa.gov>
Subject: Request to delay 2020 MIT's

Ms. Chase,

ArcelorMittal Burns Harbor is requesting that we push out 2020 MIT's currently scheduled in May into August for the following wells:

WAL No. 1 Permit No. IN-127-1W-0003
WAL No. 2 Permit No. IN-127-1W-0004
WAL No. 3 Permit No. IN-127-1W-0007
SPL No. 1 Permit No. IN-127-1W-0001
Galesville Sandstone Groundwater Monitoring Well

This request is born out of logistical restrictions/safety concerns on the part of our MIT contractors related to the effects of the pandemic. If approved, a tentative date of 17 August has been established with the contractors to begin work. We also recognize the need provide a 30 day advance notice to Field Inspectors for the purposes of witnessing the process.

Please let me know if there are any questions or concerns with the request.

Thanks,

Rob

Rob Maciel | Manager Environmental
ArcelorMittal Burns Harbor

Maintenance, Environmental & Utilities | 250 W. U.S. Highway 12
Burns Harbor, IN 46304-9745

T +219 787 4961 **| F** +219 787 4973 **| C** (b) (6)

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Conducting Part I Mechanical Integrity Tests (MITs) Without an EPA Representative Present – Unwitnessed MITs

It is the practice of Region 5 to witness MITs. On occasion, Region 5 will allow an owner/operator to perform an MIT unwitnessed by EPA, if it proves impossible to resolve EPA scheduling conflicts AND the owner/operator can produce either a mechanical, digital, or third-party record (this includes a test witnessed by a State UIC inspector). When EPA tells an owner/operator that they can conduct an unwitnessed MIT, the owner/operator should follow the procedures outlined below to facilitate EPA review of the test results.

1. Before proceeding, submit proposed test procedures to EPA, including the information that no EPA representative is available, and receive acknowledgement from the EPA.
2. Ensure the packer is set within 100 feet of the top of the injection zone. Packers not set within 100 feet of the top of the injection zone will be evaluated by EPA on a case-by-case basis. Note any approved deviations in well construction.
3. Document the test using a mechanical or digital device or a service company job record which records the value of the parameters of interest as measured during the test.
    a. Submit along with the test results a gauge calibration certificate for the mechanical or digital device used to record test parameters. All calibration (for new or recalibrated gauges) must have been performed within a year of the test.
    b. Place a gauge on the wellhead to measure pressure. The recording device serves to backup the data witnessed on the wellhead gauge.
    c. Use an appropriately scaled gauge which has a measurement range that is 1.2 – 2 times the maximum pressure measured.
    d. Measure and document pressure using a gauge and a chart record that can be read with sufficient accuracy to identify pressure change which would result in a failure of the test and to record accurate intervening values required per the test procedures. For example, if the test pressure is 300 psig, the gauge and chart record should be marked in increments of 5 psi or less.
4. Completely fill the tubing/casing annulus with liquid. No unapproved fluids or substance which may affect test outcomes are allowed. Measure and report the volume of fluid added to the annulus.
5. Stabilize the temperature of the well and the annulus liquid, either by ceasing injection or injecting at a constant fixed rate. Ensure that the injection/tubing pressure is at least 100 psi different from the annulus test pressure.
6. Annulus Test Pressures:
    a. Class II and 5X16 wells – Pressurize the annulus to a surface pressure greater than 300 psig. A net gain or loss of more than 3% during the test indicates a failed test.
    b. Class I wells - Pressurize the annulus to the greater of 300 psig or the maximum permitted injection pressure plus 100 psi. A positive pressure differential of greater than 100 psi should be maintained between the annulus and the injection tubing. If EPA does not approve any waivers from this criteria prior to testing, the test results might be considered as not demonstrating mechanical integrity and a new test will be needed. A net gain or loss of more than 3% during the test indicates a failed test.

   c. Following pressurization, isolate the annular system (no leak) from its pressure source and, if present, the sealpot or surge tank being sure to prevent any leaking across the shut-off valves.

7. Duration and Measurement Intervals:
   a. Class II and 5X16 wells – Test for at least 30 minutes
   b. Class I well – Test for at least 60 minutes
   c. Note the time, the annulus pressure, and the injection/tubing pressure at the start of the test and measure and note these same parameters at least every 10 minutes thereafter up to the end of the required test duration.
8. After the test is complete, all Class II and 5X16 wells should have their annulus pressure bled back to atmospheric pressure and the volume of the expelled fluid should be measured, recorded, and reported.
9. Send a report of the testing including any other data or documents available at the conclusion of the test which support the test results, such as gauge calibration certification, third-party service ticket, and/or original chart recordings, to EPA within 10 days of the completion of the test unless the permit specifies a different due date.
10. If the tested well was reworked in association with the test, submit a rework record.
11. Include the certification statement and signature on the transmittal letter or on the individual MIT results form and, if submitted, the rework record to comply with the requirements of 40 CFR § 144.32(b). [https://www.gpo.gov/fdsys/pkg/CFR-2012-title40-vol24/pdf/CFR-2012-title40-vol24-sec144-32.pdf].

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
STANDARD ANNULAR PRESSURE TEST

Operator _____ State Permit No. _____

Address _____ USEPA Permit No. _____

_____ Date of Test _____

Well Name _____ Well Type _____

LOCATION INFORMATION _____ Quarter of the _____ Quarter of the _____ Quarter

of Section _____; Range _____; Township _____; County _____;

Company Representative _____; Field Inspector _____;

Type of Pressure Gauge _____ inch face; _____ psi full scale; _____ psi increments;

New Gauge? Yes ☐ No ☐ If no, date of calibration _____ Calibration certification submitted? Yes ☐ No ☐

TEST RESULTS	
Readings must be taken at least every 10 minutes for a minimum of 30 minutes for Class II, III and V wells and 60 minutes for Class I wells. For Class II wells, annulus pressue should be at least 300 psig. For Class I wells, annulus pressure should be the greater of 300 psig or 100 psi above maximum permitted injection pressure. Original chart recordings must be submitted with this form.	5-year or annual test on time? Yes ☐ No ☐ 2-year test for TA'd wells on time? Yes ☐ No ☐ After rework? Yes ☐ No ☐ Newly permitted well? Yes ☐ No ☐

.

Time	Pressure (in psig) Annulus	Tubing

Casing size _____
Tubing size _____
Packer type _____
Packer set @ _____
Top of Permitted Injection Zone _____
Is packer 100 ft or less above top of Injection Zone ? Yes ☐ No ☐
If not, please submit a justification.
Fluid return (gal.) _____

Comments:

Test Pressures: Max. Allowable Pressure Change: Initial test pressure x 0.03 _____ psi
Test Period Pressure change _____ psi

Test Passed ☐ Test Failed ☐

If failed test, well must be shut in, no injection can occur, and USEPA must be contacted within 24 hours. Corrective action needs to occur, the well retested, and written authorization received before injection can recommence.

I certify under penalty of law that this document and all attachments are, 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. (See 40 CFR 144.32(d))

_____ _____ _____
Printed Name of Company Representative Signature of Company Representative Date

From: Chase Felicia
To: Jimmy E chstadt
Cc: M r hy El za eth; Ro inson Valor a
Subject: Re: Upcoming April MIT - Not fical on Requirement
Date: Friday April 17 2020 9:02:50 AM
Attachments: image001.png
unwitnessed_m t_compl ance_ass stance_05-31-17.pdf
unwitnessed_sapt_form.pdf
Outlook-r4ma423p.png
Outlook-psdvd3tk.png
Outlook-lfed0ljm.png
O tlpo -3y0gm0fe ng
Outlook-lrm1dixp.png

Yes Sir please run your SAPT unwitnessed. I am attaching both guidance and an SAPT form for your convenience. After you conduct the SAPT forward all necessary documents to me.

Best,
Felicia Chase
Underground Injection Control Section
Permits Branch
Water Division (WP-16J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

From: Jimmy Eichstadt <jimmy@arbor-resources.com>
Sent: Friday Apr l 17 2020 8:10 AM
To: Chase Felicia <chase.felicia@epa.gov>
Cc: Murphy Elizabeth <Murphy.Elizabeth@epa.gov>; Robinson Valoria <robinson.valoria@epa.gov>
Subject: RE: Upcoming April MIT - Notification Requirement

Felicia I honestly don't want to be out of service beyond perhaps end of May on the outside thus IF the unwitnessed cannot be conducted after Monday 04/20th to satisfy Region V – then I'm going to scramble a test unit and get it done satisfactorily on Monday (I believe our 5yr. date is 04/21st) and submit the paperwork to you. Again we have approval for an unwitnessed test at this time. Let me know please. Thank you and have a SAFE day. Jimmy

---

From: Chase Felicia [mailto:chase.felicia@epa.gov]
Sent: Friday Apr l 17 2020 8:40 AM
To: Jimmy Eichstadt <jimmy@arbor-resources.com>
Cc: Murphy Elizabeth <Murphy.Elizabeth@epa.gov>; Robinson Valoria <robinson.valoria@epa.gov>
Subject: Re: Upcoming April MIT - Notification Requirement

Good Morning Jimmy
Thank you for your email notification. These are very difficult times and we appreciate you keeping us aware of your well site and the challenges your are facing.

I am coping Valoria Robinson for your convenience. Valoria is the point of contact for wells that have ceased injection. When you are ready to utilize the well again please contact both Valoria and I. I will work to schedule a witnessing of the SAPT with the Field Inspectors. Once a passing SAPT has been conducted Valoria will review and administer an Authorization To Inject (ATI) correspondence that will permit you to resume injection at the well site.

Please feel free to call if you have any further inquires otherwise we are all set. Thanks again for your continued cooperation. Take care and be safe!

Best,
Felicia Chase
Underground Injection Control Section
Permits Branch
Water Division (WP-16J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

From: Jimmy Eichstadt <jimmy@arbor-resources.com>
Sent: Thursday April 16 2020 7:44 PM
To: Chase Felicia <chase.felicia@epa.gov>
Cc: Murphy Elizabeth <Murphy.Elizabeth@epa.gov>; 'Jimmy Eichstadt' <jimmy@arbor-resources.com>
Subject: RE: Upcoming April MIT - Notification Requirement

Hello Felic a, So Arbor Operating respectfully requests a two (2) day extension on our unwitnessed TESTING exercise of the Schmuckal # 2-3SWD or ginally to take p ace Monday 04/20th. Due specifically to the Stay at Home order in conjunction with one of the key pressure testing contractor s (Mike s Steamer Service) closing there doors March 1, 2020 due to the economic burden on our industry – we ve been unsuccessful at schedul ng a replacement contractor unt l Tuesday or Wednesday of this coming week. WE ARE NOT using said wellbore and it s operations were ceased in March, 2020 due to also suspending operations of the producing wellbore ons te. Accordingly, again the 2-3 is shut in until such time that we get our TEST complete and obtain an authorization from Region V that we are clear to initiate disposal operations of the same. I sha l be calling your line tomorrow to insure that this is acceptab e otherwise we shall have to br ng in a resource from a much further geographical distance to service our needs at the SWD.
Kindly, J mmy Eichstadt – Managing Member
Arbor Operating, LLC.
(231) 883-6810

From: Chase Felicia [mailto:chase.felicia@epa.gov]
Sent: Wednesday April 01 2020 8:06 AM
To: Jimmy Eichstadt <jimmy@arbor-resources.com>
Subject: Fw: Upcoming April MIT

Good Morning Jimmy
I apologize for the confusion. I am forwarding what was sent to Bryan yesterday evening. Thank you for your understanding and cooperation. Take care and be safe.

Best,
Felicia Chase
Underground Injection Control Section
Permits Branch
Water Division (WP-16J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

From: Chase Felicia <chase.felicia@epa.gov>
Sent: Tuesday March 31 2020 6:03 PM
To: Bryan Klumpp <bryan@arbor-resources.com>
Cc: JoAnne Mitock (joannemitock@ensoaq.com) <joannemitock@ensoaq.com>; Monica Rakovan <monicarakovan@ensoaq.com>
Subject: Re: Upcoming April MIT

Good Evening Bryan,

My apologies. On Thursday, March 26,2020, Susan Bodine, EPA s Assistant Administrator for Enforcement and Compliance Assurance, release the attached memorandum which explains EPA enforcement discretion in situations resulting from the Covid-19 pandemic. This temporary policy is retroactive from March 13, 2020.

https //www.epa.gov/newsreleases/epa-announces-enforcement-discretion-policy-covid-19-pandemic

As you are aware, the state of Michigan along with much of the country is under constraints due to the COVID-19 pandemic. Considering that, EPA s Field Inspectors will be unable to witness your upcoming Mechanical Integrity Test (s) (MIT), specifically the Part 1, Standard Annulus Pressure Test(s) (SAPT). Please run your upcoming MIT(s) unwitnessed if possible. I am attaching guidance and a SAPT form that must be signed, certified and mailed to my attention.

When MITs are unwitnessed, you must submit the certification statement, the data collected, and a report interpreting the data. If a chart recording is submitted, it must clearly show the pressure readings. Please see our guidance on unwitnessed MITs at https //www.epa.gov/uic/conducting-and-reporting-unwitnessed-part-i-mechanical-integrity-tests

If the COVID-19 pandemic will prohibit your facility from meeting the compliance date of the well testing, please reference the "Notification Requirement" Section (likely Part I.E.9) of your permit. You must send your correspondence to my attention and copy Elizabeth Murphy (murphy.elizabeth@epa.gov), Enforcement and Compliance Assurance Division, Water Enforcement Branch, Section 3 Chief, at which point enforcement discretion will be considered. Please be advised that when this temporary policy is no longer in effect and the pandemic restrictions have been lifted, the EPA expects facilities to take reasonable measures to resume compliance activities as soon as possible, including conducting late testing and/or submitting late reports. You may contact me directly at that time to request a technical directive for witnessing the Part 1, SAPT(s).

We know these are difficult times and appreciate your understanding and continued cooperation under this very fluid circumstance. Take care and be safe.

Best,
Felicia Chase
Underground Injection Control Section
Permits Branch
Water Division (WP-16J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

From: Bryan Klumpp <bryan@arbor-resources.com>
Sent: Tuesday March 31 2020 5:19 PM
To: Chase Felicia <chase.felicia@epa.gov>
Cc: JoAnne Mitock (joannemitock@ensoaq.com) <joannemitock@ensoaq.com>; Monica Rakovan <monicarakovan@ensoaq.com>
Subject: Re: Upcoming April MIT

Still waiting to hear timing of 5 year test. Can someone please let me know.
Thanks
BryN

Sent from my iPhone

On Mar 5, 2020, at 2 11 PM, Chase, Felicia <chase.felicia@epa.gov> wrote

As promised.
Felicia Chase
Environmental Scientist
Permits Branch
U.S. EPA Region 5
77 West Jackson Blvd. WP-16J
Chicago IL 60604
(312) 886-0240

Confiden ial: This transm ss on may contain deliberative, attorney-cl ent, a torney work product or otherwise privileged ma erial. Do not release under FOIA without appropriate review. If this message has been received by you in error, you are instructed to de ete th s message, together with any attachments, from your computer and a l storage media, whether electronic or hard copy.

From: Chase Felicia
Sent: Monday March 02 2020 10:11 AM
To: Jimmy Eichstadt <jimmy@arbor-resources.com>
Cc: Monica Rakovan <monicarakovan@ensoaq.com>; JoAnne Mitock (joannemitock@ensoaq.com) <joannemitock@ensoaq.com>
Subject: Upcoming April MIT
Importance: High

Good Morning Jimmy
Please be advised that UIC has recently made some changes to the Standard Annulus Pressure Test (SAPT) Technical Directive Notification Process for upcoming Part 1 Mechanical Integrity Test(s). All regular Part 1 SAPT for wells in active status will be witnessed by an EPA Inspector this Fiscal Year 2020.

Please be advised that all Temporarily Abandoned (TA) status wells will still be required to give the 30-day notice to request EPA witnessing of the upcoming Part 1 SAPT due. The 30-day notices should be mailed or emailed to my attention. EPA will either contact you and schedule the witnessing of the MIT or give a technical directive to run the test unwitnessed.

The Inspectors contact information is below and they are copied above. The Inspectors will reach out to you shortly prior to your MIT(s) Part 1 due date. If you have any questions specific to the scheduling of your test please feel free to contact the Inspectors directly.

Monica Rakovan PhD CPG
Environmental Solutions AQ
(b) (6) [redacted] (cell)
monicarakovan@ensoaq.com

JoAnne Mitock
Environmental Solutions AQ
513-200-7681
joannemitock@ensoaq.com

The following is your Company s regular active status Class II well or wells due for Part 1 this Fiscal Year 2020

Arbor Operating Llc	60035	MI-055-2D-0043	055	Schmuckal 2-3 SWD	2D	44.58828611	-85.74974722	49684	AC	PS	CT	04/21/2015	4/21/2020	Standard Annulus Pressure Test (SAPT)

If you have any others questions or concerns beyond scheduling your MIT(s) please do not hesitate to reach out to me. Thank you.

Best
Felicia Chase
Environmental Scientist
Permits Branch
U.S. EPA Region 5
77 West Jackson Blvd. WP-16J
Chicago IL 60604
(312) 886-0240

Confiden ial: This transm ss on may contain deliberative, attorney-cl ent, a torney work product or otherwise privileged ma erial. Do not release under FOIA without appropriate review. If this message has been received by you in error, you are instructed to de ete th s message, together with any attachments, from your computer and a l storage media, whether electronic or hard copy.

Keisha Lance Bottoms
MAYOR

CITY OF ATLANTA

DEPARTMENT OF WATERSHED MANAGEMENT
72 Marietta Street, NW
Atlanta, Georgia 30303

Mikita K. Browning
INTERIM COMMISSIONER

June 11, 2020

CERTIFIED MAIL

Chief, Water Programs Enforcement Branch
Water Management Division
U.S. Environmental Protection Agency
Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
Attn: Jairo Castillo

Department of Natural Resources
Permitting, Compliance, & Enforcement Program
2 Martin Luther King, Jr. Dr. SE, Suite 1152
Atlanta, Georgia 30334
Attn: Marzieh Shahbazaz

Re: *U.S. v. City of Atlanta*, Civ. Action No. 1:98-CV-1956-TWT, First Amended Consent Decree – Notification of Force Majeure and Request for Schedule Extension.

On March 11, 2020, the World Health Organization declared COVID-19 a global pandemic. According to the CDC, COVID-19 represents a Public Health Emergency. On March 13, 2020, the President of the United States declared the outbreak a national emergency, including emergency declarations under the National Emergencies Act and the Stafford Disaster Relief and Emergency Assistance Act. On March 14, 2020, the Governor of the State of Georgia declared a public health state of emergency. This was followed by closing of all public K-12 schools on March 16, 2020 and a stay-in-place order on March 23, 2020, which is only now being lifted. The City of Atlanta's Mayor has also undertaken several actions to slow the spread of COVID-19 including restrictions on public gatherings, closure of non-essential businesses and stay at home restrictions. In addition, COVID-19 has also impacted the date of the upcoming vote on renewal of the City of Atlanta's Municipal Option Sales Tax (MOST), moving the date from March 24, 2020 to June 9, 2020. The COVID-19 pandemic is an event arising from causes beyond the control of the City of Atlanta and thus constitutes a Force Majeure event under Section XI of the Consent Decree.

This Force Majeure event has and continues to impact the information to be submitted by the City of Atlanta in the required financial report to EPA and EPD under Section VIII.C.8.c. of the Second Amendment to the First Amended Consent Decree. Section VIII.C.8.c., requires City of Atlanta to develop a detailed Financial Report that demonstrates Atlanta's "proposed allocation and prioritization of financial resources for capital expenditures for Defendant's drinking water and wastewater system" and assesses Atlanta's "financial

capability to accelerate any completion dates for Sewer Groups four (4) through (6) under subparagraph VIII.C.8.(a)." This Financial Report is to be supported by detailed financial information outlined in subparagraphs VIII.C.8.c.i.-xii. Due to the pandemic, much of this information is being updated, precluding the City's ability to provide accurate reporting by the July 1st date for submittal delineated in the amended decree.

The City of Atlanta requests an additional sixty (60) days (September 1, 2020) to submit the Financial Report. The City of Atlanta requires this additional time to analyze and assess the impacts of the COVID-19 pandemic and the associated governmental actions, including shelter-in-place orders and closure of non-essential businesses, will have on the City's financial condition. These impacts not only require revision of projected revenues but also the City's capital program given that its capital financing capacity is being impacted. These impacts include:

- Reduction in water revenues as office buildings and other businesses suspended operations and substantially decrease water use.
- Reduction of MOST revenues, which generates significant funds for water and sewer operations.
- The need to revise its mix of capital projects and evaluate expansion of debt issuances to provide funding capacity based on these revenue impacts.
- Reduction in household incomes and household financial stresses impacting water affordability as unemployment increases throughout the City.
- Ongoing travel and trade restrictions may impact the costs for delivery of wastewater projects.
- Federal and state responses to the pandemic may change the availability, terms and conditions of various debt instruments that have been, and are planned, to be employed for Atlanta's prospective capital program financing.
- Upcoming vote to renew the MOST on June 9, 2020. Although Atlanta is anticipating a successful vote to continue the MOST, the pandemic is creating irregular and unpredictable voting patterns and an adverse vote could have significant impacts on the City's finances.

The City of Atlanta requires additional time to identify, evaluate and incorporate these and other potential impacts into the Financial Report. Failure to incorporate these considerations would result in a report that is not an accurate depiction of the City of Atlanta's current financial condition and an imperfect tool for decision-making under the First Amended Consent Decree. Atlanta proposes to submit this Financial Report to EPA and EPD for review and comment by September 1, 2020.

Please contact me if you have any questions regarding this Force Majeure request and we would appreciate your consideration of this request.

Sincerely,

Mikita K. Browning, Interim Commissioner
Department of Watershed Management

Copies:

Chief, Environmental Enforcement Section
Environmental and Natural Resource Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Ref: DOJ Case No. 90-5-1-1-14430
Ref: DOJ Case No. 90-5-1-1-4195

United State Attorney
Northern District of Georgia
Richard B. Russell Federal Building
75 Spring Street, S.W.
Suite 600
Atlanta, Georgia 30303

Attorney General
Department of Law
State of Georgia
40 Capital Square, S.W.
Atlanta, Georgia 30334

Juliet Cohen, Esq.
Chattahoochee Riverkeeper, Inc.
3 Puritan Mill
916 Joseph Lowery Boulevard
Atlanta, Georgia 30318

Kavita K. Nagrani, Associate Regional Counsel
U.S. Environmental Protection Agency
Office of Regional Counsel
Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Susan H. Richardson, Counsel
Kilpatrick Townsend & Stockton, LLP
1100 Peachtree Street, N.W.
Atlanta, Georgia 30309

City of Atlanta:
Carmen Chubb, Chief of Staff, Office of the Mayor
Joshua Williams, Chief Operating Officer, Office of the Mayor
Nina Hickson, City Attorney, Department of Law
Roger Bhandari, Division Chief, Watershed, Department of Law
Sharon Matthews, Program Manager, Program Management Services Team
Document Repository (Attn: Jan Solomon)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

July 1, 2020

ELECTRONIC MAIL
NOTIFICATION OF RECEIPT REQUESTED

City of Atlanta
Attn: Mikita K. Browning, Interim Commissioner
Department of Watershed Management
72 Marietta Street NW
Atlanta, Georgia 30303

Re: City of Atlanta's Request to Extend Deadline for Submittal of Financial Report Based on Force Majeure Request, in accordance with Consent Decree, Civil Action No. 1:95-CV-2550-TWT and No. 1:98-CV-1956-TWT, consolidated, entered on September 24, 1998, and amended on December 20, 1999 (First Amended Consent Decree or FACD) and on September 24, 2012 (Second Amended Consent Decree or SACD)

Dear Ms. Browning:

The United States Environmental Protection Agency and the United States Department of Justice, in consultation with the Georgia Environmental Protection Division (GAEPD), have reviewed your letter of June 11, 2020, requesting an extension of the submission deadline for the Financial Report that is due to the EPA and GAEPD pursuant to Section VIII.C.8.c of the Second Amendment to the First Amended Consent Decree. Your letter describes impacts on the City from the COVID-19 global health emergency. In particular, you note that a vote on a tax used to fund the City's work under the Second Amendment to the First Amended Consent Decree was moved as a result of the health emergency from March 24, 2020 to June 9, 2020.

As a result, you have requested a 60-day extension of the deadline by which the City must submit the Financial Report so that the City may analyze and assess the impacts of the COVID-19 health emergency and the associated governmental actions on the City's financial condition. You also indicated that a failure to incorporate these considerations into the Financial Report would result in an inaccurate depiction of the City's current financial condition, resulting in an imperfect tool for decision-making under the CD.

The description of circumstances affecting your submittal of the Financial Report meets the criteria of a force majeure event, and your letter contains the information required to be included in a force majeure notice under Section XII of the FACD for extension of a required deadline. Therefore, pursuant to Section XII.D of the FACD, the United States, after consultation with GAEPD, hereby approves your request to extend the deadline for submittal of the Financial Report from July 1, 2020 to September 1, 2020. In this case, the United States does not consider

this one-time, two-month extension for the Financial Report to be a material extension of time and, therefore, under Section XXI, this does not trigger the circumstances under which a Consent Decree modification would be necessary.

Should you have questions regarding the above or any aspect of this matter, please do not hesitate to contact Mr. David Phillips of my staff at (404) 562-9773 or via email at phillips.david@epa.gov.

Sincerely,

LARRY LAMBERTH

Digitally signed by LARRY LAMBERTH
Date: 2020.06.30 21:25:49 -04'00'

Carol L. Kemker
Director
Enforcement and Compliance Assurance Division

cc: Bill Weinischke,
US Department of Justice

Kavita Nagrani
US EPA Region 4

Carol King
US EPA OECA

Susan Richardson
Kilpatrick Townsend & Stockton LLP

Roger Bhandari
City of Atlanta

Robin Leigh
Georgia Department of Law

Lewis Hays
Georgia Environmental Protection Division

BACARDI CORPORATION

April 6, 2020

Compliance Assistance Program Support Branch
U. S. Environmental Protection Agency Region II
290 Broadway – 21st Floor
New York, New York 10007-1866

Director,
Caribbean Environmental Protection Division
US Environmental Protection Division
City View Plaza II – Suite 7000
#48 Road 165 Km 1.2
Guaynabo, Puerto Rico 00968-8069

Director,
Water Quality Area
Environmental Quality Board
P.O. Box 11488
San Juan, P.R. 00910

RE: Bacardi Corporation
Force of Majeure Special Notification

To whom it may concern:

Last Sunday March 15, 2020 the Governor of Puerto Rico declared by means of an Executive Order a curfew on the island as a measure to minimize the potential of infection and transmission of the Coronavirus or COVID-19. In compliance with the Executive Order decreed, Bacardi Corporation (Bacardi) ceased operations on the afternoon of Monday March 16 of 2020. Given the situation on the island and the extension of the curfew until April 12, 2020, Bacardi hereby communicates the likelihood of having its compliance affected in regards with the requirements of some of its applicable regulatory permits, in terms of issuing reports, notifications, and activities such as monitoring, inspections, among others, in the required periods of time established in the permits. Bacardi is committed to ensure compliance and carry out all the necessary actions/activities once its operations can resume and are stabilized and will be communicating any events that may affect the compliance of our site.

PO BOX 363549 SAN JUAN, PUERTO RICO 00936-3549 787 788-1500 FAX 787 788-0340

BACARDI AND THE BAT DEVICE ARE REGISTERED TRADEMARKS OF BACARDI & COMPANY LIMITED

Should you have questions or need additional information you may contact Sandra Guzmán or Myrna Suárez at (419) 705-2082 / sguzmanr@bacardi.com and (787) 382-0804 / msuarez@bacardi.com respectively.

Cordially,

Magaly Feliciano
EHS Manager

c Karen O'Brien

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
CARIBBEAN ENVIRONMENTAL PROTECTION DIVISION
CITY VIEW PLAZA II BUILDING, 7TH FLOOR
ROUTE 165 GUAYNABO, PUERTO RICO 00968

July 2, 2020

VIA EMAIL

Ms. Magaly Feliciano
EHS Manager
Bacardi Corporation
P. O. Box 363549
San Juan, Puerto Rico 00936-3549

Re: Cessation of Facility's Operations due to COVID-19,
Force Majeure Notification / Interruption of WET Testing Schedule
NPDES Individual Permit Number PR0000591
2015 MSGP IDs: PRR053117 and PRR053119

Dear Ms. Feliciano:

The United States Environmental Protection Agency ("EPA") is in receipt of two Bacardi Corporation's ("Bacardi") letters, both dated April 6, 2020, in which it informed EPA that due to the executive order issued by the Governor of the Commonwealth of Puerto Rico on March 15, 2020, declaring an emergency as a result of COVID-19, which included a curfew:

- it was making a force majeure notification since it had ceased operations at its rum distillery plant located in Cataño, Puerto Rico (the "Facility"), on March 16, 2020, and accordingly, there was the likelihood of having its compliance with the requirements of some if its applicable regulatory permits affected (i.e. issuing reports, notifications, and activities such as monitoring, inspections, among others, in the required periods of time established in the permits); and

- that the Whole Effluent Toxicity ("WET") testing for the combined discharge system of the Puerto Rico Aqueduct and Sewer Authority's ("PRASA") Bayamón Regional Wastewater Treatment Plant, the PRASA Puerto Nuevo Regional Wastewater Treatment Plant and the Facility could not be completed according to the compliance schedule in the NPDES permits issued to PRASA and Bacardi.[1]

In addressing the requirements and conditions of the National Pollutant Discharge Elimination System ("NPDES") permits that EPA has issued to Bacardi for the discharge of pollutants into waters of the United Stated,[2] we advise Bacardi to read and follow the guidances indicated below:

[1] Bacardi indicated that it will carry out the WET testing as soon as feasible.
[2] The NPDES permits mentioned in this letter refer to the NPDES Individual Permit No. PR0000591that EPA issued to Bacardi, which became effective on December 1, 2011; and the 2015 NPDES Multi-Sector General Permit for Stormwater Discharges from Industrial Activity, of which Bacardi obtained coverage on October 3, 2015.

1. *EPA's Guidance Documents under COVID-19 Pandemic*[3]

The EPA's Office of Enforcement and Compliance Assurance ("OECA") issued a document titled "COVID-19 Implications for EPA's Enforcement and Compliance Assistance Program" (the "COVID-19 Guidance"), on March 26, 2020. This COVID-19 Guidance details EPA's temporary policy regarding EPA's enforcement of environmental legal obligation during this time, and indicates, among other things, that entities should make every effort to comply with their environmental compliance obligations. You can access the COVID-19 Guidance at:

https://www.epa.gov/sites/production/files/2020-03/documents/oecamemooncovid19implications.pdf

2. *Temporary Advisory for National Pollutant Discharge Elimination System (NPDES) Reporting in Response to COVID-19 Pandemic*

Also, OECA issued a document titled "Temporary Advisory for National Pollutant Discharge Elimination System (NPDES) Reporting in Response to COVID-19 Pandemic" (the "Advisory Guidance"), on March 31, 2020. This Advisory Guidance provides further instructions to the EPA Regions, such as Region 2, on how to implement the COVID-19 Guidance, as it relates to NPDES reporting requirements that are tracked in EPA's Integrated Compliance Information System ("ICIS") for the NPDES program. As you know, NPDES permittees are required to submit electronic Discharge Monitoring Reports ("DMRs) thru NetDMR.

As indicated in the COVID-19 Guidance, EPA expects that Bacardi will, among other things:

- make every effort comply with its NPDES permits;
- identify the specific nature and dates of the non-compliance;
- identify how COVID-19 was the cause if the non-compliance, and the decisions and actions taken in response, including best efforts to comply and steps taken to come into compliance at the earliest opportunity;
- return to compliance as soon as possible;
- document the information, action, or condition; and
- provide notices and reports, as soon as possible, on those conditions and requirements it had been unable to meet or expects not to meet in the forthcoming dates, placing attention on the Advisory Guidance concerning monitoring and reporting.

For more information and updates concerning COVID-19, please visit EPA's web page at

[3] See mass mailer email message sent by Mr. José A. Rivera, Team Leader, Clean Water Act Team. The email included a Bacardi official with the following registered email address: mfeliciano@bacardi.com.

https://www.epa.gov/coronavirus.
If you have any questions or comments, please contact Mr. Jose Rivera, Team Leader for the Multi-media Permits and Compliance Branch Clean Water Team at (787) 977-5842, or thru electronic email at rivera.jose@epa.gov. Any contact by any attorney for Bacardi should be addressed to Mr. Héctor Vélez, Team Leader, Caribbean Team, Office of Regional Counsel, at (787) 977-5850, or by electronic mail at velez.hector@epa.gov.

Sincerely,

Rodriguez, Nancy

Digitally signed by Rodriguez, Nancy
Date: 2020.07.02 13:48:44 -04'00'

Nancy Rodríguez, P.E.
Chief
Multimedia Permits and Compliance Branch

cc: Ángel Meléndez, DNER (via email)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

Sent via Electronic Mail (*Dated as shown on electronic signature*)

Chike C. Odunukwe, P.E.
City Engineer, Department of Public Works
City of Brockton
45 School Street
Brockton, MA 02301

Dear Mr. Odunukwe:

Thank for your email notifying us of delays preventing your full implementation of the Town's MS4 NPDES permit because of restrictions in place in the Town of Brockton associated with the COVID-19 pandemic. In response to noncompliance resulting from the COVID-19 pandemic, Assistant EPA Administrator for Enforcement and Compliance Assurance Susan Parker Bodine has announced the exercise of enforcement discretion for certain environmental legal obligations in her Memorandum dated March 26, 2020 (COVID-19 Memorandum).

As discussed in the Memorandum, entities should make every effort to comply with their NPDES permits. However, if for reasons related to COVID-19, you are not able to timely comply with obligations required by your permit, you should document the specific reasons for the delay and comply with the affected requirement as soon as possible.

Details related to NPDES Reporting in Response to the COVID-19 Pandemic can be found at: https://netdmr.zendesk.com/hc/en-us/articles/360041746691-Covid-19-Information-Page

Feel free to contact Dave Turin of my staff at 617-918-1598, or Jeff Kopf, Senior Enforcement Counsel, at (617) 918-1796, if you have additional questions on how this policy relates to your circumstances.

Sincerely,

NEIL HANDLER Digitally signed by NEIL HANDLER
Date: 2020.06.30 11:45:31 -04'00'

Denny Dart, Chief
Water Compliance Section
Enforcement and Compliance Assurance Division

CC: David Turin, turin.david@epa.gov
Jeff Kopf, kopf.jeff@epa.gov

KING & SPALDING

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1180 Peachtree Street N.E.
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Adam G. Sowatzka
Partner
Direct Dial: +1 404 572 3508
Direct Fax: +1 404 572 5100
asowatzka@kslaw.com

May 26, 2020

VIA ELECTRONIC MAIL

Paul Schwartz, Esq.
Associate Regional Counsel
Office of Regional Counsel
U.S. EPA Region 4
61 Forsyth St., S.W.
Atlanta, GA 30303

Re: *United States of America et. al. v. City of Chattanooga,* No. 1:12-cv-00245
Notice of (Anticipated) Delay: Combined Sewer Overflow Long Term Control Plan—Additional Operational Plan Implementation

Dear Mr. Schwartz,

Pursuant to paragraph 57 of the consent decree entered by the United States District Court for the District for the Eastern District of Tennessee (Southern Division), on April 24, 2013, in the case styled *United States of America et. al. v. City of Chattanooga,* No. 1:12-cv-00245 ("Consent Decree"), I am submitting this Notice of Delay on behalf of the City of Chattanooga, Tennessee, for the LTCP-Additional Operational Plan Implementation, set forth in Paragraph 24(a) of the Consent Decree. The project will provide Peracetic Acid ("PAA") disinfection for Central Avenue and Williams Street CSO facilities.

According to Paragraph 57 of the Consent Decree,

> If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Chattanooga shall provide written notice to EPA and TDEC, within twenty-one (21) days from the date that Chattanooga first knew that the event might cause a delay. Such written notice shall include the following: an explanation and description of 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; Chattanooga's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Chattanooga, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Chattanooga shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure event. Failure to comply with the above requirements shall preclude Chattanooga from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Chattanooga shall be deemed to know of any circumstance of which Chattanooga, any entity controlled by Chattanooga, or Chattanooga's contractors knew or should have known.

Based on the foregoing, we are providing the following information for the LTCP Upgrades project:

- An explanation and description of the reasons for the delay. Directly after the Additional Operational Plan ("AOP") was approval by EPA on February 1, 2018, Chattanooga selected a consultant for design services. As of March 2020, we were on schedule to complete the project by the deadline of June 29, 2021. However, over the last several weeks we have learned that the COVID-19 pandemic has prevented bench-scale testing activities which are critical for the design. Therefore, the project is delayed and we anticipate that the deadline will not be met. Once the testing may resume, the ability to perform this activity will still be subject to the occurrence of rainfall events.

- The anticipated duration of the delay. The deadline in the Consent Decree for the project is due three (3) years after EPA's approval of the AOP. The implementation schedule in the AOP, approved by EPA on February 1, 2018, shows a completion date of June 29, 2021. The project completion date is now dependent on the duration of the COVID-19 pandemic, stay-at-home order, and domestic travel restrictions, and the availability of rainfall events to perform adequate testing.

- All actions taken or to be taken to prevent or minimize the delay. At this time, there are no measures that we are aware of that can be taken in order to meet the Consent Decree deadline.

- A schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay. At this stage, depending on the evolution of the current COVID-19 pandemic, we anticipate that the project will be completed by June 29, 2022, which is an approximate 1-year delay.

- Chattanooga's rationale for attributing such delay to a force majeure event if it intends to assert such a claim. The City intends to assert a force majeure claim under the Consent Decree. Chattanooga considers that the COVID-19 pandemic and stay-at-home order issued by the governor of Tennessee on April 2, 2020 may be defined as an "event arising from causes beyond the control of Chattanooga, of any entity controlled by Chattanooga, or of Chattanooga's consultants and contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Chattanooga's best efforts to fulfill the obligation," as defined under Section XI of the Consent Decree.

- A statement as to whether, in the opinion of Chattanooga, such event may cause or contribute to an endangerment to public health, welfare, or the environment. The City does not believe that this delay will in any way cause or contribute to an endangerment to public health, welfare, or the environment. Both CSO facilities are already permitted outfalls (Outfall 002 and Outfall 003 in the NPDES Permit).

Please feel free to contact me if you have any questions.

Sincerely,

Adam G. Sowatzka
Partner

cc: Karl Fingerhood, Esq., US DOJ
Chief of the Environmental Enforcement Section, US DOJ
Richard Elliott, US EPA Region 4
Sohnia Hong, Esq., Office of the Tennessee Attorney General
Enforcement Coordinator, Tennessee Department or Environment and Conservation
Shelby Ward, Tennessee Clean Water Network
Jeff Rose, P.E., Director of Waste Resources Division, Chattanooga, Tennessee
Phillip A. Noblett, Esq., City Attorney, Chattanooga, Tennessee
Mike Marino, P.E., Program Manager, Jacobs

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

Adam G. Sowatzka
King & Spalding LLP
1180 Peachtree Street N.E.
Atlanta, Georgia 30309-3521

Sent via email: asowatzka@kslaw.com

Re: *United States of America et. al. v. City of Chattanooga*, No. 1:12-cv-00245
Response to COVID-19 Related Force Majeure Notification: Combined Sewer Overflow Long Term Control Plan—Additional Operational Plan Implementation

Dear Mr. Sowatzka:

The U.S. Environmental Protection Agency, the U.S. Department of Justice (DOJ) and the Tennesse Department of Environmental Control (TDEC) are in receipt of your May 26, 2020, letter on behalf of the City Chattanooga (the City) pursuant to Section XI of the Consent Decree (the CD) in the above-referenced matter, providing notice of a COVID-19 related *force majeure* event that will cause a delay in performance of obligations under the CD. As you may be aware, on March 26, 2020, the EPA issued a temporary Policy: "COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program" (Policy) that addresses the EPA enforcement of environmental legal obligations during this time. As provided in Section I.C of the Policy, claims of an inability to comply with the terms of a judicial consent decree are properly handled pursuant to the consent decree's force majeure provisions. We are enclosing a copy of that Policy.

Your letter asserts a *force majeure* event based on the current COVID-19 pandemic, and indicates that the pandemic will result in a delay in completion of the City's LTCP-Additional Operational Plan Implementation, a project which will provide Peracetic Acid (PAA) disinfection for the City's Central Avenue and Williams Street CSO facilities. More specifically, your letter states that the project deadline of June 29, 2021, will not be met because the pandemic has prevented bench-scale testing activities which are critical for the design. Your letter indicates that the duration of the delay depends on the duration of the pandemic, but that the City anticipates that the project will be completed by June 29, 2022, which is an approximately 1-year delay. The EPA has consulted with the DOJ and TDEC in preparing this response.

We note that Paragraph 56 of the CD requires the City to "exercise best efforts to fulfill" the obligations of the CD, including the use of best efforts to anticipate any potential *force majeure* event. Further, these efforts should "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." In addition, paragraph 57 of the CD requires that a *force majeure* notification include the following information: (1) an explanation and description of the reasons for the delay; (2) the anticipated duration of the delay; (3) all actions taken or to be taken to prevent or minimize the delay; (4) a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; (5) Chattanooga's rationale for

attributing such delay to a force majeure event; and (6) a statement as to whether, in the opinion of Chattanooga, such event may cause or contribute to an endangerment to public health, welfare.

Your letter includes each of these items of information but acknowledges that the duration of the delay is dependent on the duration of the pandemic. Thus, while you state that the City anticipates that the project impacted by the force majeure event will be completed by June 29, 2022, for an approximate 1-year delay, this remains speculative based on uncertainty regarding the duration of impacts from the pandemic.

The information in your letter sufficiently documents that a *force majeure* event has occurred. However, further information is needed to determine the amount of delay that the force majeure event will cause and confirm that the one-year extension suggested by the City is justified. Because of the uncertainty surrounding the developing consequences of the COVID-19 public health emergency, we understand that the City may not have complete information at this time, but it should provide additional information in accordance with the CD as more information becomes available. The one-year delay that the City anticipates may turn out to be warranted, but is still speculative at this point, especially in light of the City's obligation to use best efforts to minimize any resulting delay to the greatest extent possible. We request that you provide further information to us as it develops regarding the duration of the delay and the project completion date. The City's update should include an explanation of how the force majeure event will result in the specific delay that you determine is warranted.

In addition to compliance with the express provisions of the CD, the City is encouraged to maintain an open and continuing dialogue with the EPA, DOJ, and TDEC. This will serve to protect human health and the environment, minimize potential misunderstandings, and facilitate timely and appropriate decision-making as this situation unfolds.

Should you have any questions regarding the above or any aspect of this matter, please do not hesitate to contact Associate Regional Counsel Paul Schwartz at (404) 562-9576 or via email at schwartz.paul@epa.gov.

Sincerely,

CAROL KEMKER

Digitally signed by CAROL KEMKER
Date: 2020.07.29 12:24:55 -04'00'

Carol L. Kemker
Director
Enforcement and Compliance Assurance Division

cc: Sohnia Hong, Tennessee Attorney General's Office
Patrick Parker, TDEC General Counsel's Office
William W. Weinischke, USDOJ (Bill.Weinischke@usdoj.gov)
Dane Wilson, USEPA (Wilson.Dane@epa.gov)
Tennessee Clean Water Network

METROPOLITAN SEWER DISTRICT of greater CINCINNATI

March 24, 2020

Chief, Enforcement and Compliance Assurance Branch
Attn: Molly Smith
Water Division ((ECW-15J)
USEPA Region V
77 West Jackson Blvd
Chicago, Illinois 60604

Ohio EPA Southwest District Office
Attn: Bonnie Buthker
401 East Fifth Street
Dayton, Ohio 45402

ORSANCO
Attn: Stacey Cochran
5735 Kellogg Avenue
Cincinnati, Ohio 45228

Re: Coronavirus: Notice of Force Majeure Event

Dear Ms. Smith, Ms. Buthker, and Ms. Cochran:

On behalf of Defendants Hamilton County Board of County Commissioners and the City of Cincinnati, MSD provides this notice pursuant to Section XVIII of the Global Consent Decree of a force majeure event that may cause non-compliance of the Consent Decree.

The nation and the State of Ohio stand under declarations of emergency stemming from the coronavirus pandemic. MSD has been adjusting its staffing to comport with the directives of health officials, and to protect its work force so that it is in position to sustain the public health services of the wastewater utility. MSD is being proactive on prioritized public health actions, such as initiating disinfection of discharge before the April 1 start of the recreation season in order to battle against the spread of viruses.

On Wednesday, March 18, 2020, MSD determined that it must delay some of the pump station scheduled preventative maintenance activities that are required under Exhibit 9 of the Global Consent Decree, in order to prioritize available staff for critical functions. It is unclear how long this particular delay may extend.

Beginning March 22, 2020, we have initiated a reduced work rotating schedule for our pump station and maintenance personnel with the goal to balance our effort to protect the environment with steps to protect the health of our employees. Furthermore, the staff reductions are meant to guard against total loss of available personnel in the event of widespread illness. Additionally, while we have not reduced our Plant Operator schedules, we are concerned that we will be operating at limited or less than ideal staffing as a result of potential illnesses. As such, some maintenance activities as well as the full operation of wet weather facilities may not be fully conducted as prescribed in the Consent Decree during this period.

With regard to our capital improvement program, we may experience delays in design and construction activities. No specific project delay has been identified at the present. However, while the wastewater industry is considered essential, each of our design consultant and construction firms are likely to experience limiting activities as they comply with public health restrictions.

Given the quickly evolving health situation affecting all aspects of our country, we expect that this notice provides the first of many Consent Decree requirements that may be delayed or otherwise affected by this force majeure event. MSD will track all such issues and will keep the Regulators apprised of its progress.

We would like to discuss with the Regulators an efficient way to communicate such delays. We recognize that consent decree force majeure notification is but one aspect of the need for comprehensive communication with the Regulators that will be necessary while MSD and its staff sustain the critical public health operation of the wastewater utility.

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.

Please contact me when you are able to discuss further.

Sincerely,

Diana Christy
MSD Executive Director

C: Aluotto, Jeff – Hamilton County Administrator
Anness, Charlie - Hamilton County Prosecutor
Ball, Karen - Hamilton County
Boggs, Theodore - Vorys, Sater, Seymour and Pease LLP
Duhaney, Patrick -City Manager, City of Cincinnati
Lodor, Marylynn - Deputy Director, MSD
Johnson, Reese, MSD/RCS
Klingenstein, Mark - LEIDOS
McMahon, Louis L. - McMahon DeGulis LLP
Norman, Mark A. - Vorys, Sater, Seymour and Pease LLP
Neff, Joseph - MSD/Legal
Sherer, Erin - Ohio EPA Central District
Niehaus, Melissa - MSD/WO
Wall, Marilyn - Sierra Club
Welsh, Ryan - Deputy Director, MSD/WWE
Woerner, Emily - Deputy City Solicitor, City of Cincinnati Law Department

METROPOLITAN SEWER DISTRICT of greater CINCINNATI

May 5, 2020

Chief, Enforcement and Compliance Assurance Branch
Attn: Molly Smith
Water Division ((ECW-15J)
USEPA Region V
77 West Jackson Blvd
Chicago, Illinois 60604

Ohio EPA Southwest District Office
Attn: Bonnie Buthker
401 East Fifth Street
Dayton, Ohio 45402

ORSANCO
Attn: Stacey Cochran
5735 Kellogg Avenue
Cincinnati, Ohio 45228

Re: Coronavirus: Notice of Force Majeure Event
Muddy Creek at Westbourne HRT project (Index 236)

Dear Ms. Smith, Ms. Buthker, and Ms. Cochran:

On behalf of Defendants Hamilton County Board of County Commissioners and the City of Cincinnati, MSD provides this notice pursuant to Sections XVIII, XIX, and XX of the Global Consent Decree of a force majeure event that may cause non-compliance of the Consent Decree.

The nation and the State of Ohio stand under declarations of emergency stemming from the coronavirus pandemic. On Wednesday, April 3, 2020, MSD determined that it must delay some of the training and startup activities for the Muddy Creek at Westbourne HRT project due to limited staff availability as a result of measures taken to comply with current Covid-19 social distancing requirements to protect the health of our employees. The contractor was notified to delay these activities since they cannot be performed safely and efficiently as originally planned.

On Wednesday, April 29th, as part of MSD's monthly CIP schedule updates, MSD determined that this change would delay compliance with the Consent Decree's 'construction completion' milestone. The training and startup activities have been rescheduled to begin in mid-June and are forecasted to be completed by July 7, 2020. This is causing a 67-day delay in completing the project. Note that this rescheduled date is subject to future review and revision in the event the social distancing directives remain in effect for a longer period of time. This project is one of the Bridge projects (Index 236), which had a required completion date of December 31, 2019.

MSD will continue monitoring the situation and will attempt to accelerate the schedule for the training and startup activities if that can be done while still protecting our workforce and complying with local, state and

national directives concerning the Covid-19 pandemic. As we noted on March 24, 2020, in our first force majeure notice related to COVID 19, this pandemic is unfolding and MSD will continue to provide updates and any new notices as appropriate.

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,

Diana R. Christy
MSD Executive Director

C: Aluotto, Jeff – Hamilton County Administrator
Anness, Charlie - Hamilton County Prosecutor
Ball, Karen - Hamilton County
Boggs, Theodore - Vorys, Sater, Seymour and Pease LLP
Duhaney, Patrick -City Manager, City of Cincinnati
Lodor, Marylynn - Deputy Director, MSD
Johnson, Reese, MSD/RCS
Klingenstein, Mark - LEIDOS
McMahon, Louis L. - McMahon DeGulis LLP
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Neff, Joseph - MSD/Legal
Sherer, Erin - Ohio EPA Central District
Niehaus, Melissa - MSD/WO
Wall, Marilyn - Sierra Club
Welsh, Ryan - Deputy Director, MSD/WWE
Woerner, Emily - Deputy City Solicitor, City of Cincinnati Law Department

CHRIS D. LUDLE
Service Director

EUFRANCIA G. LASH
Deputy Director

DANIEL HORRIGAN, MAYOR

DEPARTMENT OF PUBLIC SERVICE
166 S. High St., Room 201
Akron, OH 44308-1657

March 24, 2020

Chief, Environmental Enforcement Section
US Department of Justice
DOJ No. 90-5-1-1-3144/2
PO Box 7611
Washington DC, 20044-7611

Chief, Water Enforcement and
Compliance Assurance Branch (WC-15J)
US Environmental Protection Agency,
Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Director, Water Division (WD-15J)
US Environmental Protection Agency,
Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Regional Counsel (C-14J)
US Environmental Protection Agency,
Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Chief, Environmental Enforcement
Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3400

Erin Sherer
Manager Permits and Compliance
Division of Surface Water
Ohio EPA
P.O. Box 1049
Columbus, OH 43216-1049

Dean Stoll
Ohio EPA Northeast District Office
Environmental Manager
2110 East Aurora Road
Twinsburg, OH 44087

Re: *United States v. City of Akron*
Case No: 5:09-CV-00272
Submission of Force Majeure Notification – COVID-19 Pandemic

Dear Sir or Madam:

On March 18, 2020, the City of Akron (the "City") provided the United States and State of Ohio (through legal counsel) with an initial force majeure notification in accordance with paragraphs 57 and 62 of the Consent Decree. The notification was provided as a result of the COVID-19 pandemic and global health emergency because the City has reason to believe that the COVID-19 pandemic may cause a delay

in meeting the applicable project deadline for one or more of the remaining control measures required under the Consent Decree. This follow-up report is being submitted in accordance with paragraphs 57 and 62 of the Consent Decree.

I. THE COVID-19 PANDEMIC AND PUBLIC HEALTH MEASURES

On March 11, 2020, the World Health Organization announced that COVID-19 is a pandemic and a global health emergency. On March 10, 2020, Ohio Governor Mike DeWine declared a state of emergency in Ohio due to COVID-19. The Governor stated that ". . .this disease will for a period, significantly disrupt our lives." Since that time, and in order to protect the public from the spread of COVID-19, the State of Ohio has closed all schools, bar/restaurants, barbershops/salons, and most of Ohio's Bureau of Motor Vehicle offices. These closures followed orders cancelling events involving large crowds. On March 22, 2022, Ohio issued a "Stay at Home" Order, effective on March 23, 2020 at 11:59 PM, requiring individuals to stay home unless leaving for an essential activity, essential government functions, or essential business operations.

Additional measures to address this pandemic have been taken at the local level. On March 18, 2020, the City of Akron declared a state of emergency due to COVID-19. The City put all non-essential services on hold, furloughed hundreds of employees, and reduced hours for other staff to protect the public from the spread of COVID-19.

The measures taken to address COVID-19 have impacted businesses and factories throughout the country. While Ohio's Stay at Home Order allows public construction projects to continue to operate, it is possible that additional restrictions and public health orders could be issued at the national, state and/or local level.

II. THE COVID-19 PANDEMIC IS A FORCE MAJEURE EVENT

The term "Force majeure" is defined within the Consent Decree as follows:

> [A]ny event arising from causes beyond the control of Akron, its agents, consultants and contractors, or any entity controlled by Akron that delays or prevents the performance of any obligation under this Consent Decree despite Akron's best efforts to fulfill the obligation

Clearly, the COVID-19 pandemic is an event that is beyond the control of the City, its agents, consultant, contractors, or any entity controlled by the City. Moreover, it is possible that the COVID-19 pandemic could delay and/or prevent the City from meeting its obligations under the Consent Decree, including, but not limited to meeting the applicable deadlines for the remaining control measures under the Consent Decree, despite the City's best efforts. The pandemic has caused unforeseeable shortages in the availability of materials, equipment, and labor. These shortages could delay or prevent the City from meeting its obligations under the Consent Decree. Similarly, it is possible that obligations under the Consent Decree could be delayed or prevented due to current and future Federal and State requirements to protect the health of employees, project personnel, and the public.

On March 16, 2019, the City received a letter from the contractor for the Ohio Canal Interception Tunnel ("OCIT") project notifying the City that the project will be delayed due to the COVID-19 pandemic and the associated shortages of equipment, supplies and labor and associated public health requirements. The City has been closely monitoring the OCIT project (as well as all of the other remaining projects under the Consent Decree). To date, the OCIT project remains on schedule to be in operation by

June 30, 2019. However, for the reasons set forth above, there remains a possibility that the City could be prevented or delayed from placing the OCIT into full operation by that date.[1]

The contractors for the other Consent Decree projects that are under construction have informed the City about similar potential delays due to the COVID-19 pandemic. In addition to the OCIT project, the following additional projects are currently under construction:

Rack 26 and Rack 28 enhanced conveyance;[2]

Rack 10/11 storage basin;

WPCS BioCEPT;

Rack 3 green infrastructure and enhanced conveyance

It is also possible the COVID-19 pandemic could delay or prevent the City from meeting the applicable deadlines for the two remaining Consent Decree projects that are not currently under construction, the Northside Interceptor control measures and the OCIT EHRT. Moreover, the COVID-19 pandemic could interfere with the City's ability to sufficiently comply with cleaning and inspection activities under the City's Capacity Management and Operations Management ("CMOM") Program.

The City of Akron is still engaged in evaluating the impact of the ongoing COVID-19 pandemic and under the current state of emergency; Ohio's governor continues to issue orders that create new state-wide repercussions. The City is currently unable to address the additional items under paragraphs 57 and 62 of the Consent Decree at this time, including but not limited to, a more detailed explanation of the delay and the duration of the delay. Once the City's evaluation is complete and additional impacts are known, the City will supplement this report and address each of the items under paragraph 57 and 62 of the Consent Decree.

---

1 The City recently connected Rack 18 into the OCIT. Therefore, the flows from the Rack 18 drainage basin, which represent approximately 28% of the total flow to the OCIT, are being controlled by the OCIT even while the construction activities are ongoing. Subject to potential delays due to the COVID-19 pandemic, the flows from additional racks will be connected to, and controlled by, the OCIT prior to the OCIT going into full operation.
2 There is a phase of this project that is in active construction and a phase that is still in the design. The COVID-19 pandemic could delay or prevent the City from meeting applicable deadlines in either or both phases of this overall project.

The City appreciates your consideration of this submittal. In the event you have any questions or need anything further, please do not hesitate to contact Pat Gsellman of the City of Akron on his cell phone at 330-208-7323.

Respectfully submitted,

Chris D. Ludle, Director
Department of Public Service

cc: S. Helkowski
B. Cosgrove
B. Bremer
P. Gsellman
B. Gresser
T. Finn (R&A)
C. Novak (R&A)

CERTIFICATION: I certify under penalty of law that this document and its attachments were prepared under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gather and present the information contained herein. I further certify, based on my inquiry of those individuals immediately responsible for obtaining the information, that I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

Chris D. Ludle, Director
Department of Public Service

Melcher, John

From: Chike Odunukwe <codunukwe@cobma.us>
Sent: Friday, June 19, 2020 3:46 PM
To: Turin, David
Cc: advid.burns@state.ma.us; Kopf, Jeff; Borci, Todd; Larry Rowley
Subject: Request for Delay in Full Implementation of MS4 Program

David Turin
U.S. Environmental Protection Agency
Water Compliance Section
Mail code: 04-3
5 Post Office Square - Suite 100
Boston MA 02109 - 3912

RE: Request for Delay in the Full Implementation of MS4 Program

Dear Mr. Turin,

We are with this letter requesting a six to nine months delay to complete the full implementation of the MS4 for the City of Brockton. As you are aware from our previous correspondence, the City of Brockton suffered a series of mishaps that scrambled our MS4 implementation schedule.

The sudden death of the former Mayor delayed the adoption of the Stormwater Ordinance, until a new Mayor started in January 2020. Because of the Mayoral election and requirements of the City Ordinance, we could not commence the process of hiring any new staff, until the new Mayor is sworn in, the Stormwater Ordinance adopted by the City Council and accented to by the Mayor.

When above was accomplished, we started the initial process of soliciting applications for the Stormwater Management Engineering and Clerical staff. Unfortunately, at the recommendation of the Governor, the City was shut down on March 16, 2020, as a result of COVID 19 pandemic. At the present, only essential staff and Department heads are working to provide limited services.

The pandemic impart on the finances of the City, has forced a moratorium on new staff hiring and probable reduction of current staff. The moratorium is expected to last for six to nine months, after which it will be reevaluated.

We cannot implement permitting and inspection of permitted sites until we have new staff to make it possible. We need staff to run the Stormwater Authority, created by the Stormwater Ordinance. We also will not have staff for routine inspection of already installed, permitted and unpermitted stormwater management systems.

We will complete the Annual Report and 2-Year requirements, except that we will not be in a position update procedures, such as the O&M, SWMP, Outfall and Interconnection Inventory and prioritization; as well as training presentation for employees and tracking distributed public education messages.

We are working to develop the necessary data for the implementation of the Stormwater Utility Fee, approved as part of the Stormwater Ordinance. The implementation, will ease budget constraints on the MS4. Hardcopy will follow by mail.

Thank you for your time and cooperation on this matter.

Regards,

Chike C. Odunukwe, P.E.
City Engineer
Engineering Division, Department of Public Works
City of Brockton
45 School Street
Brockton, MA 02301
508-897-6437
codunukwe@cobma.us

Rod Roberson
Mayor

Laura Kolo
Utility Services Manager

Michael C. Machlan
City Engineer

City of Elkhart, Indiana
the city with a heart

Public Works & Utilities Department
Administration, Engineering & Laboratory
574 293-2572
Utility Billing
574 264-4273
1201 S Nappanee St.
Elkhart, IN 46516

March 24, 2020

Via Electronic Mail

Chief, Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611

United States Attorney
Northern District of Indiana
5400 Federal Plaza, Suite 1500
Hammond, Indiana 46320

Chief, Water Enforcement and Compliance Assurance Branch
Water Division
United States Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Chief, Compliance Branch
Office of Water Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Post Office Box 6015
Indianapolis, Indiana 46206

Chief, Enforcement Section
Office of Legal Counsel
Indiana Department of Environmental Management
100 North Senate Avenue
Post Office Box 6015
Indianapolis, Indiana 46206

Via: Electronic Mail

Re: DOJ No. 90-5-1-1-08182; USAO File No. 2003V00804
General Force Majeure Notification Due to COVID-19 Pandemic

Dear Mr. Ault:

Pursuant to Section XI of the Consent Decree, the City of Elkhart hereby provides written notice of the possibility that compliance with ongoing requirements of the decree may be delayed or prevented due to COVID-19 related impacts.

On March 13, President Trump declared the pandemic a National Emergency. Indiana Governor Eric Holcomb has issued a stay-at-home order for all state residents as officials work to combat the coronavirus pandemic. While EPA, DOJ, and IDEM are well aware of the pandemic and its far-reaching implications, we are nevertheless providing this notice as required under the decree.

At this time, this is a general assertion of force majeure. As we become aware of specific activities or projects that may be delayed we will provide supplemental notices.

Our ability to comply in a timely fashion has been undermined for several reasons that are beyond our control:

- **First**, like the State and Federal governments, much of our team who can work remotely are doing so. This makes project administration and oversight, contract approval, and project delivery extremely challenging.
- **Second**, only essential staff are permitted to work onsite and must focus on maintaining critical operations (both at our facilities and in our collection/distribution systems) during this pandemic.
- **Third**, much of our consent decree implementation is consultant and contractor supported. Many consultants have company-imposed travel bans and many of our contractors are subject to the same essential travel/shelter-in-place restrictions as everyone else. In addition, their people are as susceptible to contracting and communicating the virus as the rest of our resident population.
- **Fourth**, many of our ongoing activities are dependent on equipment, materials, and other supplies which either are or will face delivery suspensions or delays.
- **Fifth**, we are no longer shutting off customers' water for failure to pay water/sewer service fees during the pandemic. That will result in a loss of revenue that may affect our ability to issue contracts.
- **Sixth,** the ensuing economic conditions will result in loss of revenue and hardship on our customers and hinder our ability to raise rates on our financially distressed and unemployed workforce, which may adversely affect our ability to issue contracts.

Thank you for your understanding during these unprecedented circumstances. If you have any questions, please contact at (574) 293-2572.

Sincerely,

Michael Machlan
Engineering Services Manager
Department of Public Works

C: Mr. Tory Irwin
Ms. Laura Kolo
Mr. Paul Calamita

From:	Maraldo, Dean
To:	Mitchell, Sarah
Cc:	Machlan, Mike; Wendholt, Kara; Ault, Wayne (USAINN); Schnieders, Kathleen
Bcc:	Fentress, Robert; King, Carol
Subject:	RE: Elkhart, IN Monthly River Monitoring
Date:	Tuesday, June 2, 2020 7:42:00 AM

Sarah: Thank you for your May 14th email regarding the need to delay some dry weather sampling. It is not clear whether this request is being submitted pursuant to the Force Majeure provisions of the City of Elkhart consent decree. Any Force Majeure requests should address the requirements contained in those provisions (see Paragraphs 41-44 of the Consent Decree). This would include providing additional information on the specific sampling involved, who will be conducting it, the specific reasons why it cannot be conducted pursuant to the schedule, and an estimate of when you anticipate conducting the sampling. It should also address the requirement under the consent decree to provide notice of a possible force majeure event within 10 days of first knowing of the event. Finally, any delay in conducting the sampling should also be addressed in the City's next six-month status report. Please provide an update on efforts to conduct sampling in May.

Thanks,
Dean

==========
Dean Maraldo
Water Enforcement & Compliance Assurance Branch
U.S. EPA - Region 5
77 West Jackson Blvd. (ECW-15J)
Chicago, Illinois 60604
ph: (312) 353-2098
fax: (312) 385-5394
e-mail: maraldo.dean@epa.gov
http://www.epa.gov/enforcement/

From: Mitchell, Sarah <sarah.mitchell@coei.org>
Sent: Thursday, May 14, 2020 2:34 PM
To: 'Wendholt, Kara' <KWendhol@idem.IN.gov>; Maraldo, Dean <Maraldo.Dean@epa.gov>
Cc: Machlan, Mike <Mike.Machlan@coei.org>
Subject: Elkhart, IN Monthly River Monitoring

Kara and Dean,

The City of Elkhart is required by its consent decree to monitoring its CSO receiving streams during dry weather on a monthly basis. During the month of April the City

was operating with reduced staff due to the Covid-19 situation. Due to this, the river sampling was not conducted during this time. The City is now back at almost full staff and is making sure that the sampling will not be missed again. Please let me know how you would like us to address this issue. Also, should you have any questions or concerns feel free to email or call me.

Thank you,

Sarah Mitchell
Regulatory Affairs Director
Elkhart Public Works and Utilities
1201 S. Nappanee St.
Elkhart, IN 46516
(574) 293-2572

Confidentiality Notice: This e-mail and any attachments are for the exclusive and confidential use of the intended recipient. Please do not read, distribute or take action in reliance upon this message. If you received this in error, please notify me immediately by return e-mail and promptly delete this message and its attachments from your computer.

585 EAST 222ND STREET, EUCLID, OHIO 44123-2099
www.cityofeuclid.com

Department of PUBLIC SERVICE
Dan Knecht, Director
dknecht@cityofeuclid.com
Phone: 216-289-2701
Fax: 216-289-8362

March 26, 2020

Chief, Environmental Enforcement Section
State of Ohio Office of Attorney General
30 East Broad Street, 25th Floor
Columbus, Ohio 43215

Re: Coronavirus (COVID-19): Notice of Force Majeure Event
Case No. 90-5-1-1-08727

Dear Regulators:

Pursuant to Sections XVII and XVIII of the Consent Decree, the City of Euclid provides this notice of force majeure event that may delay compliance with the Consent Decree. The Nation and the State of Ohio stand under declarations of emergency stemming from the coronavirus (COVID-19) pandemic. Verbal notification of this event was provided to Colin Sullivan at US EPA on March 16, 2020.

The State and National orders have delayed Euclid's implementation of Consent Decree measures. To date, while the City of Euclid's contractor has substantially completed installation of the new membrane system equipment at its wastewater treatment plant, the contractor is not able to continue with the required training and startup due to the manufacturers' trainers being ordered not to travel. It is unclear when such efforts can be restarted.

With this quickly evolving health situation affecting all aspects of our City, State and Country, we expect that this is the first of multiple Consent Decree requirements that may be delayed or otherwise affected by this force majeure event. For example, we expect to adjust our staffing to comply with the directives of health officials and to protect our work force so that we are in position to sustain the public health services provided by the wastewater utility. Likewise, the City's contractors and consultants are making major staffing and business adjustments to comply with and/or as a result of State orders. Euclid will track all such issues and will keep the Regulators apprised.

We recognize that Consent Decree force majeure notification is but one aspect of the need for comprehensive communication with the Regulators that will be necessary while Euclid, its staff and vendors sustain the critical public health operation of the wastewater utility under extremely difficult times.

Please contact me when you are able to discuss further.

Respectfully,

Daniel L. Knecht
Director of Public Service

RECEIVED
MAR 30 2020
Attorney General
Environmental Enforcement

U.S. Department of Justice

Environment and Natural Resources Division

Steven D. Ellis

90-5-1-1-08727

(U.S. Postal Service Mail Delivery)
Environmental Enforcement Section
P.O. Box 7611
Washington, DC 20044-7611

(Private Courier Delivery)
Environmental Enforcement Section
150 M. St. N.E., Room 5.1611
Washington, DC 20002

Direct Dial (202) 514-3163
Email: Steven.Ellis@usdoj.gov

April 16, 2020

Via Email

Dan Knecht
Director of Public Service
City of Euclid, Ohio
585 E. 222nd St.
Euclid, Ohio 44123
dknecht@cityofeuclid.com

Re: *United States v. City of Euclid*, Case No. 1:11-cv-01783 (N.D. Ohio)

Dear Mr. Knecht:

We have received your letter dated March 26, 2020, submitting a force majeure notice due to the impact of the novel coronavirus COVID-19. We will respond after we have reviewed the notice and consulted the State Co-Plaintiffs, as appropriate.

Sincerely,

s/Steven D. Ellis
Steven D. Ellis
Senior Counsel
Environmental Enforcement Section

Cc: Steven Paffilas
Robert Thompson
Colin Sullivan

City of Greenville, Mississippi

Errick D. Simmons
Mayor

Office of the Mayor

City Council

Al Brock, Ward 1
Lois Hawkins, Ward 2
Bill Boykin, Ward 3
Lurann Thomas, Ward 4
Tasha Banks, Ward 5
James Wilson, Ward 6

340 Main Street • P.O. Box 897 • Greenville, MS 38701 • Telephone: 662-378-1501 • Facsimile: 662-378-0276 • Email: edsimmons@greenvillems.org

June 1, 2020

VIA FEDERAL EXPRESS AND E-MAIL:

Environmental Protection Agency
Chief, Water Enforcement Branch
Enforcement and Compliance Assurance Division
Region 4
Attention: Mr. Brad Ammons
61 Forsyth Street, Southwest
Atlanta, Georgia 30303
E-Mail: ammons.brad@epa.gov
Telephone: (404) 562-9769

VIA FEDERAL EXPRESS AND E-MAIL :

Ms. Gretchen Zmitrovich
Mississippi Department of Environmental Quality
515 East Amite Street
Jackson, Mississippi 39201
Telephone: (601) 961-5050
E-Mail: gretchen_zmitrovich@mdeq.ms.gov

Re: *Request for Additional Time within which to Complete Certain Elements of the City's Interim Corrective Action Plan (ICAP) Required Under Administrative Order (Docket No. CWA-04-2020-0303)*

Dear Brad and Gretchen:

This letter follows numerous discussions of a period of weeks and, in a few cases, several months, concerning the progress of the City of Greenville's work to repair a number of issues at the Greenville Wastewater Treatment Plant (WWTP). We visited these issues on Tuesday during our monthly conference call as well. Plainly stated, because of factors totally beyond the City's control, completing the required repairs within the allotted time is simply not possible.

Unlike the Partial Consent Decree under which the City has been performing the evaluations and repairs, the Administrative Order (the Order) does not contain a specific *Force*

Majeure clause. Despite this omission, the City believes strongly that "impossibility of performance" justifies the City's request for additional time to complete the work required under the Order. You may recall the discussion during at least one of our telephone conferences between City Attorney Andy Alexander and DOJ's Valerie Mann about the City's desire to specifically include flooding caused by the Mississippi River as a *force majeure* event. Ultimately, that provision was not included in the Partial Consent Decree. However, paragraph 42, which immediately follows the *force majeure* clause in the decree, recognizes that an event may occur that may delay the performance of the City's obligations "whether or not caused by a *force majeure* event."

Admittedly, the Order itself does not contain this language. However, the City submits that, if performance of certain obligations under the Order cannot be completed during the allotted time – through no fault of the City – an extension is appropriate.

Presently there are two "events" that are preventing the City from completing its performance in a timely manner. The main problem, of course, has been the Mississippi River, which has been at a high level since mid-December, and on January 19, 2020, it reached a level of 48 feet, which is "flood stage" at the WWTP. Because the WWTP is immediately east of the mainline Mississippi River levee, the high-water has a direct effect on the ground-water level under the plant. The main effect on this project is that, as the ground-water rises under the WWTP's secondary clarifiers, it creates a buoyancy force on the underground portion of these clarifiers. This is not a problem when the clarifiers are full, as the material inside the clarifier counteracts the buoyancy force. However, the high ground water level means that the clarifiers cannot be drained for cleaning, because there is a danger of them "floating" out of the ground and causing serious damages to themselves. Draining is the necessary first step in the process of repairing whatever damages have occurred to the clarifiers. Only after they have been drained and cleaned can the City determine the extent of the repairs that will be required, and effectuate those repairs.

As of today's date, the water level at the river is at 45.1 feet, and rising. It is currently projected that the river's level will crest on June 6, 2020. At that time, it will once again be over flood stage in the vicinity of the WWTP. There is not yet any projection for when the river level will begin to recede. When it does start to recede, the projection is that it will be receding at about 1 foot per day. There is no projection of how long that will continue. The bottom line is that the river level must fall at least to 36 feet, and then remain at that level (or lower) for the ground water level to recede enough for the three remaining clarifiers to be drained, cleaned and repaired. I have attached a chart that shows the river's levels between December 1, 2019 and May 29, 2020. This will give you a visual of its behavior during that period.

During the time period while the clarifier repair has been suspended, the City has not been sitting still. Instead of working on the clarifiers, the City's focus has been shifting over to cleaning a number of aeration basins. The WWTP has 12 such basins, with 12 scheduled to be cleaned under the Order. The basins, which are massive structures, could be drained safely without being

damaged. Currently, basins 1, 2, 7 and 8 have been cleaned and basin 8 will become an interim grit chamber until the actual grit chamber is completed and becomes functional in February of 2021. Work on that grit chamber is not being delayed by the high-ground water level.

After the river level reaches 36 feet, the ground water that has built up over the course of the flooding, it will, in all likelihood, take another two weeks for the ground-water level to reach a level so that the clarifiers can be safely drained. After that, the clarifiers must be thoroughly cleaned before the necessary repairs can be determined and the repairs can begin after that. I have attached to this letter Appendix B, Emergency WWTP Project Greenville, MS Schedule. Mr. Burle has adjusted a number of work items to factor in almost seven months of flooding conditions. The Appendix shows when each project has been completed, as well as the projected finish date that will occur in the future. For example, taking all of the data that the City currently has, clarifiers 1, 2 and 3 will begin to be drained on August 1, 2020. Cleaning, determination of necessary repairs and completion of the repairs will occur beginning August 2, 2020 and be completed on November 1, 2020. The number of days listed in Appendix B are "working" days, not "calendar" days. All projects are listed on the Appendix, as it includes both completed projects and projects that are not yet completed.

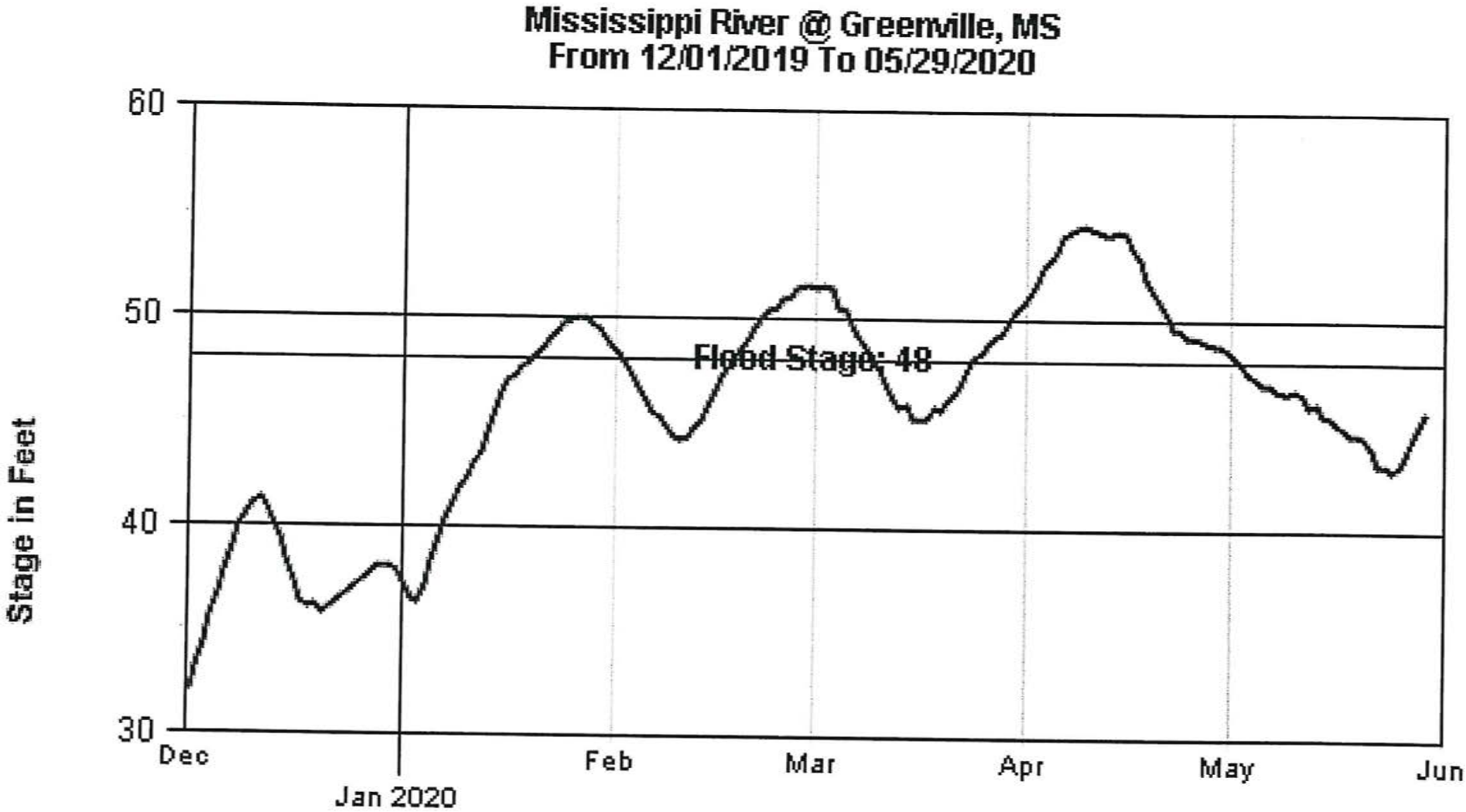
As I discussed in my letter to you of May 11, 2020, there is one additional "event" that is seriously hampering the City's ability to complete the work yet to be done – the COVID-19 virus. As we discussed during our telephone conference, the City has now determined that it has, and will lose approximately 3.5 million dollars. This loss has occurred chiefly because of the sharp downturn in sales tax revenue and the loss of revenue from Greenville's and Washington County's two casinos. These losses occurred beginning in March, 2020. As a result of this loss of income, the City is in the process of furloughing 25 employees and probably more furloughs will be declared in the future. The City has shut down its public swimming pool and sharply curtailed all other Park Commission activities, including its summer baseball programs. Loss of gaming funds is seriously affecting the Greenville Airport as well. Frankly, the loss of this revenue is going to make completion of all of the required projects under the Administrative Order very difficult. Pushing the required projects into the next fiscal year, which begins on October 1, 2020 will help matters, but the City still must have enough cash to be able to meet the costs of these final projects, including, but not being limited to, the UV disinfection system.

After you and your staff's have been able to review this matter, I believe it would be helpful to schedule another conference call, so that we can answer any remaining questions you and they may have. We look forward to hearing from you at your earliest convenience.

Sincerely yours,

Errick D. Simmons, Mayor

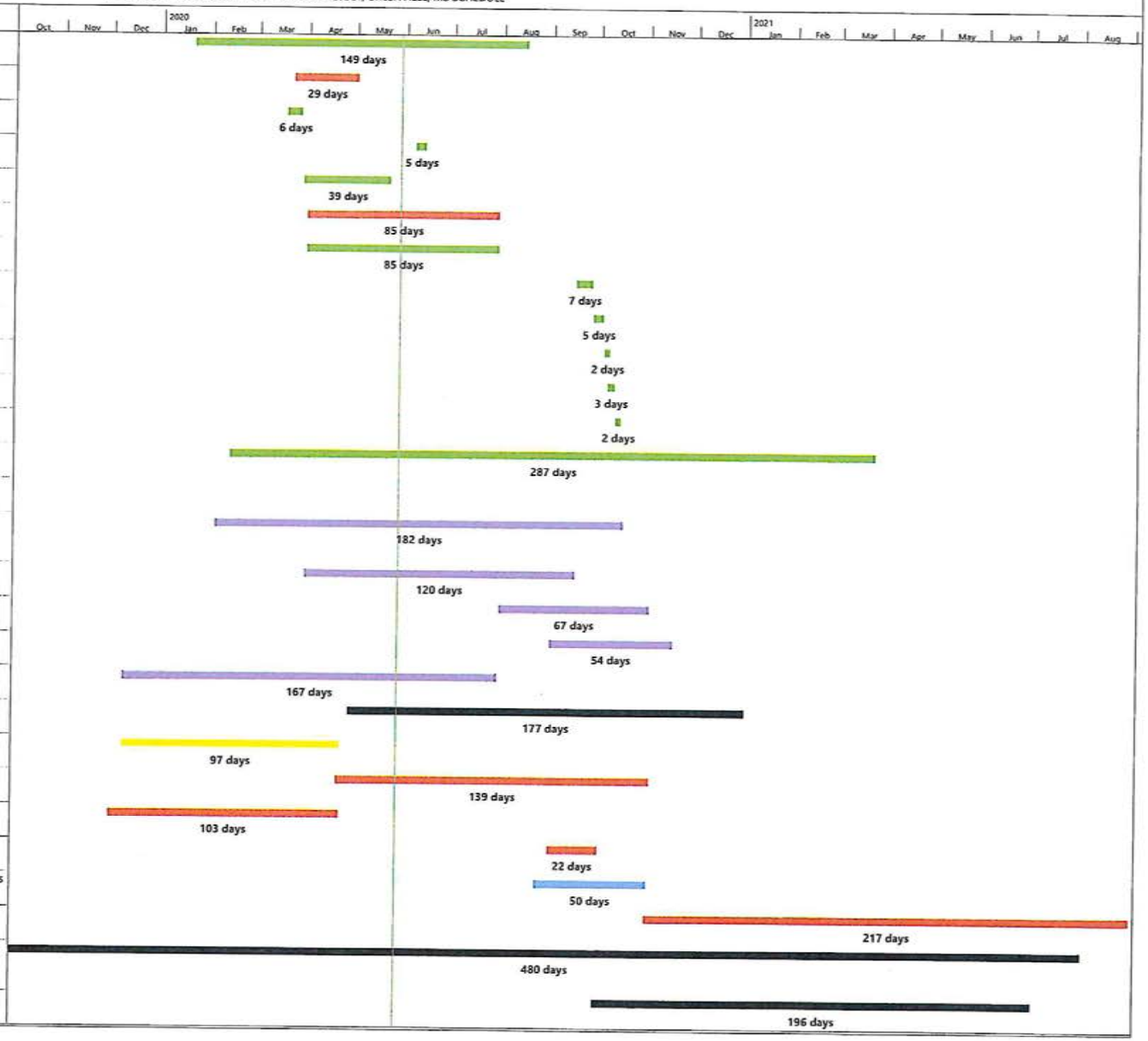
EDS/ars



Gage Zero = 74.92 Ft. NGVD29

APPENDIX B - EMERGENCY WWTP REPAIR PROJECT, GREENVILLE, MS SCHEDULE

ID	Task Name	Duration	Start	Finish	Firm
1	Aeration Basins 3,4,5,6,7 Cleaning	149 days	Mon 1/20/20	Fri 8/14/20	Hemphill
2	Aeration Basin 8 Cleaning	29 days	Mon 3/23/20	Thu 4/30/20	Manchac
3	Bypass Channel Cleaning	6 days	Thu 3/19/20	Thu 3/26/20	Hemphill
4	Structural Repair for Aeration Basin 1 Slide Gate	5 days	Mon 6/8/20	Fri 6/12/20	Hemphill
5	Aeration Basin 1 & 2 Cleaning	39 days	Mon 3/30/20	Thu 5/21/20	Hemphill
6	Aeration Basin Diffuser Replacements	85 days	Wed 4/1/20	Tue 7/28/20	Manchac
7	Aeration Basin Wall Repairs	85 days	Wed 4/1/20	Tue 7/28/20	Hemphill
8	Clean Clarifiers	7 days	Thu 9/17/20	Fri 9/25/20	Hemphill
9	Internal Gravity, CCTV, and Gravity Sewer Cleaning	5 days	Mon 9/28/20	Fri 10/2/20	Hemphill
10	Clean Process Lift Station	2 days	Mon 10/5/20	Tue 10/6/20	Hemphill
11	Clean UV System	3 days	Wed 10/7/20	Fri 10/9/20	Hemphill
12	Clean Effluent Pump Station	2 days	Mon 10/12/20	Tue 10/13/20	Hemphill
13	Grit Chamber Reconstruction	287 days	Fri 2/14/20	Mon 3/22/21	Hemphill
14	Barrack Repair (No Repairs)	-0- days	N/A	N/A	
15	Sluice Gates/Slide Gate/Stop Plate Order/Delivery/Installation	182 days	Wed 2/5/20	Thu 10/15/20	I.S. Inc.
16	Exercising Sluice Gates (Total 11 Gates)	120 days	Wed 4/1/20	Tue 9/15/20	I.S. Inc.
17	Clarifier 1, 2 and 4 Repairs	67 days	Sat 8/1/20	Sun 11/1/20	I.S. Inc.
18	Clarifier 3 Repairs	54 days	Wed 9/2/20	Mon 11/16/20	I.S. Inc.
19	WAS Pump Order/Delivery/Installation	167 days	Tue 12/10/19	Wed 7/29/20	I.S. Inc.
20	WAS Sewer Cleaning/Repairs & Valve Replacement	177 days	Wed 4/29/20	Thu 12/31/20	To Be Determined
21	Hypochlorite Disinfection System Construction	97 days	Tue 12/10/19	Wed 4/22/20	Avis
22	Hypochlorite Disinfection System Operation	139 days	Wed 4/22/20	Mon 11/2/20	Manchac
23	Chlorine Tablet/Gas Disinfection System	103 days	Mon 12/2/19	Wed 4/22/20	Manchac
24	Biomass Generation	22 days	Wed 9/2/20	Thu 10/1/20	Manchac
25	UV Disinfection System Repair	50 days	Tue 8/25/20	Sun 11/1/20	Trojan Technologies
26	WWTP with UV System Operational	217 days	Mon 11/2/20	Tue 8/31/21	Manchac
27	Sludge Lagoon #2 Cleaning/Disposal Design/Bid/Construction	480 days	Tue 10/1/19	Sun 8/1/21	To Be Determined
28	WWTP Effluent Pump Station Repair	196 days	Thu 10/1/20	Thu 7/1/21	To Be Determined



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
SAM NUNN ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

The Honorable Errick D. Simmons
Mayor of Greenville
340 Main Street
Greenville, Mississippi 38701

Duplicate sent via email: EDSimmons@greenvillems.org

Re: United States et al. v. City of Greenville, Mississippi
Partial Consent Decree (Civil Action 4:16-cv-00018),
DOJ Case No. 90-5-1-1-10932
COVID-19 Related Force Majeure Notification

Dear Mayor Simmons:

The U.S. Department of Justice (DOJ), the U.S. Environmental Protection Agency (EPA) and the Mississippi Department of Environmental Quality (MDEQ) are in receipt of the City of Greenville's (Greenville's) May 11, 2020 letter (Letter) under Section X, Paragraphs 41-42 of the above-referenced Partial Consent Decree (the PCD), notifying the EPA and the MDEQ of a potential force majeure event that may cause a delay or impediment to performance of obligations under the PCD. As you may be aware, on March 26, 2020, the EPA issued a temporary Policy: "COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program" (Policy) that addresses the EPA enforcement of environmental legal obligations during this time. As provided in Section I.C of the Policy, claims of an inability to comply with the terms of a judicial consent decree are properly handled pursuant to the consent decree's force majeure provisions. We are enclosing a copy of that Policy.

Greenville's Letter asserts a potential force majeure event based on the current COVID-19 public health emergency. The EPA and DOJ have consulted with the MDEQ in preparing this response. This response is intended to cover the facilities that are the subject of the above-referenced PCD and directs Greenville to Paragraphs 41-45 [*force majeure* provisions] of the PCD. Among other things, Greenville should note that Paragraph 41 of the PCD requires it to exercise best efforts to fulfill the obligations of the PCD, including the use of best efforts to anticipate any potential force majeure event both as it is occurring and after it has occurred, to prevent or minimize delay to the greatest extent possible.

Greenville's Letter identifies the following factors that may cause an impediment to performance in complying with the PCD. Following declarations of emergency at the national, state and local levels, Greenville has received notices from contractors, consultants and vendors regarding anticipated delays in mobilizing equipment and contract personnel as a result of the pandemic and subsequent shelter-in-place orders. Greenville states that these impacts may affect its implementation of PCD work and/or deliverables. Greenville also cites that the Group 2 sewer assessment report may be delayed because of an inability to hold a public meeting. However, there is no requirement for a public meeting prior to

submittal per the PCD, so this concern cannot be a justification for the delay. Similarly, Greenville states the work at the Hancock Lift Station and Force Main Project may be impacted but the contract deadline for this project is not a current requirement of the PCD.

Meaningful compliance with the force majeure provisions set forth in Paragraph 42 of the PCD, requires more than the factors set forth in the Greenville Letter. The force majeure provision of the PCD requires that the notice must at a minimum include in a force majeure notification letter: (1) a description and explanation of the reasons for the delay, (2) the anticipated duration of the delay, (3) all actions taken or to be taken to prevent or minimize the delay, (4) a schedule for implementation of any measures to be taken to prevent or minimize the delay or the effect of the delay, (5) Greenville's rationale for attributing such delay to a force majeure event if it intends to assert such a claim, and (6) a statement as to whether, in the opinion of Greenville, such event may cause or contribute to an endangerment to public health or the environment. Greenville should include all available documentation to support this force majeure claim with its notice. Because of the uncertainty surrounding the COVID-19 public health emergency, we understand that Greenville may not have complete information at this time, but it should provide additional information in accordance with that Section as more information becomes available.

In addition to compliance with the express provisions of the PCD, Greenville is encouraged to maintain an open and continuing dialogue with the EPA, DOJ, and MDEQ. This will serve to protect human health and the environment, minimize potential misunderstandings, and facilitate timely and appropriate decision-making as this situation unfolds. Should you have any questions regarding the above or any aspect of this matter, please do not hesitate to contact Brad Ammons at (404) 562-9769 or via email at ammons.brad@epa.gov.

Sincerely,

signing for Carol Kemker

KERIEMA NEWMAN Digitally signed by KERIEMA NEWMAN
Date: 2020.07.01 16:25:28 -04'00'

Carol L. Kemker
Director
Enforcement and Compliance Assurance Division

Enclosures

cc: Gretchen Zmitrovich,
MDEQ (via email to GZmitrovich@mdeq.ms.gov)

Chrisna Baptista,
EPA OECA (via email to baptista.chrisna@epa.gov)

Valerie Mann,
U.S. DOJ (via email to Valerie.Mann@usdoj.gov)

Andrew Alexander,
Lake Tindall, LLP (via email to aalexander@ltindall.com)

Mita Ghosh,
Office of Water Legal Support (via email to Ghosh.Mita@epa.gov)

CITY OF LIMA, OHIO

David J. Berger, Mayor

50 Town Square Lima Ohio 45801-4900 419/228-5462 Fax 419/221-5214
www.cityhall.lima.oh.us

March 26. 2020

Chief
Water Enforcement and Compliance Assurance Branch
Water Division
US EPA Region 5
77 W. Jackson Blvd.
Chicago, Illinois, 60604

RE: Notification of Potential Consent Decree Violations during the COVID-19 Pandemic

To Whom It May Concern:

This letter is to notify US EPA that there is potential that the City of Lima may be unable to comply with its consent decree, case no.: 3:14 CV 2551, due to the current COVID-19 pandemic. Section XI, paragraph 65 of the consent decree states, "If any event occurs or has occurred that may prevent or delay performance of any requirement of this consent decree . . . Lima shall notify U.S. EPA, in writing, within 14 days after Lima first knew – or, . . . should have known – of such event." This letter is intended to satisfy the aforementioned requirement. The section continues with, "The notice will indicate whether Lima claims that the performance or delay should be excused due to a force majeure event." Lima is claiming that any potential failures to perform or delays that would prevent compliance with the consent decree should be excused due to a force majeure event, namely the COVID-19 Pandemic. Lima anticipates that there could be a failure to perform peak wet weather sampling and as a result needs to delay and request another extension on sampling. Furthermore, Lima anticipates that there could be failure to perform and delays with some of our CMOM requirements: routine maintenance and CSO/SSO monitoring.

Lima is claiming that any of the possible failures to perform or delays relating to peak wet weather operations and CMOM requirements will be directly or indirectly caused by the COVID-19 Pandemic and therefore excused under the force majeure clause. The basis for this claim is outlined below.

ANTICIPATED PERFORMANCE PROBLEMS OR DELAYS

Peak Wet Weather Operations:

The consent decree requires the wastewater treatment plant (WWTP) to treat peak wet weather flows of up to 70MGD. This requires two paths of treatment through the plant: 40 MGD goes through aeration and final clarifiers, 30 MGD goes through the nitrification towers. The consent decree, in appendix C, requires peak wet weather sampling of the nitrification towers in the WWTP. The coronavirus could cause problems in both the operation and sampling of peak wet weather. As part of Lima's emergency response plan, the City could temporarily suspend peak wet weather operations.

Operating the WWTP during peak wet weather mode requires more than the minimum staffing requirements. There needs to be at least one operator at the computer monitoring the system and the plant. There needs to be one operator collecting samples, making rounds, opening/closing gates and valves, and making sure there are no problems visible through the plant or effluent discharge. There needs to be at least one person in the lab running samples that the operators are collecting. Finally, the filter press needs to be consistently being operated to prevent any overflows from the digesters. Without having at least the minimum people available to work as mentioned above, operating in peak wet weather could cause detrimental effects to the plant and/or the environment if something goes wrong. There are numerous worse case scenarios given the typical weather when operating in peak wet weather, one person cannot keep an eye on everything to make sure there are no problems. During this pandemic, everyone is advising plants to prepare for staffing shortages. Lima can operate the plant in dry weather, and possibly wet weather mode with a skeleton crew on

hand, however, it is not realistic to expect one person to operate peak wet weather alone. If the situation becomes that dire, Lima may need to allow more CSO discharges to the river, in order to protect our long-term ability to operate the plant safely and effectively

Depending on how this pandemic plays out, Lima may need to request an extension on sampling to make sure it gets samples during a typical spring season to ensure the data reflects how the towers will operate in worst case rain events, multiple rain events in a short duration, and not just in sporadic rain events. Appendix C, paragraph A of the consent decree required sampling through July, 2019. On June 20, 2019, the EPA approved Lima's request to extend peak wet weather sampling for another year. The consent decree, in Appendix C, paragraph A specifies that this sampling period may not be extended beyond one year. However, given that the WWTP had not yet developed consistent, efficient, and effective peak wet weather mode operations during the specified July, 2018 to July, 2019 period, it is crucial to have at least one complete rainy season to sample the nitrification towers while operating under peak wet weather mode. Given that this pandemic is going to run through the spring season, if the worst case scenario mentioned above occurs, Lima may not be consistently operating in peak wet weather and therefore will not have sampling from the nitrification towers that will accurately reflect whether the WWTP can handle peak wet weather events during a typical rainy spring season.

CMOM Requirements:

Routine Maintenance

The CMOM sets a goal of routine maintenance, including CCTV, sewer cleaning, and manhole inspections, for 10% of the system every year. Currently, all non-emergency sewer maintenance has been suspended. This has been done to protect Lima's employees. Given the difficulty of achieving 10% routine maintenance in a normal year, this set back will likely prevent the City from achieving 10% this year and depending on the economic hardships caused by this pandemic, additional resources may not be available in the following year to dedicate to catching up on this maintenance.

The CMOM also sets of goal of routine maintenance at least once every two weeks at all lift stations throughout the system. This routine maintenance of the lift station will likely be suspended, and only emergency maintenance performed as part of our emergency response plan to this pandemic. This allows Lima to utilize lift station mechanics in other ways to help keep the WWTP operating efficiently even if it is operating with a reduced staff.

CSO/SSO Monitoring

Lima has five overflow structures that are monitored through the SCADA system. The remaining overflows in the system must be checked in person after 0.25" of rain. There is a floating block in each one that, if misplaced, represents an overflow, and must be reset before the next rain event. Then a notification of all overflows must be made within four hours of discovering these overflows. Again, depending on the intensity of this pandemic, Lima may not have the staff on hand to keep up with checking and resetting these blocks after every major rain event. However, it is important to note that only about 2% of all overflow volume enters the river through the structures that have blocks.

FORCE MAJEURE CLAIM

Basis for the Force Majeure Event

The basis for the force majeure claim in the COVID-19 pandemic. The timeline of the spread of and response to this outbreak in the U.S., through Ohio, and through the City of Lima, is outlined below.

- January 21, 2020- First case of the virus in U.S.
- January 31, 2020 – Secretary of health and Human Services declares public health emergency in U.S.
- February 29, 2020 – First confirmed death due to the virus, in U.S.
- March 9, 2020 – Governor DeWine declares a state of emergency in Ohio
- March 13, 2020 – President declares a national emergency
    - Governor DeWine closes K-12 schools
- March 15, 2020 – Governor DeWine closes all bars and dine-in restaurants
- March 16, 2020 – State Health Director closes all polls
- March 18, 2020 – Governor DeWine closes all salons, barbers, spas, tattoo parlors
    - First COVID-19 related death in Ohio
    - Mayor Berger enacts pandemic protocol for the City of Lima, all City buildings are closed to the public
- March 22, 2020 – Governor DeWine issues a Shelter in Place order

Anticipated Length of Any Delay

Given the fluidity of this pandemic, and the fact that the situation is daily changing, it is impossible to accurately estimate the length of any anticipated delay. The best Lima can guess is that the suspending peak wet weather operations at the WWTP will only occur when there is not enough staff to safely operate in that mode. When staffing levels are sufficient Lima will operate in peak wet weather mode. Hopefully, this does not last beyond the spring season, but it is impossible to predict. If Lima enters a consistent state of emergency operations, peak wet weather operations will be suspended until the state of emergency operation is lifted.

Lima can anticipate needing to extend the sampling of the nitrification towers for one more year. Extending it a full year would allow Lima to catch the 2021 spring season in its sampling. This is the best way to get an accurate picture of how the nitrification towers perform during extended and frequent peak wet weather operations.

It is impossible to know how long this pandemic will last, therefore there is no way for Lima to predict how long it will suspend routine maintenance in the sewer system. Once the pandemic has subsided and the danger of exposure to Lima's staff is alleviated, routine maintenance throughout the sewer system and lift stations will resume.

Again, CSO/SSO monitoring will be conducted as long as there is adequate staffing to do so. As long as there is adequate staff, there will be no failure to perform. Lima expects any issues in this regard to be sporadic only.

Precise Cause or Causes of the Force Majeure Event

The obvious overarching cause of the force majeure event is the COVID-19 pandemic. The precise causes of the aforementioned performance and delay problems in peak wet weather operations will result from either Lima's policy of reduced staffing to prevent all of its staff from catching the virus and spreading it among each other, or from Lima's staff actually catching the virus and eliminating any extra available operators. The only way peak wet weather operations and sampling will not occur is if there are not enough available staff to do so while maintaining the integrity of the plant, the effluent, and the river.

The precise cause related to CMOM requirements is Lima's pandemic protocol procedures. Due to the nature of the virus and that it is present and viable in sewage streams, Lima must protect its staff from possible exposure. This prevents not only those working in the direct contact from catching the virus, but also prevents staff from spreading it to coworkers if they were to carry the virus. Since maintaining adequate staffing in the plants and the collection system is of utmost importance, minimizing the risk of exposure and spread of the virus is paramount. This is why the pandemic protocol calls for the suspension of any nonemergency maintenance in the sewer system.

The precise cause of lift station maintenance and CSO/SSO monitoring will be lack of adequate staff to perform the required actions. Lack of staff could result from reduced staffing by the City or employees contracting the virus. As long as staff is available, Lima will perform these responsibilities as required.

Measures Taken or to be Taken to Prevent or Minimize Any Delay

The best way to prevent or minimize any delay is to keep the staff healthy and available to work. This means doing whatever the City can to prevent the spread of this virus among employees. The City has enacted multiple policies and procedures to ensure our employees stay safe and do not come into contact with the virus.

- Suspend all travel and in person training for City of Lima employees
- Encourage extra handwashing and hand sanitizer use
- Make sure there is extra PPE available for employees
- Cleaning trucks between shifts
- Enacted pandemic protocol (see attachment)
    - Allows telecommuting where practical
    - Encouraging time off if sick, and liberal approval of sick time, relaxed requirements on use of sick time
    - Social distancing
    - Extra cleaning
    - Not allowing groups larger than 10 to congregate in an area
- Suspend all non-emergency sewer maintenance
- Cross train employees on plant operation and lab work
- Working to develop SOP's detailed enough for people who have never operated the plant to follow if necessary
- Made lists of back-up providers and labs

- Communicated with current labs and suppliers to ensure no disruption of service
- Sent out official letters to all essential contractors, manufacturers, haulers, etc. identifying them as essential to operations at the plant
- Had all outside essential providers register as such with homeland security

Steps that could be taken if the pandemic reaches Lima:

- Stagger shift start times, break times, and lunches
- Spread operators across shifts
- Rotating shifts, on call shifts
- Request licensed operators, not on Lima's staff, to help operate the plant

Timetable for Implementing Aforementioned Measures

All of the measures mentioned above have been implemented by the City, except those listed under "Steps that could be taken if the pandemic reaches Lima." Staggering shift start times, break times, and lunches is up to the supervisor of each division currently. If the pandemic reaches the City of Lima it will become mandatory. Lima will enact the rest of the measures on an as needed basis, or if employees start becoming exposed to the virus, or if required by the Mayor or the Governor.

In summary, the City of Lima is notifying EPA of a claim of force majeure for any potential failures to perform or delays caused by the COVID-19 pandemic as required by the Consent Decree in section XI, paragraph 65.

Sincerely,

Michael Caprella

Michael Caprella
Director of Utilities, City of Lima

CC: David J. Berger, Mayor
Tony Geiger, Law Director
Fred Andes, Barnes & Thornburg
Steve Samuels, Frost, Brown & Todd

City of Toledo
Department of Public Utilities
Edward A. Moore, Director

420 Madison Avenue, Suite 100 • Toledo, Ohio 43604 | Customer Service (419) 245-1800 | Fax (419) 245-1853 | Web: https://toledo oh gov/services/public-utilities/

Toledo Waterways Initiative
Phone: (419) 936-3671

Date: April 1, 2020

Ms. Molly Smith, Acting Branch Chief
Water Enforcement & Compliance Assurance Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

Dear Ms. Smith,

The City of Toledo has received the U.S. EPA's comments to our Post Construction Compliance Monitoring Work Plan (PCCMWP). As we've reviewed the comments and discussed the associated revisions to the PCCMWP, it is apparent that the 30-day timeline requested for plan resubmittal will be extremely difficult to meet. We are actively working to incorporate the comments into a revised draft of the PCCMWP, however, some comments require a field investigation. Since most of the staff involved with revising the plan are working remotely due to the Coronavirus crisis, our progress has inherently been hindered.

With the above stated, I am sending this letter to request an additional 30 days to submit the revised PCCMWP. Your understanding of our current situation and consideration of this request are greatly appreciated.

Please contact me at Julie.Cousino@toledo.oh.gov or at (419)466-8255 if you have any questions or need further information. Thank you.

Sincerely,

Julie Cousino, P.E.
TWI Program Administrator
Department of Public Utilities

Cc: (via email)
Patrick Kuefler, U.S. EPA Region 5
Elizabeth Wick, Ohio EPA
Ryan Gierhart, Ohio EPA
Scott Helkowski, Ohio AG
Steven Ellis, DOJ
Leslie Kovacik, City of Toledo

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO ATTENTION OF

ECW-15J

VIA EMAIL (Julie.Cousino@toledo.oh.gov)

Julie Cousino, P.E.
TWI Program Administrator
Department of Public Utilities
City of Toledo
420 Madison Avenue, Suite 100
Toledo, Ohio 43604

Re: City of Toledo, Ohio Post Construction Compliance Monitoring Work Plan

Dear Ms. Cousino:

Thank you for your April 1, 2020, letter requesting an additional 30 days to respond to our comments on the draft Post Construction Compliance Monitoring Work Plan (PCCMWP). Based on your request, we are extending the date to respond to revise the PCCMWP to May 20, 2020.

If you have any questions, please contact either William Jones of my staff at (312) 886-6058, or Gary Prichard from our Office of Regional Counsel at (312) 886-0570.

Sincerely,

RYAN BAHR Digitally signed by RYAN BAHR Date: 2020.04.21 08:12:11 -05'00'

Ryan J. Bahr
Acting Chief
Water Enforcement & Compliance Assurance Branch

cc: Leslie Kovacik, City of Toledo, Ohio (via email)
Ryan Gierhart, Ohio Environmental Protection Agency (via email)
Scott Helkowski, Ohio Attorney General (via email)
Steve Ellis, Department of Justice (via email)

CITY OF
CLEVELAND
HEIGHTS

March 31, 2020

Chief, Water Enforcement and Compliance
Assurance Branch (WC-15J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Regional Counsel (C-14J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

VIA US Mail and E-Mail

Re: COVID19: Notice of Force Majeure Event
DJ# 90-5-1-1-10457

Dear Regulators:

Pursuant to Sections IX of the Partial Consent Decree, and consistent with EPA's OECA guidance dated March 26, 2020, the City of Cleveland Heights provides this notice of force majeure event that may delay compliance with the Consent Decree.

The nation and the State of Ohio stand under declarations of emergency stemming from the coronavirus pandemic. With this quickly evolving health situation affecting all aspects of our country, the City of Cleveland Heights has determined that multiple Consent Decree requirements may be delayed or otherwise affected by this force majeure event. For example, we expect to adjust our staffing to comply with the directives of health officials and to protect our work force so that we are in position to sustain the public health services of the city. Similarly, our contractors may face delays in the several Consent Decree required measures. It is not possible at this time to estimate the duration of this situation. Cleveland Heights will track all such issues and will keep the Regulators apprised.

We look forward to continuing communication in this unprecedented situation, the health, economic and financial effects of which have yet to be seen fully.

40 SEVERANCE CIRCLE, CLEVELAND HEIGHTS, OHIO 44118
216 • 291 • 4444 FAX • 291 • 2064

Please contact me if you wish to discuss further.

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.

Very Truly Yours,

William R. Hanna
Director of Law

cc: Thomas Benson, US DOJ (via email)
L. Scott Helkowski, Office of OAG
Erin Sherer, Ohio EPA
Tanisha R. Briley, City Manager
Collette Clinkscale, Director of Public Works
Louis L. McMahon (via email)

Bhatt, Krishna

From: Ihlenburg, Erick
Sent: Friday, May 22, 2020 3:38 PM
To: Mendez, Gretchen
Cc: Buettner, Robert; Rodolfo Seda; Buenning, Hans; Rivera, Alex; Velez, Julian; Patel, Harish; LaVigna, Gaetano; Villatora, Liliana; Klepp, Robert; Fried, Gregory
Subject: RE: CORCO - URGENT COMMUNICATION - IMMEDIATE ATTENTION AND RESPONSE REQUESTED

Gretchen,

We have received CORCO's March 27, 2020 written notification of the cancelled/delayed performance test due to restrictions caused by the Covid-19 pandemic. The notice was submitted following a March 25, 2020 phone call you initiated with me to discuss the delayed test. On March 26, 2020, I emailed you a link to the EPA memorandum "COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program," issued by Assistant Administrator Susan Parker Bodine on that same date (COVID-19 Memo). This temporary policy generally authorizes the conditional exercise of EPA's enforcement discretion for various instances of noncompliance caused by the Covid-19 pandemic, including those caused by "travel and social distancing restrictions imposed both by governments or corporations or recommended by the Centers for Disease Control and Prevention to limit the spread of COVID-19." This email provides EPA's further response to CORCO's March 27, 2020 notification.

In the CORCO matter, where EPA issued an administrative compliance order (ACO) requiring performance testing at CORCO's vapor combustion unit (VCU), EPA intends to exercise its enforcement discretion in accordance with the COVID-19 Memo, provided that CORCO continues to meet each of the conditions specified in Section I.A. of that memo. Specifically, all enforcement discretion set forth in the COVID-19 Memo is conditioned on the following:

1. Entities should make every effort to comply with their environmental compliance obligations.
2. If compliance is not reasonably practicable, facilities with environmental compliance obligations should:
    a. Act responsibly under the circumstances in order to minimize the effects and duration of any noncompliance caused by COVID-19;
    b. Identify the specific nature and dates of the noncompliance;
    c. Identify how COVID-19 was the cause of the noncompliance, and the decisions and actions taken in response, including best efforts to comply and steps taken to come into compliance at the earliest opportunity;
    d. Return to compliance as soon as practicable; and
    e. Document the information, action, or condition specified in a. through d.

Given the nature of ACOs issued under Section 113(a) of the Clean Air Act, including the limitations for such orders specified in Section 113(a)(4) of the Act, and the uncertain duration of the relevant Covid-19 restrictions, we find the conditional exercise of our enforcement discretion to be preferable to an extension of the ACO compliance date under 40 C.F.R. 63.7(a). We remain committed to working with CORCO to reschedule the required VCU performance test once the relevant Covid-19 restrictions are lifted and the testing can be conducted safely, while as expeditiously as possible. EPA notes that as of the date of this email, CORCO represents that the contractor it retained to conduct the performance test is still imposing internal company restrictions on employee travel. Moreover, on May 1, 2020, the governor of Puerto Rico issued an Executive Order extending "lockdown" and curfew restrictions in Puerto Rico until May 25, 2020. We acknowledge and appreciate CORCO's proposal to conduct the performance test within 30 days after lifting of the relevant

Covid-19 restrictions that affect both CORCO and the contractors that are necessary to conduct the test. We encourage ongoing discussion, information sharing, and documentation of the specific circumstances that will allow EPA and CORCO to agree on the timing for rescheduling and conducting the test.

Please call me with any questions or concerns.

Sincerely,

Erick

Erick R. Ihlenburg
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007
Phone: (212) 637-3250
Fax: (212) 637-3199

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From: Mendez, Gretchen <gmendez@gaclaw.com>
Sent: Friday, March 27, 2020 2:45 PM
To: Ihlenburg, Erick <Ihlenburg.Erick@epa.gov>
Cc: Buettner, Robert <Buettner.Robert@epa.gov>; Rodolfo Seda <rodolfo.seda@corcopr.com>
Subject: CORCO - URGENT COMMUNICATION - IMMEDIATE ATTENTION AND RESPONSE REQUESTED
Importance: High

URGENT COMMUNICATION

IMMEDIATE ATTENTION AND RESPONSE REQUESTED

Dear Erick:

We hope this email finds you and your colleagues, friends and family well.

By letter postmarked on February 18, 2020 ("Notice"), Commonwealth Oil Refining Company, Inc. ("CORCO") notified the Environmental Protection Agency ("EPA" or "Agency") of its intention to conduct the performance testing ("Testing") for the Vapor Control Unit ("VCU") and the VCU's Continuous Parameter Monitoring System ("CPMS") in accordance with Sections E. II. and E.III. of the Administrative Compliance Order Reference Number CAA-02-2019-1004 dated April 25, 2019 ("ACO"). The Testing was scheduled to be performed simultaneously starting on April 22, 2020 and ending on April 23, 2020. CORCO submitted with the Notice the VCU and the CPMS Testing protocols for EPA approval in accordance with the requirements of 40 CFR § 63.8(e)(3) and ACO Sections E. IV. and E.V. EPA's approval for these Testing protocols remain pending.

Since the issuance of the ACO, CORCO has engaged in all necessary actions leading to the performance of the Testing as scheduled. On March 15, 2020, the Governor of Puerto Rico issued Executive Order 2020-23 ("Order") in response to the COVID-19 virus pandemic, which, among other things, establishes mandatory curfew and closing of all commercial establishments commencing on March 15, 2020, at 6:00 pm until March 30, 2020, excluding food sale establishments that provide drive-thru, carry-out or delivery services; wholesalers; pharmacies; supermarkets; gas stations; banks or financial institutions; elderly care centers; any business in the distribution chain of food, medicine, medical equipment or fuel; and services associated with the excluded sectors.

Since the issuance of the Order, CORCO has taken all reasonable take steps to protect its employees from contracting or otherwise being exposed to the COVID-19 virus. CORCO has also taken numerous steps aimed at preventing the proliferation of COVID-19, including restricting services provided by outside contractors to those that are essential to the facility's fuel distribution operations or required in the unlikely event of an emergency. Non-essential services have been postponed until the Order restrictions are lifted. Contractors entering CORCO are also required to meet the safeguards and procedures that have been implemented to assure contractor health and safety while providing the services needed to safely and effectively sustain facility fuel distribution operations to meet the demands of our clients and the market.

CORCO considers the services for the Testing to be essential to its operations given its commitment to perform the Testing as scheduled and strictly adhere with all ACO ordered provisions. CORCO has thus continued to work together with the contractor with the goal of performing the Testing on April 22-23, 2020.

However, on the afternoon of March 24, 2020, the contractor informed CORCO that the Testing was canceled in view of recent COVID-19 restrictions that have been imposed on the contractor, which ban employees from traveling, engaging in non-manufacturing activities and other work-related actions that may unnecessarily expose contractor personnel to the COVID-19 virus.

CORCO is sensitive to the importance of adhering to the Order restrictions and is committed to ensure worker health and safety and prevent the spread of the COVID-19 virus. CORCO is also sensitive to the precautions

taken by its contractors to safeguard the welfare of its employees under these unforeseeable an unfortunate circumstance.

Accordingly, the morning of March 25, 2020, I called you to inform the Agency of the cancellation of the Test and to discuss possible ways in which the time to perform the obligations under the ACO may be extended. We agreed that CORCO should submit its request for additional time in writing.

On March 26, 2020, the Governor of Puerto Rico announced that she will issue a second executive order with stricter restrictions applicable from April 1, 2020, until April 12, 2020, which makes it impossible for CORCO to reasonably anticipate whether the Order and other COVID-19 restrictions will continue and for how long, in attempts to reschedule the next available date in which the Testing may be performed. CORCO is also facing other challenges as the COVID-19 ramifications affect the logistics that must necessarily be in place for the Testing to be performed. For instance, at this time, hotels, car rentals, restaurants and other business supporting business travel in Puerto Rico are restricting operations in view of the COVID-19 pandemic. We are unable to determine or reasonably anticipate when these sectors will restore operations to support business travel (presumably after disinfection occurs). Other factors that may affect the scheduling of the Testing moving forward include: contractor availability after the COVID-19 restrictions are lifted for the performance of the Testing, possible illness of key personnel, and implementing procedures for disinfection of the VCU and CPMS equipment and systems, for which supplies will likely to continue to be limited as they remain in high demand.

CORCO has duly complied with the Sections E.IV. and E.V. of the ACO by timely submitting the Notice and the Testing protocols by letter postmarked on February 18, 2020. CORCO has also engaged in all possible efforts to comply with the Testing obligations required under Sections E.II. and E.III of the ACO. Notwithstanding CORCO's best efforts, we have reasonably come to the conclusion that Testing cannot be performed at the facility's VCU and CPMS by the dates that were notified in the Notice (April 22-23, 2020) or even by the deadline prescribed by the ACO. CORCO also reasonably foresees that the ordered provisions of Sections E.VI, E.VII., E.VIII. and E.X. of the ACO will be impossible to comply with on the time period prescribed by the ACO, as these obligations are contingent on the performance of the VCU and the CPMS Testing.

In view of these events, CORCO reviewed 40 C.F.R. Part 63 Subpart A ("Subpart A") provisions relevant to performance testing and has found the following force majeure provisions:

> ***"§ 63.7 Performance Testing. (a)(4)(i)*** *The owner or operator shall notify the Administrator, in writing as soon as practicable following the date owner or operator first knew, or through due diligence should have known that the event may cause or caused a delay in testing beyond the regulatory deadline specified in paragraph (a)(2) or (a)(3) of this section, or elsewhere in this part, but the notification must occur before the performance test deadline unless the initial force*

majeure or a subsequent force majeure event delays the notice, and in such cases, the notification shall occur as soon as practicable.

(ii) *The owner or operator shall provide to the Administrator a written description of the force majeure event and a rationale for attributing the delay in testing beyond the regulatory deadline to the force majeure ; describe the measures taken or to be taken to minimize the delay; and identify a date by which the owner or operator proposes to conduct the performance test. The performance test shall be conducted as soon as practicable after the force majeure occurs.*

(iii) *The decision as to whether or not to grant an extension to performance test deadline is solely within the discretion of the Administrator. the Administrator will notify the owner or operator in writing of approval or disapproval of the request for an extension as soon as practicable.*

(iv) *Until an extension of the performance test deadline has been approved by the Administrator under paragraphs (a)(4)(i), (a)(4)(ii), and (a)(4)(iii) of this section, the owner or operator of the affected facility remains strictly subject to the requirements of this part.*

Subpart A also defines force majeure as follows:

§ 63.2 Definitions. "*Force majeure means, for purposes of § 63.7, an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents the owner or operator from complying with the regulatory requirement to conduct performance tests within the specified timeframe despite the affected facility's best efforts to fulfill the obligation. Examples of such events are acts of nature, acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility.*"

CORCO respectfully asserts that its inability to comply with Sections E.II., E.III. E.VI., E.VII., E.VIII. and E.X. of the ACO is due to a force majeure event under section 63.7(a)(4), as the event delaying or preventing compliance with the ordered provisions of Sections E.II., E.III. E.VI., E.VII., E.VIII. and E.X. of the ACO s arise from causes beyond CORCO's control or of the contractor's control and notwithstanding CORCO's best efforts to fulfill these obligations. CORCO further asserts that the conditions of Section 63.7(a)(2)(4)(i)-(ii) have been met considering that CORCO's counsel conferred with EPA counsel regarding the contractor cancellation on shortly after the contractor canceled to discuss the possibility of extending the time to perform the ACO ordered provisions after the COVID-19 restrictions and the services supporting the Testing become available. CORCO is also promptly submitting herewith written confirmation of the force majeure reasons for delaying the performance of the Testing and other ACO obligations before the date of the Testing. CORCO has further demonstrated that it has taken all possible measures to avoid the delay of the performance of the ACO obligations associated with Testing as well as its commitment to perform these Testing and to cooperate with EPA to fully comply with all ACO ordered provisions.

Therefore, on behalf of CORCO, we hereby request that EPA grant an extension of time to meet the ordered provisions of Sections E.II., E.III. E.VI., E.VII., E.VIII. and E.X. of the of the ACO. We also request that EPA consider extending the time to comply with the obligation relative to the periodic reporting of Section E.IX. of the ACO in view that all activities associated to the performance of the Testing must necessarily come to a halt until the Order and other COVID-19 restrictions are lifted. According to our calculations, the first of these periodic reports shall be submitted by no later than April 5, 2020.

At this time, CORCO cannot possibly propose a new date for the Testing as it cannot reasonably anticipate when the COVID-19 restrictions will be lifted and how much time will be required for the services discussed above to be available (contractor, hotels, disinfection, etc.). We thus understand that this is a continuing force majeure event, an unprecedented crisis, which is difficult to put an ending date to. Also, the execution of the Testing is contingent on restrictions being lifted not only in Puerto Rico but also for contractors coming from the United States, the sectors supporting business travel and availability of contractors for Testing and disinfection.

Therefore, given this novel and unique situation, we respectfully request that EPA approve an extension of time of thirty (30) days commencing after the lifting of the federal, Commonwealth and COVID-19 restrictions affecting CORCO and/or the contractors for CORCO to comply with the ACO ordered provisions of Sections E.II., E.III. E.VI., E.VII., E.VIII., E.IX. and E.X. A 30-day period is being requested in addition to the time the COVID-restrictions will be lifted in good faith and with the understanding that it may provide CORCO adequate time to make the necessary coordination, preparation, and disinfection for the Testing to be performed.

CORCO also requests that EPA evaluate this request on an urgent basis considering that CORCO remains subject to the ACO ordered provisions until the Agency approves an extension of time or otherwise modifies the ACO and given that, according to our calculations, compliance with these obligations start as early as April 5, 2020.

CORCO wishes to maintain open communication with the Agency to discuss this request and establish the course of action moving forward for the Testing. To those ends, we are available for a call with EPA after the request is evaluated to discuss the particulars and any questions the Agency may have regarding the same.

Best regards and stay safe,

Gretchen

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Delek Logistics Partners, LP
305 N. Washington Ave.
El Dorado, AR 71730

Via Email

June 24, 2020

Amy Salinas
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 6
Office of Regional Counsel
1445 Ross Avenue, Suite 1200
Dallas, TX 75202

Bryant Smalley
Team Leader, Oil and Response Team,
U. S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200
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Charles Maguire
Chief, Water Enforcement Branch
U. S. Environmental Protection Agency, Region 6
ECDW 120 I Elm Street, Suite 500
Dallas, TX 75202

Dara Hall
Assistant Attorney General
State of Arkansas Attorney General
Environmental Division
323 Center Street, Suite 200
Little Rock, Arkansas 72201

RE: Consent Decree - *United States v. Delek Logistics Operating, LLC,* Civ. No. 1: 18-cv - 01040 (Effective November 08, 2019)

Ladies and Gentlemen:

This letter is being sent to in connection with the above-referenced Consent Decree, and is intended to confirm the telephone communications that took place on June 18, 2020 between Bryant Smalley, Team Leader of the Oil and Response Team, USEPA Region 6, and with Lisa Thompson, General Counsel of the Arkansas Department of Environmental Quality. Capitalized terms used in this letter but not defined herein shall have the meaning ascribed to them in the Consent Decree.

Pursuant to paragraphs 15.a and 15.b of the Consent Decree, Delek was to undertake certain confirmatory surface water and sediment sampling within 180 days of the Date of Entry, which would have been by May 6, 2020. For the reasons set forth below, Delek did not undertake the sampling in a timely manner. The purpose of the calls today was to advise EPA and ADEQ of the delay and to assure the agencies that Delek is now expediting the sampling work, at additional cost to Delek, in order to complete the sampling requirement as quickly as possible.

The COVID-19 pandemic, which has resulted in both dramatic and unforeseen economic impacts to the energy sector, was the primary contributing cause of Delek's delay. Delek has been following declarations and protective measures recommended by federal, state, county, and local agencies in order to limit exposure of its work force to the COVID19, as well complying with the various emergency orders issued by the State of Arkansas and surrounding states. In order to protect essential workers of Delek's operations, non-essential workers have largely been telecommuting and working from remote locations. This has limited the number of workers present at operating assets to only those that are considered essential to maintain safe operations as well as limiting the number of workers authorized to travel. The focus of Delek's staff on protecting essential personnel and critical operations led to Delek failing to timely schedule the sampling activities.

In order to minimize the impacts of the delay, Delek has now, at additional cost to it, has expedited the sampling activities and had instructed its contractor to prioritize the handling, analysis and reporting of the results of the confirmatory sampling. Delek believes this "rush order" process will reduce turnaround times such that the results and report required under paragraph 15.e will available within seven (7) days instead of the typical turnaround time of thirty (30) or more days. Delek also believes that this expedited handling will ensure timely submittal of the results and also believes that this delay will not negatively impact the public's health and welfare or the environment.

Delek regrets this delay in undertaking the sampling and requests your forbearance. Delek believes that any such forbearance would be consistent with the spirit of Executive Order 13924, dated May 19, 2020, which directs federal agencies to address the COVID-19 economic emergency by "waiving or providing exemptions from regulations and other requirements that may inhibit economic recovery, consistent with applicable law and with protection of the public health and safety…." The Executive Order also requires such agencies to consider policies of enforcement discretion that "decline enforcement against persons and entities that have attempted in reasonable good faith to comply with applicable regulatory standards, including… with a pre-enforcement ruling."

Please feel free to contact the undersigned by phone at (469) 704-7379 or email at harry.lewis@deleklogistics.com, if you require additional information or wish to discuss this matter further.

Sincerely,

Harry Lewis
Director, EHS
Delek Logistics Partners, LP

U.S. Department of Justice

Environment and Natural Resources Division

AG
90-5-1-1-11308

Environmental Enforcement Section
P.O. Box 7611
Washington, DC 20044

Telephone (202) 514-4091
Facsimile (202) 514-8865
Anna.E.Grace@usdoj.gov

VIA EMAIL

August 10, 2020

LeAnn Johnson Koch
Perkins Coie LLP
700 13th Street NW, Suite 600
Washington D.C. 20005-3960

Re: Consent Decree, *United States, et al. v. Delek Logistics Operating, et al.*, Case No. 1-18-cv-01040

LeAnn,

We have received a letter from Harry Lewis dated June 24, 2020, concerning Delek's failure to comply with requirements of the above-referenced Consent Decree. Although Mr. Lewis did not reference the Decree's force majeure provisions, he cited the COVID-19 pandemic "which has resulted in both dramatic and unforeseen economic impacts to the energy sector" as the "primary contributing cause" of Delek's noncompliance. Harris Letter at 2. We therefore construe the letter as an assertion of force majeure under Paragraphs 40-41 of the Consent Decree. This letter will serve as the initial response on behalf of the United States and the State of Arkansas ("Government Plaintiffs").

As I am sure you are aware, the force majeure provisions require Delek to exercise "best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring and (b) following the potential force majeure, such that the delay and any adverse effects of the delay are minimized." Decree at ¶ 40. Delek's financial inability to perform any obligation under the Decree is not a force majeure event. *Id.*

In order to avail itself of the force majeure provisions under the Decree, Delek must provide notice to EPA and Arkansas within 72 hours of when Delek first knew or should have known that the event might cause a delay. Decree at ¶ 41. Within seven days thereafter, Delek must provide a written explanation and description of the reasons for the delay, among other required information. *Id.* Failure to comply with these requirements precludes Delek from "asserting any claim of force majeure for that event for the period of time of such failure to comply." *Id.*

As Mr. Harris notes, the Decree requires Delek to complete surface water and sediment sampling no later than May 6, 2020. Harris Letter at 2; Decree at ¶ 15. Delek must also submit a

report on this sampling within 30 days of its receipt of the lab report. Decree at ¶ 15(e). The Decree also requires Delek to notify the Government Plaintiffs of any potential or actual violation of any requirement of the Decree. Decree at ¶ 20. Delek must provide such notice within ten business days of the day Delek first becomes aware of the violation. *Id.*

In explaining Delek's noncompliance, Mr. Harris refers to Delek's efforts to follow "declarations and protective measures recommended by federal, state, county, and local agencies," and comply with "various emergency orders issued by the State of Arkansas and surrounding states." Harris Letter at 2. We note that the State of Arkansas issued an order declaring a state of emergency caused by the COVID-19 public health crisis on March 11, 2020.

While Delek may not have known on March 11 that the Arkansas emergency order and other effects of the pandemic would interfere with its compliance, it should have known that it may have. Certainly, Delek should have known of its noncompliance, and the purported reasons for it, by May 6, when it failed to complete the required sampling work by the court-ordered deadline. Delek is thus precluded from asserting force majeure for the period of its untimely notice.

We acknowledge that according to Mr. Harris, as of June 24, 2020, Delek had sought to expedite sampling activities and instructed its contractor to prioritize its analysis. Delek has also recently submitted a report on its sampling activities, dated July 13, 2020, to the United States and Arkansas on or about July 21, 2020. This report is under review by the Government Plaintiffs.

Please note that the Government Plaintiffs reserve all rights under the Decree and applicable law. Please let me know if there are any questions.

Best regards,

/s/ Anna Grace
Anna Grace
Trial Attorney

Cc: Amy Salinas
Christina Baker
Lisa Thompson

From: Kono, Michiko
To: Marvin Chanes
Cc: Arias, Megan
Subject: RE: Mali Server Outage - EPA Information Request
Date: Wednesday, April 8, 2020 12:01:13 PM
Attachments: image001.jpg

Mr. Chanes: Thank you for your email containing additional information. Your request for cancellation of the information request is not granted. However, management approves an extension of 60 more days to submit a complete response.

We believe that an attorney is not necessary for filing a response and that you should be able to do it without one.

Please let us know if you would like to request an additional extension before the end of the aforementioned 60 day period. Also, please contact us if there are additional questions.

My phone number is (404) 562-9558, and I am an attorney assigned to this matter.
Megan Arias' phone number is (404) 562-8968. She is an environmental engineer in the Air Enforcement Branch at EPA Region 4.

Thank you for your time and attention.

From: Marvin Chanes <marvin@pmtdiesel.com>
Sent: Wednesday, April 8, 2020 10:59 AM
To: Kono, Michiko <Kono.Michiko@epa.gov>
Subject: RE: Mali Server Outage - EPA Information Request

Due to (b) (6) [redacted] we are currently under a Stay at Home Order as per Local, State & Federal Orders.
Our lack of ability to process and fulfill orders has forced us shut down our E-commerce websites.
We do not have the ability to access the information to respond to your request.
Additionally, we do not have the financial abilities to retain proper counsel to file this response.

Marvin Chanes

From: Kono, Michiko [mailto:Kono.Michiko@epa.gov]
Sent: Thursday, April 02, 2020 4:30 PM
To: Marvin@pmtdiesel.com
Cc: Arias, Megan; Kono, Michiko
Subject: Mali Server Outage - EPA Information Request

Mr. Chanes: Would you please provide us with additional, detailed information about your ability or inability to respond to the Information Request Letter from EPA? We don't believe we can cancel the Information Request Letter, but we may be able to grant an extension.

We look forward to hearing from you.

From: Marvin Chanes <marvin@pmtdiesel.com>
Sent: Monday, March 30, 2020 10:25 AM
To: Arias, Megan <arias.megan@epa.gov>
Subject: Mali Server Outage

If you responded to this email in thr last 6 days, Please resend.
Our In-Bound Mail Server was down.

From: Marvin Chanes [mailto:marvin@pmtdiesel.com]
Sent: Tuesday, March 24, 2020 2:23 PM
To: 'arias.megan@epa.gov'
Subject: Request for Information March 17, 2020

Megan Arias

Do to the Coronavirus Pandemic, Direct Marketing Online is closed for an unknown period of time.
As per our converstion, yesteday.
We herby request that the EPA cancel this Request for Information.

I await your response via email.

Marvin Chanes
Direct Marketing Online

Virus-free. www.avg.com

From: Chase, Felicia
To: Matthew C Rowan
Cc: Monica Ra o an; oannemitoc @ensoaq.com; M r hy, Eliza eth
Subject: Re: Upcoming (Delayed) MIT
Date: Monday, May 4, 2020 3:48:29 PM
Attachments: image001.png
image002.png
image003.png
image004.png

Hi Matthew
Last we spoke we were advised that you were interested in waiting until June when Inspectors were expected to resume field activities. You may run your Part 1 SAPT unwitnessed this Wednesday. This is the first week our Inspectors are back in the field and thus have a very full schedule for the next 2 weeks. Unfortunately it is not likely that they would be able to squeeze in another this week. It's not a problem I will take this well off the June schedule and look forward to receiving your unwitnessed SAPT with all the necessary documentation. Please send hard copies with wet signatures electronically and via mail.

Monica & JoAnne
Please omit this one.

Thank you. Take care and be safe!
Best,
Felicia Chase
Underground Injection Control Section
Permits Branch
Water Division (WP-16J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

From: Matthew C Rowan <matthew.rowan@dteenergy.com>
Sent: Monday, May 4, 2020 3:38 PM
To: Chase, Felicia <chase.felicia@epa.gov>
Cc: Monica Rakovan <monicarakovan@ensoaq.com>; joannemitock@ensoaq.com <joannemitock@ensoaq.com>; Murphy, Elizabeth <Murphy.Elizabeth@epa.gov>
Subject: RE: Upcoming (Delayed) MIT

Monica

We re scheduled to perform an unwitnessed test this Wednesday which is what we were approved to do back in April is this OK?

Matt

Matthew C Rowan
DTE Gas Company
Manager Reservoir Engineering and Geology
Office (313) 235-1116
Cell (b) (6) [redacted]
matthew.rowan@dteenergy.com

From: Chase, Felicia <chase.felicia@epa.gov>
Sent: Monday, May 4, 2020 4:30 PM
To: Matthew C Rowan <Matthew.Rowan@dteenergy.com>
Cc: Monica Rakovan <monicarakovan@ensoaq.com>; joannemitock@ensoaq.com; Murphy, Elizabeth <Murphy.Elizabeth@epa.gov>
Subject: [EXTERNAL] Upcoming (Delayed) MIT
Importance: High

Good Afternoon Matthew

Please be advised that EPA Inspectors will be reaching out to schedule a date and time for the above and below mentioned.

The Inspectors contact information is below and they are copied above. The Inspectors will reach out to you shortly, prior to your MIT(s) Part 1 due date. If you have any questions specific to the scheduling of your test, please feel free to contact the Inspectors directly.

Monica Rakovan, PhD CPG
Environmental Solutions AQ
513-593-1310 [redacted] [/owa/] [redacted] (cell)
monicarakovan@ensoaq.com

JoAnne Mitock
Environmental Solutions AQ
513-200-7681 [redacted] [/owa/] [redacted] joannemitock@ensoaq.com

The following is your Company s regular active status Class II well or wells due for Part 1 this Fiscal Year 2020

Mich Cons Gas Co (DTE Energy)	MIS25022	MI-147-2D-0018	147 Diet in Community 2	2D	42.78802	-82.5302	48226 TA	PS	CT	4/26/2018	4/26/2020	Standard Annulus Pressure Test (SAPT)

If you have any others questions or concerns beyond scheduling your MIT(s), please do not hesitate to reach out to me. Thank you.

Best,
Felicia Chase
Underground Injection Control Section
Permits Branch
Water Division (WP-16J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

From:	Draper, Seth
To:	Charles Payne
Cc:	McCoin, Shane
Subject:	RE: Extension for new SWPPP under CWA-07-2020-0119
Date:	Thursday, June 18, 2020 9:44:23 AM

Chas,
This is an email confirming the 60 day extension. The new deadline for paragraph 53 is now August 20, 2020.

Please let me know if you have any questions.

Seth Draper
U.S. Environmental Protection Agency
Region 7
Water Enforcement Branch
11201 Renner Blvd, Lenexa, KS 66219
(913) 551-7080

-----Original Message-----
From: Charles Payne <chasmetoo@mac.com>
Sent: Monday, June 15, 2020 5:01 PM
To: Draper, Seth <Draper.Seth@epa.gov>
Cc: Charles Payne <chasmetoo@mac.com>
Subject: Extension for new SWPPP under CWA-07-2020-0119

Mr. Draper,
Elim Industries would like to officially request an extension of 60 days to meet the requirements of the above noted agreement with EPA and Acme Scrap.
Elim Industries has spent extensive time attempting to meet this deadline but cannot due to the following:
* Covid-19 travel restrictions and response timing has made addressing other needs excessive and hard to deal with.
* Elim Industries always spends additional time attempting to ensure collection of all necessary and perceived required documentation thus the three days on-site collecting information for this activity.
* Additional trips away from the office for compliance assistance with other companies has taken time during these passing days
* Not contracted for these activities until 05/20/2020 with an activation date of the same as noted in the attached copy of the contracts.
* Dealing with other locations including one here in Abilene and several other new locations out in East Texas
* Ongoing activities for just under 90 total reports over each quarter including monthlies performed in the DFW area
* Elim Industries wishes to present a proper and complete document without the need for EAP to ask for rework or additionals

The reasoning for the extra time is to provide Elim Industries to ensure all i's have been doted and all t's crossed properly.

Please let me know if this is acceptable to EPA.

Thank you for your time, attention, and consideration to this request.

Respectfully Submitted,
Chas Payne, Elim Industries
36 Bay Water Dr.
Abilene, TX 79605
877-456-8877 t.f.
325/795-8905 - ph.
325/795-0045 - fx.

(b) (6) [redacted] - cl.

From:	Modigliani, Justine
To:	Cristen Solor
Cc:	Jeff Apolito; Scott Unkel; Robert McGehee; Matt Lapp; Matt Lapp
Subject:	FW: Response to RFI, CWA-IR-19-018 for US Concrete
Date:	Wednesday, April 1, 2020 9:37:00 PM
Attachments:	image001.png image002.png image003.png image004.png image005.png image006.png image007.png AprilResponseCV.docx

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Hello Mr. Solor,

I hope this email finds you in good health. We have reviewed your request for an extension and given the current circumstances, we are supportive of extending the deadline as requested, until August 1, 2020, with the implementation of the short term measures described below.

Please keep us informed should any other questions or concerns arise.

Thank you,

Justine Modigliani, Chief
CWA Compliance Section

From: Cristen Solor <csolor@complianceplusservices.com>
Sent: Wednesday, April 1, 2020 9:38 AM
To: Mceathron, Kimberly <McEathron.Kimberly@epa.gov>; Jeff Apolito <japolito@us-concrete.com>; Scott Unkel <sunckle@us-concrete.com>; Robert McGehee <rmcgehee@us-concrete.com>
Cc: Matt Lapp <mlapp@complianceplusservices.com>
Subject: RE: Response to RFI, CWA-IR-19-018 for US Concrete

Good morning Kim,
I apologize for the delay in response. I wanted to make sure I had the most up to date information.

1. The facilities are still operating, although in certain cases at reduced capacity and hours due to decreased demand.
2. In most cases, the regular staff are present on-site, although there is periodic reduction based on staffing needs.
3. Regulatory staff in New York City have not responded to any correspondence for at least 2 weeks. New York State staff have not responded to submitted information on 3/6/2020, although it is difficult to determine whether this is just normal delays or a result of reduced staffing /hours.
4. Specific staff on each site are trained on stormwater requirements and those staff are still working. Short term measures at the College Point (31st Ave., Queens) and Smith Street Plant (381 Hamilton Ave., Brooklyn) primarily consist of working with the water disposal contractor to remove process wastewater as required. Additionally, at Smith Street, there were improvements completed to the trench drain system that have increased stormwater and process water capture. At the Chelsea

Road plant, there is no site discharge due to the berm that exists around the discharge point. Part of the planned site improvements will be involve re-opening a pathway for discharge.

Please let me know if you have any other questions. Stay well.
Cristen

From: Mceathron, Kimberly <McEathron.Kimberly@epa.gov>
Sent: Monday, March 30, 2020 7:27 AM
To: Cristen Solor <csolor@complianceplusservices.com>; Jeff Apolito <japolito@us-concrete.com>; Scott Unkel <sunckle@us-concrete.com>; Robert McGehee <rmcgehee@us-concrete.com>
Cc: Matt Lapp <mlapp@complianceplusservices.com>
Subject: RE: Response to RFI, CWA-IR-19-018 for US Concrete

Hi Cristen,

We've reviewed your letter and were hoping you could provide some more details regarding the current operations at these facilities. Understandably, there are a lot of uncertainties right now but we were hoping you could answer some general questions:

1. Are the facilities active?
2. Are there some staff present on-site?
3. How have regulatory staff schedules been affected?
4. If the facilities are active, and there are some staff present on-site, have the staff on-site been trained on stormwater requirements and what short-term measures are they implementing to prevent unauthorized discharges of process wastewater?

Thanks and take care,

Kim

_____

Kimberly McEathron
Water Compliance Branch
United States Environmental Protection Agency, Region 2
290 Broadway, New York, NY 10007
Phone: 212-637-4228

From: Cristen Solor <csolor@complianceplusservices.com>
Sent: Thursday, March 26, 2020 2:05 PM
To: Mceathron, Kimberly <McEathron.Kimberly@epa.gov>; Jeff Apolito <japolito@us-concrete.com>; Scott Unkel <sunckle@us-concrete.com>; Robert McGehee <rmcgehee@us-concrete.com>
Cc: Matt Lapp <mlapp@complianceplusservices.com>
Subject: Response to RFI, CWA-IR-19-018 for US Concrete

Hi Ms. McEathron,

Please see the attached request for extension for resolution of issues related to the US EPA RFI to US Concrete. Thank you for your consideration of this matter. Please let me know if you have any questions or concerns.
Cristen

Cristen L. Solor, PWS
Senior Project Manager

www.complianceplusservices.com

240 GIBRALTAR RD, SUITE 100
HORSHAM, PA 19044
USA

215.734.1414 609.752.4001

CSolor@CompliancePlusServices.com

Geosyntec consultants

6770 South Washington Avenue, Suite 3
Titusville, Florida 32780
PH 321.269.5880
FAX 321.269.5813
www.geosyntec.com

21 April 2020

James H. Smith
Corrective Action Specialist
RCRA Corrective Action and Permitting Section
RCRA Cleanup and Brownfields Branch
United States Environmental Protection Agency
Region 4
61 Forsyth Street
Atlanta, Georgia 30303

Subject: Monitoring Well Network Maintenance Completion Documentation and Semi-Annual Sampling Cancelation Notification
Precision Fabricating & Cleaning Company, Inc.
EPA ID No. FLD 981 471 121

Dear Mr. Smith,

On behalf of Precision Fabricating & Cleaning Company, Inc. (PFC), Geosyntec Consultants, Inc. (Geosyntec) is submitting this correspondence to the United States Environmental Protection Agency (EPA) to provide an update regarding monitoring well maintenance status and to request cancelation of the April 2020 Semi-Annual Sampling event.

Per EPA's 30 October 2019 correspondence, EPA requested that PFC conduct an inspection and service offsite monitoring wells such that they be in a condition to be sampled at any time. The monitoring well inspection was conducted on 20 November 2019 by Geosyntec and PFC personnel. In response, the following items have been conducted: (i) monitoring well pads have been cleared of overlying grass and/or soil; (ii) monitoring well caps have been replaced with low-profile, locking, expandable well caps that will ensure a secure (requires a well key to unlock) and proper seal, where applicable; (iii) monitoring well MW-24C has been rehabilitated and is usable for groundwater sampling (iv) monitoring wells MNA-4A and MNA-4B have been redeveloped to remove sediment/sand buildup within the screened interval (following removal of buildup, it appears that the total depth of the wells may be misreported [shallower than reported], which would be cause for the discrepancy; a more thorough investigation in this will be conducted prior to the next sampling event); and (v) the top of casing for monitoring well MNA-4A has been repaired. PFC will continue to maintain the offsite monitoring well network to ensure the wells are in usable condition for proper and representative groundwater sampling needs.

PFC's operations at 3975 East Avenue are deemed essential critical infrastructure workers, particularly in connection with their support of essential work underway at Kennedy Space Center and Oak Ridge National Laboratories. In an effort to protect that workforce, PFC is canceling the April 2020 semi-annual groundwater sampling event. Groundwater contaminant concentrations have been reduced by well over 98% throughout the dissolved groundwater plume as a result of the PFC's treatment remedy over the past twenty (20) years. As a result, cancellation of the April 2020 semi-annual groundwater sampling event is consistent with EPA's recently released *Interim Guidance on Site Field Work Decisions Due to Impacts of COVID-19* (10 April 2020) when balancing the risk to the health and safety of PFC employees where the task canceled does not create any imminent and substantial endangerment and would not provide near-term reduction in human health risk.[1] PFC will proceed with the full annual groundwater sampling event in October 2020, assuming COVID-19 concerns have been mitigated by that time The October 2020 Annual Sampling Event will include monitoring wells that would have been sampled during the April 2020 event plus the additional monitoring wells included in the annual sampling event, as presented in the January 2020 Remedial Measures Annual Report.

We appreciate your continued cooperation and oversight of this project. Please do not hesitate to contact me if you have any further questions or concerns.

Sincerely,

James J. Langenbach, P.E.(FL), BCEE
Principal Engineer/Project Director

Joseph K. Bartlett III, P.E.(FL)
Project Engineer/Project Manager

cc: Jason Shye – PFC
Jamal Naas – PFC
William Pence – Baker Hostetler
Robert Cook – Florida Department of Environmental Protection (FDEP)
Ashanti McBride, Esq. – FDEP OGC RCRA Program Attorney
Bill Weinischke, Esq. USDOJ
Joan Redleaf Durbin, Esq. – EPA

[1] Wright, Peter and Bodine, Susan (EPA). *Interim Guidance on Site Field Work Decisions Due to Impacts of COVID-19*. 10 April 2020

From: Sullivan, Jennifer
To: Marshalonis, Dino
Cc: Jencius, Morgan
Subject: COVID DEVIATION REQUEST: Hecla Greens Creek Mining Company
Date: Wednesday, April 15, 2020 4:21:31 PM

Hi Dino,

Not sure if this is specifically a deviation to consider since it's not really a request but more like and acknowledgement, but letting you know anyway for consideration in logging.

Facility: Hecla Greens Creek Mining Company

Deviation: In response to a RCRA Inspection, Facility efforts to clean-up the lead and zinc around the concentrate storage building have been delayed due to facility's 14-day quarantine period and restriction to allow for Contractor access.

Delay: Work completion postponed to mid-July.

V/r,
Jen

From: Chu, Xiangyu <Chu.Xiangyu@epa.gov>
Sent: Tuesday, April 14, 2020 4:36 PM
To: Sullivan, Jennifer <Sullivan.Jennifer.A@epa.gov>
Subject: FW: Hecla Greens Creek Mining Company RCRA Inspection

Hi Jen,

See below email regarding building repair and cleanup work delay due to COVID-19 on this site. Please inform Dino if you determine this is relevant for him to track. Thanks

Xiangyu

From: Christopher Wallace <CWallace@hecla-mining.com>
Sent: Monday, April 06, 2020 8:56 PM
To: Chu, Xiangyu <Chu.Xiangyu@epa.gov>
Subject: RE: Hecla Greens Creek Mining Company RCRA Inspection

Dear Mr. Chu,

I appreciate your inquiry into the status of the cleanup of escaped concentrate from around the Concentrate Storage Building.

In October 2020, Hecla Greens Creek Mining Company (HGCMC) hand shoveled the concentrates into containers. In all, approximately 1.5 yd^3 of concentrates were recovered and sent to the mill for

processing. HGCMC is planning to remove additional soils from around the building to ensure that the concentrates were removed. However, as of date, this work has not been conducted. Before removing the residual material, the pathways through which concentrates escape need sealing. Sealing will be accomplished with expanding spray foam and a spray-on rubber membrane. Contracting for this work has been completed, and the contractor's equipment is due to arrive on site shortly. Unfortunately, with the COVID-19 pandemic, HGCMC has implemented a 14-day quarantine period and has limited space for outside contractors. With the difficulties we are all facing, I'm recommending to the general manager that sealing the building be postponed. Currently, there is too much uncertainty to give a definitive answer when this work is to be completed. However, I will review the situation again in a couple of weeks.

Once the building is sealed, a strip of soil 1-foot deep x 2-feet wide will be excavated from around the perimeter of the building. HGCMC maintains an on-site laboratory that will be used for in house confirmation sampling. Additional samples will be sent to an outside laboratory for confirmation. After receiving satisfactory confirmation results, the excavated areas will be backed filled with fresh, clean rock. The material excavated will be TCLP, and depending on the results will be disposed of as a hazardous waste or not. I would estimate the excavation, confirmation testing, and backfilling will take about a month. Without the uncertainty introduced from the COVID-19 pandemic, I predict that the work could be finished by late May or early June. With my recommendation to the general manager to postpone, I would expect completion potentially by mid-July.

Please let me know if you have any further questions.

Stay safe, stay healthy, and help stop the spread.

Regards,

Christopher Wallace
Permitting and Environmental Compliance Coordinator
Hecla Greens Creek Mining Company
P.O. Box 32199
Juneau, AK 99803-2199
Office: 907-790-8473
Mobile: (b) (6) [redacted]
cwallace@hecla-mining.com

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From: Chu, Xiangyu <Chu.Xiangyu@epa.gov>
Sent: Thursday, April 2, 2020 12:13 PM
To: Christopher Wallace <CWallace@hecla-mining.com>
Subject: FW: Hecla Greens Creek Mining Company RCRA Inspection

Dear Mr. Wallace,

Thank you for your response letter. I have a few fellow-up question regarding the lead release from the Concentrate Storage Building. Can you provide me with an update regarding your efforts to cleanup the lead and zinc around the concentrate storage building. Also, what actions have been taken to prevent further release of the concentrate products to the soil around the building. It will be helpful to me if you can provide a timeline of completed actions or future workplan schedule in your reply to this email. Please let me know if you have any question.

Regards,

Xiangyu Chu
Region 10
Enforcement and Compliance Assurance Division
EPA Region 10
206-553-2859

From: Christopher Wallace <CWallace@hecla-mining.com>
Sent: Wednesday, February 19, 2020 11:28 AM
To: Williams, CherylB <Williams.CherylB@epa.gov>
Subject: Hecla Greens Creek Mining Company RCRA Inspection

Dear Ms. William,

Hecla Greens Creek Mining Company received the RCRA compliance inspection report sent via email on 25 November 2019. With the attached letter, we are providing supplemental information to clarify certain aspects of the EPA's inspection report, as well as provide the EPA with an update regarding actions taken to address findings in the inspection report.

Sincerely,

Christopher Wallace
Permitting and Environmental Compliance Coordinator
Hecla Greens Creek Mining Company
P.O. Box 32199
Juneau, AK 99803-2199
Office: 907-790-8473
Mobile: (b) (6)
cwallace@hecla-mining.com

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THE STATE of ALASKA
GOVERNOR MIKE DUNLEAVY

Department of Environmental Conservation
DIVISION OF AIR QUALITY
Air Compliance Program
410 Willoughby Avenue, Suite 303
PO Box 111800
Juneau, Alaska, 99811-1800
Main: 907.465.5100
Toll free: 866.241.2805
Fax: 907.465.5129
www.dec.alaska.gov

RE: COVID-19 caused Non-Compliance Concerns, No Action Assurance Memorandum

To Whom It May Concern,

Where the National Emergency and Federal, State, or municipal laws, regulations, or recommended guidance for at-risk individuals are still an evolving situation, the Alaska Department of Environmental Conservation (DEC or the Department) remains committed to protecting human health and the environment. In certain instances, such as, but not limited to state-only required stack testing or visible emissions observation certification requirements, the Department recognizes that guidance on protecting an individual's health or well-being may conflict with requirements for permit compliance.

Where authority to issue waivers for Non-Compliance with Federally enforceable conditions or stack testing requirements for rules under 40 CFR 60 and 63 remain subject to EPA approval, DEC retains certain discretionary authority with respect to enforcement and will consider such force majeure or other National Emergencies in the context of issued guidance for reasonable precautions to prevent the spread of COVID-19 or in protection of at-risk individuals.

The Department understands that certain permit conditions may take a necessary back seat to guidance on COVID-19. Until July 1, 2020 – please, continue to seek compliance with all permit conditions to the extent that they do not cause an increased risk or contravene guidance on COVID-19. The Department issues this as a No Action Assurance Memorandum on enforcement for qualifying events where compliance with permit requirements would contravene guidance on COVID-19.

As an example, where travel for certification requirements is not recommended, continue to observe requirements for monitoring, even if you do so after a certification has lapsed. Submit as required under your applicable permit condition all non-compliance events with proper DEC Notification forms for Permit Deviations. Include with your notification any cause or guidance pertinent to the non-compliance with certification under 18 AAC 50.205.

DEC is communicating with Alaska Environmental Resources (AER) on providing an additional stack test certification course in Anchorage around the middle of June 2020 in the event that there is a need to train and certify individuals unable to attend other locations as regularly scheduled. For questions on scheduling and currently offered trainings or scheduling needs to comply with the Municipality of Anchorage's limit on mass gatherings, please contact Shawna Popovici with AER at (907) 230-4325 or shawna.popovici@aer-control.com. In case of further restrictions/delays – we will continue to examine contingency options.

For stack testing requirements, the Department has limited authority to issue waivers for delayed test requirements. Depending on the underlying requirement, approval from the U.S. Environmental Protection Agency may be required. The Department is communicating with the EPA to ensure we remain up to date with current guidance or exemption criteria. We intend to be no more stringent than EPA, but – to date, cannot offer exemptions, extensions, or assurances for enforcement discretion where we lack authority to do so. We intend to use what discretion we have for credibly qualifying circumstances and will follow the lead of EPA, however – this process may take some time and extend well past the date of required compliance.

In the event that guidance on travel restrictions, social distancing, quarantine or isolation make compliance by July 1, 2020 difficult, the Department may extend this No Action Assurance Memorandum for qualifying events documented under the required ADEC Notification or Permit Deviation process.

For other questions, please feel free to reach out to us through your regularly assigned inspector. If you have questions about who that is, please see our Department website at http://dec.alaska.gov/air/air-compliance/contacts/ or contact your regional office compliance supervisor:

Tom Turner – Anchorage	Moses Coss – Fairbanks	Denise Wiltse - Juneau
Tom.turner@alaska.gov	moses.coss@alaska.gov	denise.wiltse@alaska.gov
907.269.8123	907.451.2163	907.465.5278

Protection of public health and the environment remain the Department's focus during this period of national and state emergency. As the situation continues to evolve, the Department may issue additional guidance to address further questions or situations that arise related to air quality requirements.

Sincerely,

Jason Olds
Air Quality, Compliance
Program Manager

From:	Pavitt, John
To:	Marshalonis, Dino
Cc:	Glass, Geoffrey
Subject:	COVID DEVIATION REQUEST FW: Hilcorp Alaska, LLC - Performance Testing Non-Compliance, Grayling Platform
Date:	Friday, May 1, 2020 6:58:30 PM
Attachments:	20200501 HAK_Grayling EU 4a.pdf

Dino,

Please see the attached request from Hilcorp AK LLC, rec'd today. I believe this is a follow up to a previous request to R10 and the State.

Sincerely,

John Pavitt, Air Compliance Inspector
Air and Toxics Enforcement Section
U.S. EPA Region 10
Alaska Operations Office
Anchorage, AK
Phone: (907) 271-3688

From: Julieanna Potter <jupotter@hilcorp.com>
Sent: Friday, May 01, 2020 2:35 PM
To: Glass, Geoffrey <GLASS.GEOFFREY@EPA.GOV>; Pavitt, John <Pavitt.John@epa.gov>; Olds, Jason R (DEC) <jason.olds@alaska.gov>; Turner, Thomas E (DEC) <tom.turner@alaska.gov>
Cc: Dave Wilkins <dwilkins@hilcorp.com>
Subject: Hilcorp Alaska, LLC - Performance Testing Non-Compliance, Grayling Platform

Good Afternoon,

Please see the attached courtesy letter to formally document information, action, and conditions listed in Section IA of the *Implications for EPA's Enforcement and Compliance Assurance Program Memorandum* issued on March 25, 2020 for a delayed initial performance test under 40 CFR 60, Subpart GG at the Grayling Platform. A hard copy of the attached letter has been mailed to the EPA Region 10 office in Seattle, Washington.

Please let me know if you have any questions or concerns.

Thank you,
Julieanna

Julieanna Potter (Orczewska)
Environmental Specialist – Air Quality | Hilcorp Alaska, LLC
3800 Centerpoint Dr., Ste. 1400 | Anchorage, AK 99503
Office: 907.777.8444 | Cell: (b) (6) [redacted] | jupotter@hilcorp.com

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Hilcorp Alaska, LLC

Post Office Box 244027
Anchorage, AK 99524-4027

3800 Centerpoint Drive
Suite 1400
Anchorage, AK 99503

Phone: 907/777-8300
Fax: 907/777-8301

May 1, 2020

U.S. Environmental Protection Agency
Region 10 (OCE-101)
1200 Sixth Avenue, Suite 155, 15-H13
Seattle, Washington 98101

Subject: Hilcorp Alaska, LLC – Performance Testing Non-Compliance, Grayling Platform

To Whom It May Concern:

Hilcorp Alaska, LLC (Hilcorp) submits this courtesy letter to formally document information, action, and conditions listed in Section IA of the *Implications for EPA's Enforcement and Compliance Assurance Program Memorandum* (Memo) issued on March 25, 2020 for the following noncompliance:

Facility	Grayling Platform
Operating Permit	AQ0069TVP03
Emission Unit	4a – Solar Centaur T-4500
Regulation	40 CFR 60, Subpart GG
Non-Compliance	Delayed initial performance test under 40 CFR 60, Subpart GG
Compliance Due Date	4/11/2020

Additional information related to this noncompliance is outlined below to correspond with each line item listed in Section IA of the Memo.

1. *Entities should make every effort to comply with their environmental compliance obligations.*

   Hilcorp was impacted by the Coronavirus Disease 2019 (COVID-19) National Emergency. It was prepared to meet all regulatory deadlines prior to the declaration. Hilcorp contracted a source testing company to complete the performance test, submitted the Source Test Plan on Mach 6, 2020, and was working to finalize logistical considerations at the time of the declaration.

2. *If compliance is not reasonably practicable, facilities with environmental compliance obligations should:*
   a. *Act responsibly under the circumstance in order to minimize the effects and duration of any noncompliance caused by COVID19;*

Hilcorp has proactively implemented multiple precautionary strategies in response to the global outbreak to limit the potential spread of the COVID-19 to personnel at our remote facilities.

b. *Identify the specific nature and dates of the noncompliance;*

The initial performance test for Emission Unit (EU) 4a under 40 Code of Federal regulations (CFR) 60, Subpart GG, was required to be completed by April 11, 2020 on the Grayling Platform located in Cook Inlet, Alaska. The initial performance test has been delayed beyond the compliance due date as a result of the COVID-19 pandemic.

c. *Identify how COVID-19 was the cause of the noncompliance, and the decisions and actions taken in response, including best efforts to comply and steps taken to come into compliance at the earliest opportunity;*

Performance testing at Hilcorp facilities is completed by a third-party source testing company as part of a Cook Inlet Source testing campaign across multiple facilities. Trained third-party source testers travel between Anchorage, Kenai, and Nikiski, Alaska before boarding a helicopter and traveling to each remote platform located in Cook Inlet. This activity would introduce non-routine personnel to each Hilcorp facility for a period of 2-7 days to conduct emissions testing before moving to the next facility. The activity could potentially provide a pathway to transport COVID-19 to many different Hilcorp facilities in a brief amount of time.

The federal government, State of Alaska Governor's Office, and the Municipality of Anchorage issued several health mandates, emergency orders, and recommendations to reduce the potential spread of COVID-19 among our Alaskan communities. Specifically, Health Mandate 012, issued on March 28, 2020, restricted the travel of individuals between communities. As indicated above, performance testing on the Grayling Platform would at minimum, require the source testers to travel between three communities, before reaching the facility.

To ensure the safety of Hilcorp's personnel and its contractors, Hilcorp restricted all non-essential travel to our remote facilities during the National Emergency. The travel of source testers to Hilcorp's remote platforms would contravene local and federal guidance on COVID-19 and could present an undue risk to the testers and our facility personnel.

d. *Return to compliance as soon as possible; and*

Hilcorp has a source testing company under contract to complete the performance test and has submitted the Source Test Plan. Hilcorp has continued to work with the source testing company to finalize preparatory plans and will be ready to initiate regulatory notification and testing as soon as it is safe to do so.

e. *Document the information, action, or condition specified in a. through d.*

Supporting documentation for responses to a. through d. are maintained in Hilcorp files.

As discussed in the March 16, 2020 letter submitted to EPA and the Alaska Department of Environmental Conservation (ADEC), the complete Hilcorp 2020 Emissions Testing program includes testing in accordance with New Source Performance Standards (NSPS), National Emissions Standards for Hazardous Air Pollutants (NESHAP), and State of Alaska Title V Permits. Hilcorp anticipates additional noncompliances for delayed performance testing under NSPS, NESHAP, and Alaska Title V Permits as the COVID-19 National Emergency continues to unfold. In accordance with ADEC's *No Action Assurance Memorandum* issued on March 20, 2020, Hilcorp will submit Permit Deviations as required under each facility's Title V Permit, if applicable. A copy of the Grayling Platform Permit Deviation for EU 4a is provided in Attachment A.

A copy of the March 16, 2020 letter, including a complete list of Hilcorp 2020 Emissions Testing requirements is provided in Attachment B.

Please contact Julieanna Potter at (907) 777-8444 or jupotter@hilcorp.com with any questions or concerns.

Based on information and belief formed after reasonable inquiry, I certify that the statements and information in and attached to this document are true, accurate, and complete.

Sincerely,

David S. Wilkins
Senior Vice President
Hilcorp Alaska, LLC

Attachments:

Attachment A – Grayling Platform Permit Deviation
Attachment B - Waiver Request Letter Dated March 16, 2020

cc: Geoffrey Glass, EPA
John Pavitt, EPA
Jason Olds, ADEC
Tom Turner, ADEC
Julieanna Potter, Hilcorp

ATTACHMENT A

Grayling Platform Permit Deviation

Section 13. ADEC Notification Form[10]

Grayling Platform
Stationary Source (Facility) Name

AQ0069TVP03
Air Quality Permit Number

Hilcorp Alaska, LLC
Company Name

When did you discover the Excess Emissions/Permit Deviation?
Date: *4* / *11* / *2020* Time: *10* : *30*

When did the event/deviation occur?
Begin Date: *04* / *11* / *2020* Time: *00* : *00* (please use 24hr clock)
End Date: ____/____/____ Time: _____:_____(please use 24hr clock)

What was the duration of the event/deviation?____:_____(hrs:min) or _____ days
(total # of hrs, min, or days, if intermittent then include only the duration of the actual emissions/deviation)

Reason for Notification: (please check only 1 box and go to the corresponding section)

☐ Excess Emissions - Complete Section 1 and Certify.

☒ Deviation from Permit Condition - Complete Section 2 and Certify

☐ Deviations from COBC, CO, or Settlement Agreement - Complete Section 2 and Certify

Section 1. Excess Emissions

(a) Was the exceedance: ☐ Intermittent or ☐ Continuous

(b) Cause of Event (Check one that applies):

☐ Start Up /Shut Down
☐ Control Equipment Failure
☐ Bad fuel/coal/gas
☐ Natural Cause (weather/earthquake/flood)
☐ Scheduled Maintenance/Equipment Adjustment
☐ Upset Condition
☐ Other_____

(c) Description
Describe briefly, what happened and the cause. Include the parameters/operating conditions exceeded, limits, monitoring data and exceedance.

(d) Emissions Units Involved:
Identify the emission unit involved in the event, using the same identification number and name as in the permit. Identify each emission standard potentially exceeded during the event and the exceedance.

Unit ID	Emission Unit Name	Permit Condition Exceeded/Limit/Potential Exceedance

[10]Revised as of August 20, 2008

(e) Type of Incident (Please Cheek only one).

☐ Opacity _____% ☐ Venting _____(gas/scf) ☐ Control Equipment Down

☐ Fugitive Emissions ☐ Emission Limit Exceeded ☐ Other:

☐ Marine Vessel Opacity ☐ Flaring

(f) Unavoidable Emissions:

Do you intend to assert that these excess emissions were unavoidable? ☐ Yes ☐ No

Do you intend to assert the affirmative defense of 18 AAC 50.235? ☐ Yes ☐ No

Certify Report (go to end of form)

Section 2 Permit Deviations

(a) Permit Deviation Type (check one only box, corresponding with the section in the permit).

☐ Source Specific

☐ Failure to monitor/report

☒ General Source Test/Monitoring Requirements

☐ Recordkeeping/Reporting/Compliance Certification

☐ Standard Conditions Not Included in Permit

☐ Generally Applicable Requirements

☐ Reporting/Monitoring for Diesel Engines

☐ Record Keeping Failure

☐ Insignificant Source

☐ Facility Wide

☐ Other Section_____ (title of section and section number of your permit).

(b) Emission Unit Involved.

Identify the emission unit involved in the event, using the same identification number and name as in the permit. List the corresponding permit conditions and the deviation.

Unit ID	Emission Unit Name	Permit Condition/Potential Deviation
4a	Solar Centaur T4500	**Condition 21:** NSPS Subpart A Performance (Source)Tests – The Permittee shall conduct source tests according to 40 C.F.R. 60.8 and Section 6 on any affected facility as such times as may be required by EPA, and shall provide the Department and EPA with a written report of the results of the source test.

(c) Description of Potential Deviation:
Describe briefly what happened and the cause. Include the parameters/operating conditions and the potential deviation.

The initial performance test for Emission Unit (EU) 4a under 40 Code of Federal regulations (CFR) 60, Subpart GG, was required to be completed by April 11, 2020 on the Grayling Platform. The initial performance test has been delayed beyond the compliance due date as a result of the Coronavirus Disease 2019 (COVID-19) National Emergency. Hilcorp was prepared to meet all regulatory deadlines prior to the declaration. Hilcorp contracted a source testing company to complete the performance test, submitted the Source Test Plan on Mach 6, 2020, and was working to finalize logistical considerations at the time of the declaration.

(d) Corrective Actions:
Describe actions taken to correct the deviation or potential deviation and to prevent future recurrence.

Hilcorp has a source testing company under contract to complete the performance test and has submitted the Source Test Plan. Hilcorp has continued to work with the source testing company to finalize preparatory plans and will be ready to initiate regulatory notification and testing as soon as it is safe to do so.

Certification:

Based on information and belief formed after reasonable inquiry, I certify that the statements and information in and attached to this document are true, accurate, and complete.

Printed Name: David S. Wilkins Title: Senior Vice President Date: 5/1/2020

Signature: Phone Number: (907) 777-8300

NOTE: This document must be certified in accordance with 18 AAC 50.345(j)

To Submit this Report:

1. Fax to: 907-451-2187;

Or

2. Email to: DEC.AQ.Airreports@alaska.gov - if faxed or emailed,

Or

3. Mail to: ADEC
Air Permits Program
610 University Avenue
Fairbanks, AK 99709-3643

Or

4. Phone Notification: 907-451-5173
Phone notifications require a written follow-up report.

Or

5. Submission of information contained in this report can be made electronically at the following website:

https://myalaska.state.ak.us/deca/air/airtoolsweb/

if submitted online, report must be submitted by an authorized E-Signer for the Stationary Source.

ATTACHMENT B

Waiver Request Letter Dated March 16, 2020

Hilcorp Alaska, LLC

Post Office Box 244027
Anchorage, AK 99524-4027

3800 Centerpoint Drive
Suite 1400
Anchorage, AK 99503

Phone: 907/777-8300
Fax: 907/777-8301

March 16, 2020

U.S. Environmental Protection Agency
Region 10 (OCE-101)
1200 Sixth Avenue, Suite 155, 15-H13
Seattle, Washington 98101

Alaska Department of Environmental Conservation
Air Permits Program
610 University Ave.
Fairbanks, Alaska 99709

Subject: Hilcorp Alaska, LLC - 2020 Emissions Testing Waiver Request

To Whom It May Concern:

In light of the global outbreak of the Coronavirus Disease 2019 (COVID-19) National Emergency, Hilcorp Alaska, LLC (Hilcorp) is proactively implementing multiple precautionary strategies to limit the potential spread of COVID-19 to our remote facilities.

Hilcorp has implemented social distancing procedures for our remote facilities including the restriction of all non-essential travel. A review of upcoming projects identified the 2020 Emissions Testing program as an activity that would introduce non-routine personnel and potentially provide a pathway to transport COVID-19 to many different Hilcorp facilities in a brief amount of time. Due to limited qualified emissions testers located in Alaska, Hilcorp often must rely on companies located outside of the state to conduct emissions testing. Qualified third-party emissions testers travel each Hilcorp facility for a period of 2-7 days to conduct emissions testing before moving to the next facility. The Hilcorp 2020 Emissions Testing program would require emissions testers to travel between twelve remote Alaskan facilities.

Hilcorp respectfully requests a waiver to delay emissions testing deadlines for Alaska facilities by 6 months. Hilcorp emission units and regulatory deadlines scheduled to occur as part of the Hilcorp 2020 Emissions Testing program are provided as an Attachment. As indicated in the attached table, Hilcorp emissions testing is required under New Source Performance Standards (NSPS) and State

of Alaska Title V Permits. Waivers for initial testing under NSPS Subpart GG, subsequent testing under Subpart JJJJ, KKKK, and ZZZZ, and subsequent testing under Best Available Control Technologies (BACT) are subject to approval by the U.S. Environmental Protection Agency (EPA). Waivers for subsequent testing under NSPS Subpart GG for compliance demonstrations under State of Alaska Title V Permits are subject to approval by the Alaska Department of Environmental Conservation (ADEC). We appreciate your thoughtful consideration as we attempt to navigate these unique and unsettling circumstances.

Please contact Julieanna Potter at (907) 777-8444 or jupotter@hilcorp.com with any questions or concerns.

Based on information and belief formed after reasonable inquiry, I certify that the statements and information in and attached to this document are true, accurate, and complete.

Sincerely,

David S. Wilkins
Senior Vice President
Hilcorp Alaska, LLC

Attachment: Hilcorp Alaska, LLC 2020 Emissions Testing Program

cc: Krishna Viswanathan, EPA
Kelly McFadden, EPA
Geoffrey Glass, EPA
Jim Plosay, ADEC
Jason Olds, ADEC
Tom Turner, ADEC
Moses Coss, ADEC
Julieanna Potter, Hilcorp

Hilcorp Alaska, LLC 2020 Emissions Testing Program

Region	Location	Permit Number	EU ID	Category	Equipment	Regulation	Testing Group	Test Due Date	Requested Due Date
Cook Inlet Offshore	Anna Platform	AQ0062TVP03, Rev. 1	3	Turbine	Solar Saturn T-1400	40 CFR 60, Subpart GG[a]	C1[b]	6/4/2020	12/4/2020
	Anna Platform	AQ0062TVP03, Rev. 1	4	Turbine	Solar Saturn T-1400	40 CFR 60, Subpart GG[a]	C1	6/4/2020	12/4/2020
	Anna Platform	AQ0062TVP03, Rev. 1	5	Turbine	MK-II	40 CFR 60, Subpart GG[a]	C1	6/4/2020	12/4/2020
	Granite Point Platform	AQ0066TVP03, Rev. 1	2	Turbine	Solar Saturn T-1200	40 CFR 60, Subpart GG[a]	C2	6/4/2020	12/4/2020
	Granite Point Platform	AQ0066TVP03, Rev. 1	3	Turbine	Solar Saturn T-1200	40 CFR 60, Subpart GG[a]	C2[b]	6/4/2020	12/4/2020
	Grayling Platform	AQ0069TVP03	4a	Turbine	Solar Centaur T-4500	40 CFR 60, Subpart GG[c]	C4[b]	4/11/2020	10/11/2020
	Dolly Varden Platform	AQ0060TVP03, Rev. 2	12	Turbine	Solar Centaur T-4500	40 CFR 60, Subpart GG[a]	C4	6/3/2020	12/3/2020
	Grayling Platform	AQ0069TVP03	1	Turbine	Solar Centaur T-4500	40 CFR 60, Subpart GG[a]	C4	6/3/2020	12/3/2020
	Grayling Platform	AQ0069TVP03	3	Turbine	Solar Centaur T-4500	40 CFR 60, Subpart GG[a]	C4	6/3/2020	12/3/2020
	Monopod Platform	AQ0067TVP03	1	Turbine	Solar Centaur T-4500	40 CFR 60, Subpart GG[a]	C4	6/3/2020	12/3/2020
	Monopod Platform	AQ0067TVP03	2	Turbine	Solar Centaur T-4500	40 CFR 60, Subpart GG[a]	C4	6/3/2020	12/3/2020
	MGS Platform C	AQ0085TVP03	18	Turbine	Solar Centaur 40	40 CFR 60, Subpart GG[a]	C5[b]	6/3/2020	12/3/2020
	MGS Platform C	AQ0085TVP03	19	Turbine	Solar Centaur 40	40 CFR 60, Subpart GG[a]	C5	6/3/2020	12/3/2020
	Tyonek Platform	AQ0091TVP02, Rev. 1	2	Turbine	Solar Centaur 40 T-4700	40 CFR 60, Subpart GG[a]	C6[b]	4/24/2020	10/24/2020
	Tyonek Platform	AQ0091TVP02, Rev. 1	3	Turbine	Solar Taurus 60 T-7300S	40 CFR 60, Subpart GG/BACT[a]	C7[b]	4/25/2020	10/25/2020
	Tyonek Platform	AQ0091TVP02, Rev. 1	4	Turbine	Solar Taurus 60 T-7300S	40 CFR 60, Subpart GG/BACT[a]	C7	4/25/2020	10/25/2020
	Granite Point Platform	AQ0066TVP03, Rev. 1	1	Turbine	Solar Centaur Model C50	40 CFR 60, Subpart GG[d]	-	6/30/2020	12/30/2020
	Steelhead Platform	AQ0009TVP03	4	Turbine	Solar Taurus 70-10302S	40 CFR 60, Subpart KKKK[e]	-	6/16/2020	12/16/2020
	Tyonek Platform	AQ0091TVP02, Rev. 1	8	RICE	Waukesha Model L-7042G	40 CFR 63, Subpart ZZZZ[e]	-	12/31/2020	12/31/2020
	Tyonek Platform	AQ0091TVP02, Rev. 1	9	RICE	Waukesha Model L-7042G	40 CFR 63, Subpart ZZZZ[e]	-	12/31/2020	12/31/2020
Kenai Peninsula	Beluga River Unit	AQ0942TVP01, Rev. 2	1	Turbine	Solar Taurus 60-7800S	40 CFR 60, Subpart KKKK[e]	-	6/23/2020	12/23/2020
	Beluga River Unit	AQ0942TVP01, Rev. 2	2	RICE	Waukesha Model H25GLD	40 CFR 63, Subpart ZZZZ[e]	-	12/31/2020	12/31/2020
	Beluga River Unit	AQ0942TVP01, Rev. 2	37[f]	RICE	Waukesha Model F3514GSI	40 CFR 60, Subpart JJJJ[e]	-	5/15/2020	11/15/2020
	Beaver Creek Production Facility	AQ0070TVP03, Rev. 1	1b	RICE	Waukesha Model F3514GSI	40 CFR 60, Subpart JJJJ[e]	-	8/9/2020	2/9/2021
	Kenai Gas Field Pad 14-6	AQ0094TVP03, Rev. 1	11	Turbine	Solar Centaur 4700	40 CFR 60, Subpart GG[a]	K1	6/7/2020	12/7/2020
	Kenai Gas Field Pad 14-6	AQ0094TVP03, Rev. 1	12	Turbine	Solar Centaur 4700	40 CFR 60, Subpart GG[a]	K1[b]	6/7/2020	12/7/2020
	Kenai Gas Field Pad 34-31	AQ0087TVP03	1	Turbine	Allison 501-KC	40 CFR 60, Subpart GG[a]	K2	6/6/2020	12/6/2020
	Kenai Gas Field Pad 34-31	AQ0087TVP03	2	Turbine	Allison 501-KC	40 CFR 60, Subpart GG[a]	K2[b]	6/6/2020	12/6/2020
	Kenai Nikiski Pipeline (KNPL) Junction	N/A	N/A	RICE	Caterpillar G3516B, Compressor C	40 CFR 60, Subpart JJJJ[e]	-	12/13/2020	12/13/2020
Alaskan North Slope	Milne Point Unit	AQ0200TVP02, Rev. 4	1	Turbine	GE LM-2500	40 CFR 60, Subpart GG/RATA[a]	N3	10/22/2020	4/22/2021
	Milne Point Unit	AQ0200TVP02, Rev. 4	2	Turbine	GE LM-2500	40 CFR 60, Subpart GG/RATA[a]	N3[b]	10/22/2020	4/22/2021

Notes:

[a] Subsequent test required by the permit.
[b] Denotes emissions unit planned for representative testing in 2020 pending agency approval.
[c] Initial test required under NSPS Subpart GG.
[d] Test requested by ADEC via letter on December 19, 2019.
[e] Subsequent test required under NSPS.
[f] Beluga River EU ID 37 includes 7 compressor engines. Each engine is required to be tested.

Note: *The March 16, 2020 letter inadvertently omitted a subsequent performance test for EU ID 1 located on the Steelhead Platform required by AQ0009TVP03, due 5/7/2020.*

From:	Pavitt, John
To:	Marshalonis, Dino
Subject:	COVID DEVIATION REQUEST - FW: Hilcorp Alaska, LLC Emissions Testing Waiver Request
Date:	Monday, May 4, 2020 5:55:11 PM
Attachments:	20200316 HAK Emissions Testing Waiver Request.pdf COVID_19 NAAM.PDF

Dino, attached is the 1st deviation request from Hilcorp on 3/23/20. It is related to upcoming air emission testing deadlines.

Sorry if you didn't already receive this.

Sincerely,

John Pavitt, Air Compliance Inspector
Air and Toxics Enforcement Section
U.S. EPA Region 10
Alaska Operations Office
Anchorage, AK
Phone: (907) 271-3688

From: Julieanna Potter <jupotter@hilcorp.com>
Sent: Monday, March 23, 2020 3:52 PM
To: Pavitt, John <Pavitt.John@epa.gov>
Subject: FW: Hilcorp Alaska, LLC Emissions Testing Waiver Request

John-

Thank you for your call this afternoon. As discussed, attached is the letter submitted last week regarding Hilcorp Alaska's source testing obligations in 2020. I have also attached a copy of the No Action Assurance memo issued by ADEC last week.

Please feel free to give me a call if you have any questions or concerns.
Best,
Julieanna

Julieanna Potter (Orczewska)
Environmental Specialist – Air Quality | Hilcorp Alaska, LLC
3800 Centerpoint Dr., Ste. 1400 | Anchorage, AK 99503
Office: 907.777.8444 | Cell: (b) (6) [redacted] | jupotter@hilcorp.com

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From: Julieanna Potter
Sent: Tuesday, March 17, 2020 8:57 AM

To: 'Viswanathan, Krishna' <Viswanathan.Krishna@epa.gov>; 'McFadden, Kelly' <McFadden.Kelly@epa.gov>; 'Glass, Geoffrey' <GLASS.GEOFFREY@EPA.GOV>; 'Plosay, James R (DEC' <jim.plosay@alaska.gov>; 'Olds, Jason R (DEC' <jason.olds@alaska.gov>; 'Turner, Thomas E (DEC' <tom.turner@alaska.gov>; 'Coss, Pablo M (DEC' <moses.coss@alaska.gov>; 'dec.aq.airreports@alaska.gov'
Cc: Dave Wilkins <dwilkins@hilcorp.com>
Subject: Hilcorp Alaska, LLC Emissions Testing Waiver Request

Good Morning,

In light of the global outbreak of the Coronavirus, Hilcorp Alaska, LLC (Hilcorp) is proactively implementing multiple precautionary strategies to limit the potential spread of COVID-19 to our remote facilities. Hilcorp respectfully requests a waiver to delay emissions testing deadlines for Alaska facilities by 6 months. Hard copies of the attached waiver request letter have been mailed to EPA, Region 10 and ADEC-Fairbanks.

Please feel free to contact me with any questions or concerns.

Thank you,
Julieanna

Julieanna Potter (Orczewska)
Environmental Specialist – Air Quality | Hilcorp Alaska, LLC
3800 Centerpoint Dr., Ste. 1400 | Anchorage, AK 99503
Office: 907.777.8444 | Cell: (b) (6) [redacted] | jupotter@hilcorp.com

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
ACCOUNTING OPERATIONS CINCINNATI OH 45268

May 1, 2020

Re: Request to establish an installment repayment plan for CWA-02-2020-3304**:**

In response to your request for a payment plan for the above referenced bill, please find attached a proposed payment schedule. The interest rate is established by the US Treasury and currently is at 1 percent per annum.

The first payment is due 06/1/2020. Subsequent payments are due every month until the debt is paid in full. Once signed, this payment schedule is binding. If the payments are not received according to the schedule, the full remaining balance of the debt will be due immediately. Additional interest, handling, and penalty charges will subsequently accrue on any unpaid balance and the balance in full will be referred to the US Treasury for collection action.

If you accept the terms of this repayment plan, please sign/date this letter and return to:

US EPA Cincinnati Finance Center
Attn: Milton Wise
26 W MLK Dr
MS002-NWD
Cincinnati, OH 45268

or

Email: wise.milton@epa.gov

If you have any questions, please contact Milton Wise at 513-569-7013 or wise.milton@epa.gov

Sincerely,

Milton Wise
EPA Cincinnati Finance
(513) 569-7013

BILL NUMBERS: CWA-02-2020-3304**:**

I agree to make an initial payment of **$183.33** on or before 06/1/2020 to the United States Environmental Protection Agency on the above owed debt. I agree to make monthly payments in the amount of **$183.33** thereafter until the debt is paid in full. Please note that the last payment is $**183.39**.

Payment	Payment Amount Due	Due Date
1	$183.33	06/1/2020
2	$183.33	07/1/2020
3	$183.33	08/1/2020
4	$183.33	09/1/2020
5	$183.33	10/1/2020
6	$183.33	11/1/2020
7	$183.33	12/1/2020
8	$183.33	01/1/2021
9	$183.33	02/1/2021
10	$183.33	03/1/2021
11	$183.33	04/1/2021
12	$183.33	05/1/2021
13	$183.33	06/1/2021
14	$183.33	07/1/2021
15	$183.33	08/1/2021
16	$183.33	09/1/2021
17	$183.33	10/1/2021
18	$183.39	11/1/2021

Total principal: $3,300 Total interest: $0.00

Please remember to include CWA-02-2020-3304 on all correspondence.

Payments can be made by any of the three below options:

To mail payment:	For wire transfer:	Online Payment:
US EPA Fines and Penalties Cincinnati Finance Center PO Box 979077 St. Louis, MO 63197-9000	Federal Reserve Bank of NY ABA 021030004 Acct: 68010727 SWIFT address: FRNYUS33 33 Liberty Street New York, NY 10045	By check or any major credit card www.pay.gov Search "**SFO 1.1**" Open form & complete

In recognition and acceptance of the above payment plan for CWA-02-2020-3304:

_____ _____

Mr. Robert A. Simpson, President Date
A Hyatt Ball Co., Ltd
1 School Street
Fort Edward, NY 12828

_____ _____

Greg Luebbering Date
Cincinnati Finance Center Director

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

April 6, 2020

Mr. Robert A. Simpson, President
A. Hyatt Ball Co., Ltd.
1 School Street
Fort Edward, NY 12828

Re: Administrative Compliance Order
Docket No. CWA-02-2020-3005
A. Hyatt Ball Co., Ltd.

Dear Mr. Simpson:

This is in response to your letter dated March 20, 2020 to EPA Region 2, received by this office via e-mail on March 27, 2020, which was requesting an extension to comply with the Ordered Provisions in the Administrative Compliance Order (Docket Number CWA-02-2020-3005) (2019 Order # 2) that EPA issued to A. Hyatt Ball Co., Ltd. on October 29, 2019. This letter is requesting an extension of 4 months, to no later than July 20, 2020, to submit the Periodic Reports that were due in December 2018, June 2019 and December 2019. In this letter, it is stated that a certification letter was attached to it to comply with Ordered Provision #3 in the 2019 Order #2.

This office reviewed your submittal and determined that the Certification letter was not attached to the above mentioned letter and that it is required to be submitted to EPA in order to comply with Ordered Provision # 3 in the 2019 Order #2. This office also reviewed your request for an extension, to no later than July 20, 2020, to submit the Periodic Reports due December 2018, June 2019 and December 2019 and has granted you the requested extension.

A. Hyatt Ball Co., Ltd. needs to notify this office, in writing, if it has not performed any sampling and analysis of its process wastewater since July 2018 for the regulated parameters found at 40 C.F.R. § 414.111 and provide the reason why such sampling and analysis were not performed.

If have any questions regarding this letter or any other matter, feel free to contact Ms. Alia Roufaeal of my staff at (212) 637-3864 or at roufaeal.alia@epa.gov.

Sincerely,

Doughlas McKenna, Chief
Water Compliance Branch

cc: Bryan Sherman, Project Manager, HRP Associates, Inc. via e-mail

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Robert K. Miller
Director, Public Works Department
City of Jackson
200 S. President Street
P.O. Box 17
Jackson, Mississippi 39205-0017
rmiller@jacksonms.gov

Re: United States v. City of Jackson, MS, Civil Action No. 3:12-cv-790 TSL-JMR
COVID-19 Related *Force Majeure* Notification

Dear Mr. Miller:

The U.S. Environmental Protection Agency, U.S. Department of Justice, and Mississippi Department of Environmental Quality (MDEQ) are in receipt of the City of Jackson's (City) March 24, 2020 letter issued pursuant to Section XI of the above-referenced Consent Decree (CD). The letter provides notice of a *force majeure* event that may cause a delay or impediment to performance in complying with certain provisions of the CD. The EPA has consulted with DOJ and MDEQ in preparing this response.

As you may be aware, on March 26, 2020, the EPA issued a temporary policy, "COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program" (Policy), that addresses the EPA's enforcement of environmental legal obligations during this time. As provided in Section I.C of the Policy, claims of an inability to comply with the terms of a judicial consent decree are properly handled pursuant to the consent decree's *force majeure* provisions. Enclosed with this letter is a copy of the Policy.

The City's March 24, 2020 notice asserts a *force majeure* event based on the current COVID-19 public health emergency. Paragraph 73 of the CD requires the City to "exercise best efforts to fulfill" the obligations of the CD, including the use of best efforts to anticipate any potential force majeure event. Further, these efforts should "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."

More specifically, the City's letter asserts an actual *force majeure* event based on the current COVID-19 public health emergency's impacts that have caused the City to suspend inspections of food service establishments (FSEs) under the City's Fats, Oils and Grease Control Program. The City explains that this suspension was necessary due to restricted access and closures of FSEs throughout the City and to protect the health of the public, restaurant owners/employees and the City's FSE inspectors. The City does assert that while the delay in performance of FSE inspections will not contribute to an endangerment to public health, welfare, and the environment, continued performance of the inspections

could contribute to an endangerment to public health and welfare. The City also asserts in its letter that because COVID-19 and its effects are unpredictable and outside of its control, the City cannot currently address the additional items required under Paragraphs 73 and 74 of the CD, including the anticipated duration of the delay and steps that could be taken to minimize the delay.

Based on the current circumstances surrounding the COVID-19 public health emergency, the EPA agrees that the City may temporarily suspend inspections of FSEs for a period of 60 days from the date of this letter. During this 60-day period, the City should periodically update the EPA and MDEQ regarding the status of the its ability to restart such inspections and to address its obligation to provide the additional information required under Paragraphs 73 and 74 of the CD. The City must also respond to any SSOs caused by FOG in accordance with the approved Sewer Overflow Response Plan (SORP), which is enforceable under the CD.

The City's March 24, 2020 letter also provides notice of a potential *force majeure* event due to concerns that the current COVID-19 public health emergency may cause a delay or impediment to performance in complying with certain other provisions of the CD, yet the City indicates that it is still evaluating those other potential impacts. Because of the uncertainty surrounding the COVID-19 public health emergency, we understand that the City may not have complete information at this time, but it should provide additional information in accordance with the CD as more information becomes available.

Because the City's current notice remains speculative as to the impact COVID-19 may have on other CD obligations, the EPA must defer judgment on this aspect of the City's *force majeure* claims at this time. The decision to defer judgment on the City's claims should not be construed as acceptance of any potential noncompliance covered by the CD. For a *force majeure* claim to be ripe for decision, the City should, in accordance with Paragraph 74 of the CD, provide the following: an explanation and description of 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; the rationale for attributing such delay to a *force majeure* event; and a statement as to whether such event may cause or contribute to an endangerment to public health, welfare, or the environment. Paragraph 74 also requires the City to include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure event.

In addition to compliance with the express provisions of the CD, the City is encouraged to maintain an open and continuing dialogue with the EPA, DOJ, and MDEQ. This will serve to protect human health and the environment, minimize potential misunderstandings, and facilitate timely and appropriate decision-making as this situation unfolds. We suggest at a minimum that the parties discuss these ongoing issues during our regularly scheduled monthly conference calls. Should you have any questions regarding the above or any aspect of this matter, please do not hesitate to contact Mr. Brad Ammons of my staff at (404) 562-9769 or via email at ammons.brad@epa.gov.

Sincerely,

CAROL KEMKER Digitally signed by CAROL KEMKER
Date: 2020.06.03 12:14:52 -04'00'

Carol L. Kemker
Director
Enforcement and Compliance Assurance Division

Enclosure

cc: Ms. Susan Richardson
Kilpatrick, Townsend and Stockton

Ms. Michelle Clark
Mississippi Department of Environmental Quality

Ms. Diane Schober
Mississippi Department of Environmental Quality

Ms. Mita Ghosh
Office of Water Legal Support

JOAQUIN MANUFACTURING
FABRICATORS/ENGINEERS/CONTRACTORS

6900 Elm Street Commerce City, Co. 80022 Ph: 303-286-7060 Fax: 303-286-7067

June 23, 2020

Response Requested:
Yes: ☑ No: ☐

EPA Region 8
1595 Wynkoop Street
Denver, CO 80202

Attention: Mr. Matt Castelli

Reference: Consent Agreement dated 6/17/20

Subject: 90 Day Payment Period

Dear Mr. Castelli,

Joaquin Manufacturing Corporation (JQMC) agrees to pay $13,600 within 90 days of the effective date of the consent agreement. Consistent with item #29 of the consent agreement my certified statement is below:

I certify under penalty of law that COVID-19 negatively impacted the financial health of JQMC. On 3/22/20 Colorado Executive Order D 2020 013 directed employers to reduce their in-person work forces by 50% and to stagger work schedules to reduce proximity of workers. JQMC complied with this order and staggered our shifts between and day and a night shift. This force majeure event resulted in delays on projects, decreased productivity because of reassignment of manpower, learning curve, crew size inefficiency, dilution of supervision at night, and the logistics of new working hours. We also incurred unanticipated costs due to the intensity and level of cleaning to prevent the spread of the disease. In late May we experienced increased absenteeism, and ultimately had a positive COVID-19 case that required us to significantly reduce our work and have all our employees tested before they were able to return to work. JQMC covered the unanticipated costs of all the testing to ensure we could go back to work as quickly as possible.

The information contained in this submittal is to the best of my knowledge and belief, true, accurate, and complete. I am authorized and empowered to act on behalf of JQMC.

Please let me know if you need additional information about COVID-19 negatively impacting our business, and confirm we have the 90 days to pay out the penalty.

Sincerely,
JoaQuin Manufacturing Corporation

Wayne M. Fee

Wayne M. Fee
President

From:	Noles, Jordan
To:	Dressler, Jason
Subject:	RE: Request for Extension on Kentucky"s Five Year Update of the RMP - Deadline: 4//4/2020
Date:	Tuesday, March 24, 2020 2:38:00 PM

Jason,

I spoke with Mr. Harris. He was asking if there is any kind of extension that can be had in case he can't submit his RMP by April 4th. He says he should be able to, but he is two states away from the actual facility and they are very strict with no traveling right now. He said he is going to try and meet with employees at the facility via Skype. He just wanted to have the information in case he misses the deadline. I told him I would reach back out to him once I got more clarification.

Thanks,

Jordan Noles
404.562.9105

From: Dressler, Jason <Dressler.Jason@epa.gov>
Sent: Tuesday, March 24, 2020 1:28 PM
To: Noles, Jordan <Noles.Jordan@epa.gov>
Subject: FW: Request for Extension on Kentucky's Five Year Update of the RMP - Deadline: 4//4/2020

Jordan,

Please contact Mr. Harris and find out more about his request and why he thinks an extension is necessary.

Thanks,

Jason

From: Lovett, Queen <Lovett.Queen@epa.gov>
Sent: Monday, March 23, 2020 4:59 PM
To: Dressler, Jason <Dressler.Jason@epa.gov>
Cc: Bell, Mary A. <Bell.Marya@epa.gov>
Subject: Request for Extension on Kentucky's Five Year Update of the RMP - Deadline: 4//4/2020

Jason,

Mr. Bradley Harris contacted EPA today, March 23rd, at 1:30 p.m., regarding a request for an extension on Kentucky's Five Year update of the Risk Management Plan. Please note, Mr. Harris can be reached at telephone number: (662) 402-0708, or via email at, Bradley.harris@pinnacleag.com. If you are not the POC to respond, please forward this message.

Thanks for any assistance you can provide.

Queen Lovett
U.S. EPA-Region 4
61 Forsyth Street, SW, Suite 9T25
Atlanta, Georgia 30303
Telephone Number: (404) 562-8319
Email: Lovett.queen@epa.gov
3/23/2020

From:	Grandinetti, Robert
To:	Marshalonis, Dino
Subject:	DEVIATION REQUEST: King County Consent Decree
Date:	Tuesday, April 7, 2020 3:14:14 PM
Attachments:	KC-WTD_Notification_PotentialForceMajeureEvent-Coronovirus_040720.pdf

There is no request for relief that King County is asking, this is merely them notifying us of a possible need for relief.

Basically this is a notice of a possible Force Majeure Event due to the Covid-19. EPA has responded acknowledging receipt of it, and we are waiting to see if HQ provides any more specifics on how to respond further, or if we need to respond further.

Rob Grandinetti
CWA Enforcement Specialist
EPA Region 10
Phone: 509-376-3748

From: Oughton, Marla <Marla.Oughton@kingcounty.gov>
Sent: Tuesday, April 07, 2020 11:49 AM
To: laura.fricke@ecy.wa.gov; tom.mariani@usdoj.gov; Grandinetti, Robert <Grandinetti.Robert@epa.gov>; RonaldL@ATG.WA.GOV; Kowalski, Edward <Kowalski.Edward@epa.gov>; Wright, Kevin <Kevin.Wright@kingcounty.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; shawn.mckone@ecy.wa.gov
Cc: Isaacson, Mark <Mark.Isaacson@kingcounty.gov>; Bromley, Verna <Verna.Bromley@kingcounty.gov>; Waddle, Robert <Robert.Waddle@kingcounty.gov>; Taylor, Lisa <Lisa.Taylor@kingcounty.gov>; Mandel, Eric <Eric.Mandel@kingcounty.gov>; Lafer, Jeff <Jeff.Lafer@kingcounty.gov>; Meyer, Betty <betty.meyer@seattle.gov>
Subject: Notification of Potential Force Majeure Event - COVID-19

Sir/Madam:
The attached subject correspondence is being sent on behalf of Wastewater Treatment Division Director Mark Isaacson. A hard copy will follow via USPS. Please contact Mark at 206-477-4601 or Mark.Isaacson@kingcounty.gov with any questions.

Marla Rivas Oughton | Assistant to the Division Director | Wastewater Treatment Division
201 S Jackson St, Seattle, WA 98104 | MS: KSC-NR-0501 | D 206-477-4435 | F 206-684-1741

King County
Department of Natural Resources and Parks
Wastewater Treatment Division
King Street Center, KSC-NR-0500
201 South Jackson Street
Seattle, WA 98104-3855

April 7, 2020

Laura Fricke
Municipal Unit Supervisor
Washington State Department of Ecology
Northwest Regional Office, Water Quality Program
3190 160th Ave. SE
Bellevue, WA 98008

Tom Mariani
Chief, Environmental Enforcement Section
Environmental and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044

Robert Grandinetti
NPDES Compliance
U.S. Environmental Protection Agency, Region 10
Office of Compliance and Enforcement
309 Bradley Blvd., Suite 115
Richland, WA 99352

Ronald Lavigne
Attorney General of Washington
Ecology Division
P.O. Box 40117
Olympia, WA 98504

Edward Kowalski
Director, Office of Compliance and Enforcement
U.S. Environmental Protection Agency, Region 10
1200 Sixth Ave., Suite 900
Seattle, WA 98101

Kevin Wright
Chief of the Civil Division
King County Prosecuting Attorney's Office
King County Courthouse
516 Third Ave., Room W400
Seattle, WA 98104

Mark Pollins
Director, Water Enforcement Division
Office of Civil Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Mail Code: 2243-A
Washington, D.C. 20460

Shawn McKone
Municipal Facility Manager
Washington State Department of Ecology
Northwest Regional Office, Water Quality Program
3190 160th Ave. SE
Bellevue, WA 98008

Dear Sir/Madam:

RE: <u>Notification of Potential Force Majeure Event (#8) for Consent Decree and NPDES Permit Compliance due to COVID-19 and Emergency Response Actions</u>

At this time, King County Wastewater Treatment Division (WTD) is not requesting a specific extension of any obligation or milestone specified in the Consent Decree. Furthermore, WTD is not aware of, nor do we currently anticipate delays or effects of the COVID-19 pandemic to cause or contribute to an endangerment to public health or welfare, or the environment. All projects are moving forward as planned, and contractors have been notified to revise project specific Health and Safety Plans (HASP) to include COVID-19 pandemic response measures. This letter provides written notification of potential disruptions to WTD as a result of the unprecedented effects of the COVID-19 pandemic.

WTD submits this letter in accordance with Section XI, paragraph 73 of the Consent Decree (Case 2:13-cv-00677-JCC) between King County (County), the United States Environmental Protection Agency (EPA), and the State of Washington Department of Ecology (Ecology), and the related Agreed Non-Material Consent Decree Modification for the Ship Canal Water Quality Project (Document 7, filed on October 25, 2016). Additionally, WTD submits this letter in response to guidance recently provided by EPA[1] and Ecology[2] that encourage regulated entities to document the types of disruptions that the COVID-19 pandemic has caused for operations. Operations potentially affected by the COVID-19 situation include the Combined Sewer Overflow (CSO) control program and five wastewater treatment plants under individual National Pollutant Discharge Elimination System (NPDES) permits (West Point, South Plant, Brightwater, Vashon Island, and Carnation).

WTD specifically is reporting the potential for a force majeure event to occur in association with the COVID-19 pandemic which is attributable to causes beyond the control of the County, and which may impact the ability to fully meet the obligations of the Consent Decree despite best efforts to fulfill its obligations. The following WTD capital construction projects under the Consent Decree have potential to be affected by the COVID-19 outbreak. Each of these construction projects are being properly managed, were on schedule prior to the COVID-19 outbreak, but could be impacted by the outbreak in a variety of ways.

- Georgetown Wet Weather Treatment Station (GWWTS): The Flatiron West construction firm, WTD's contractor for the treatment plant portion of the GWWTS construction project, provided written notice that although it has not experienced any actual delays, it believes the COVID-19 outbreak has the potential to impact their labor and supply chains.

- Georgetown Wet Weather Treatment Station (GWWTS): The James W. Fowler Co, WTD's contractor for the conveyance portion of the GWWTS construction project, provided written notice that although it has not experienced any actual delays, it believes the COVID-19 outbreak has the potential to impact its labor and material supplies.

- Ship Canal Water Quality Project (SCWQP): Seattle Public Utilities (SPU) is the lead agency on this joint project with King County and is responsible for construction, SPU received a written notification from Lane Construction Corporation (Lane) - the contractor responsible for the largest single portion of the project, the tunnel construction - about potential COVID-19 effects. Lane indicates that, although it has not experienced any actual delays and is not currently requesting an adjustment in the project schedule, it believes the COVID-19 outbreak has the potential to impact Lane's operations in a variety of ways, including staff and labor shortages, subcontractor impacts, delayed material orders or shipments, price and labor cost escalations, and other impacts.

---

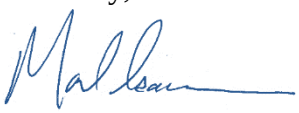
[1] March 26, 2020 Memorandum [Susan Parker-Bodine, Assistant Administrator for Enforcement and Compliance Assurance]-COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program
[2] Ecology – "COVID-19 Regulatory Flexibility" website information at https://ecology.wa.gov/About-us/Get-to-know-us/Coronavirus-Updates/Regulatory-flexibility (accessed March 27, 2020)

The extent and duration of the COVID-19 outbreak and the impacts on WTD operations cannot be forecast at this time. Under King County's management directives, and consistent with applicable local public health, state, and federal mandates, WTD is currently implementing work practices which focus on providing continuity of operations, essential functions, and reducing or suspending non-essential functions. However, additional potentially impacted projects or operations from the COVID-19 situation may be identified over time.

Finally, the County and WTD's operations staff and management team appreciate EPA and Ecology leadership and guidance relating to essential wastewater services during the COVID-19 crisis. We believe coordination and communication regarding the circumstances of the COVID-19 effects to our program will be important for compliance assurance processes under our Consent Decree and NPDES permits, and for our private sector contractors in their ability to manage and prioritize the safety of their staff and construction activities. As indicated and requested by EPA and Ecology in guidance for the COVID-19 response, WTD will continue to monitor, record, and document the conditions and circumstances on our staff and contractors that may result in delays or compliance situations for our operations.

Please contact me at (206) 477-4601 or Mark.Isaacson@kingcounty.gov with any questions or for additional information.

Sincerely,



Mark Isaacson
Division Director

Exhibits:

- Exhibit A – Flatiron West notification to King County
- Exhibit B – James Fowler Co. notification to King County
- Exhibit C – Lane Construction Co. notification to Seattle Public Utilities

cc: Verna Bromley, Senior Deputy Prosecuting Attorney, King County Prosecuting Attorney's Office
Robert Waddle, Wastewater Operations Manager, Wastewater Treatment Division (WTD), Department of Natural Resources and Parks (DNRP)
Lisa Taylor, PMP, Project Planning and Delivery (PPD) Section Manager, WTD, DNRP
Eric Mandel, CSO Program Coordinator/Capital Project Manager IV, PPD, WTD, DNRP
Jeff Lafer, NPDES Permit Administrator, Environmental and Community Services Section, WTD, DNRP
Betty Meyer, PE, Wastewater Regulatory Compliance Manager, City of Seattle, Seattle Public Utilities

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EXHIBIT A

FLATIRON

Flatiron West
1400 Talbot Rd S, Suite 500
Renton, WA 98055
www.flatironcorp.com

March 18, 2020 FSL-226

Chris Mack
King County – Wastewater Treatment Division
6521 5th Avenue South
Seattle, WA 98108

RE: Notice of Potential Impact of COVID-19 on the Georgetown Wet Weather Treatment Station
Project: Georgetown Wet Weather Treatment Station – King County #C01025C17

Dear Ms. Mack,

This letter constitutes notice of potential impact of the COVID-19 on the Project.

As you are aware, COVID-19 is having severe impacts throughout the world. The World Health Organization (WHO) has declared COVID-19 a pandemic. Many countries, industries and businesses had already implemented and are implementing strict measures to restrict or reduce transmission of the virus, including broad restrictions on people, travel and manufacturing. Similar disease control and prevention measures have and will continue to be implemented in other countries as the virus continues to spread. In short, COVID-19 has had and will continue to have a profound impact on global and local workforces and the supply of goods and services.

As the situation is developing daily, Flatiron considers it appropriate to provide this early notification that we expect that the Project will be impacted by the virus and its effects. In particular, we note that the COVID-19 event is likely to impact our labor and materials supply chains. The scope and extent of the impacts cannot be predicted at this time due to the continually evolving nature of the COVID-19 event.

We look forward to all parties' cooperation in respect of this matter, and we trust that all parties will take steps to prioritize the health and safety of all Project personnel in the interests of the overall success of the Project, while balancing the interests of the greater public good.

Finally, please note that Flatiron reserves all rights pursuant to Contract C01025C17 and at law with respect to this matter.

We will keep you apprised as this situation develops and more information becomes known.

FLATIRON

Flatiron West
1400 Talbot Rd S, Suite 500
Renton, WA 98055
www.flatironcorp.com

If there are any questions or concerns, please contact the undersigned.

Sincerely,

Virgil Curtis
Project Manager

Cc:
Issue 196

James W. Fowler Co.
General Contractors

EXHIBIT B

March 27, 2020 JSL-151-RCO-054

Chris Mack
Project Representative
King County
Wastewater Treatment Division

Georgetown WWTS - Conveyance Project; Contract C01071C17
RE: NOI - RCO 054

Dear Chris,

In accordance with specification 00700-5.1A, James W. Fowler Co. is issuing the fallowing Notice of Intent to Submit a Request for Change Order. This notice of intent is in regard to the COVID 19 Coronavirus Pandemic and the potential impacts to JWF and our subcontractors including but not limited to project shutdowns, slowdowns, or delays in material acquisition. The federal government and the state of Washington have issued shut down and shelter in place orders. These orders may or may not directly affect this project, though difficulties in acquiring materials, supplies and labor are likely. At this time it is not possible to predict the cost and schedule impact this pandemic will inflict. JWF and our subcontractors will do everything in our powers to limit the aforementioned impacts.

Regards,

Will Yoho
James W. Fowler Co.

TEL 503 **623-5373** ● FAX 503 **623-9117** ● PO Box 489, 12775 Westview Drive ● Dallas, OR 97338 ● **www.jwfowler.com**

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EXHIBIT C

LANE

March 18, 2020

LANE-LTR NOCOV

Mr. Roger Mitchell, PE, CCM, CEng, FICE
SCWQP Supervising Resident Engineer
700 Fifth Avenue
Seattle, WA 98124-4018

VIA: Email

Re: Notice of Potential Impacts Related to Coronavirus (COVID-19) on SCWQP – Tunnel Storage project (the "Project")

Dear Roger,

The Lane Construction Corporation ("Lane") provides this notice of potential time and cost impacts to the Project because of the ongoing novel Coronavirus (COVID-19) outbreak.

On March 11, 2020, the World Health Organization declared COVID-19 a global pandemic. According to the Center for Disease Control, COVID-19 represents a Public Health Emergency. On March 13, 2020, the President of the United States declared the outbreak a national emergency. As COVID-19 spreads throughout our communities and the world, we continue to see additional governmental actions and declarations, including increased quarantines, event cancellations, crowd size restrictions, and widespread travel and import bans. The ongoing effects of COVID-19 grow by the day and have the potential to impact Lane's operations in a variety of ways, including staff and labor shortages, subcontractor impacts, delayed material orders or shipments, price and labor cost escalations, or other impacts.

Although the impacts and spread of COVID-19 are still evolving and changing, Lane is providing this notice of potential time and cost impacts to ensure we are complying with the Contract Documents as we continue to evaluate the impacts of this event. Because the COVID-19 outbreak and its effects are outside of our control, Lane considers any potential cost and time impacts caused by this unforeseeable event to be recoverable under the Contract Documents. As such, please be advised that to the extent the COVID-19 outbreak impacts the Project's operations, Lane will exercise its rights to secure additional contract time and money under all applicable provisions of the Contract Documents, including any provisions for Force Majeure, changed conditions, suspensions, delays, or altered work.

Lane is actively monitoring this ongoing situation and will continue to keep you advised of any impacts on this Project. In the meantime, Lane will continue to partner with the City of Seattle on this Project and will work with the City of Seattle to mitigate the impacts of this pandemic while keeping the safety, health, and wellbeing of all involved at the forefront.

The Lane Construction Corporation
90 Fieldstone Court
Cheshire, CT 06410
T 203-439-2900 203-237-4260
www.laneconstruct.com
An Equal Opportunity Employer M / F / D / V

Lane submits this notice without prejudice to its rights to assert any claims, cumulative impacts, or damages related to or arising from any impacts to the Project. Lane further reserves all rights, claims, damages, and remedies available to it under the Contract Documents and applicable law.

Please do not hesitate to contact Lane should you have any questions or wish to discuss this further.

Sincerely,

The Lane Construction Corporation

Chris Lamb
Project Manager

Cc: Daniele Nebbia- Director of Tunneling – Lane

Tea-Hee Han – Contract Manager- Lane

Allen Wiggins- Assistant General Counsel – Lane

Christopher Ciancanelli- Corporate Attorney- Lane

Knoxville Utilities Board

March 27, 2020

VIA CERTIFIED MAIL

Daniel J. O'Lone
Acting Chief, Clean Water Enforcement Branch
Water Protection Division
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303

Re: Notification of Potential Force Majeure – Notice of Impacts Related to Coronavirus (COVID-19) on Composite Correction Plan Phase 2 Project: U.S., et al. v. Knoxville Utilities Board (KUB): Case Nos. 3:04-CV-568 and 3:03-CV-497; DOJ Case No. 90-5-1-1-08186

Dear Mr. O'Lone:

In conformance with the *Force Majeure* provision in Section XI.D. of the Knoxville Utilities Board (KUB) Consent Decree, this letter provides notification of the potential for delay or prevention of performance with the objective of the Consent Decree to achieve the goal of elimination of Sanitary Sewer Overflows, as related to the Composite Correction Plan (CCP) under Section VII.D.1.(a)(v) of the Consent Decree. The potential for delay or prevention of meeting the EPA required completion date of June 2021 may occur despite KUB's best efforts due to the ongoing novel Coronavirus (COVID-19) pandemic.

On March 19, 2020, KUB received the enclosed Force Majeure letters from its contractor and major equipment sub-contractor regarding the potential schedule delays related to the Coronavirus (COVID-19) pandemic on the Kuwahee WWTP Composite Correction Plan Phase II project. Although KUB is unaware of any delays in the current schedule, the evolving nature of the COVID-19 pandemic has the potential to impact our contractor services in numerous ways, which could ultimately affect the schedule date for completion.

At this time, KUB, the owner's engineer and the contractor continue their standard practice of meeting bi-weekly to review schedules, and CCP construction continues in conformance with requirements of the Consent Decree. KUB continues to prioritize regular communication efforts with its contractors and will closely monitor unforeseen schedule impacts related to the COVID-19 pandemic. The contractor is also required to inform KUB when any schedule impacts are observed. KUB will keep EPA informed of any delays in performance as they are identified.

In regard to complying with CD programs, we are currently unaware of any concerns fulfilling those requirements. We will continue to respond to sanitary sewer overflows appropriately and continue all regulatory compliance monitoring and reporting as required. KUB has installed work guidelines to protect our employees in accordance with CDC and state and local government guidance. If further protective measures are deemed necessary or additional delays in schedules become known, KUB will keep the EPA informed of any such delays as they become identified.

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 the information submitted, it 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.

Thank you for your assistance. If you require additional information, please call Joshua Johnson at (865) 558-2744

Sincerely,

Derwin Hagood, P.E.
Senior Vice President and Chief Operating Officer

cc: Chief, Environmental Enforcement Section
Environment and Natural Resources Division, DOJ
Mary Jo Bragan, Chief, EPA Region 4 NPDES Permitting & Enforcement Branch
Dennis Sayre, Acting Chief, EPA Region 4 Municipal & Industrial Enforcement Section
Jenny Howard, General Counsel, TDEC
Kathy Hawes, Executive Director, TCWN
Indya Kincannon, Mayor, City of Knoxville
J. William Coley, Hodges Doughty & Carson, PLLC
George Garden, TDEC Division of Water Resources (DWS)
Jessica Murphy, TDEC DWS Manger of Compliance & Enforcement
Susan H. Richardson, Kilpatrick, Townsend & Stockton, LLP
Tim Hill, TDEC Knoxville Field Office

Enclosure: (1) Ltr from Lane to KUB dated 03192020
(2) Ltr from Veolia to Lane dated 03192020

March 19, 2020 Letter 0009

Knoxville Utilities Board
Contract Services
2015 Neyland Dr.
Knoxville, TN 37901

Attn: Joey Henry
Joey.Henry@kub.org

Re: Notice of Potential Impacts Related to Coronavirus (COVID-19) on Kuwahee WWTP Composite Correction Plan Phase 2 Project (the "Project")

Dear Joey,

The Lane Construction Corporation ("Lane") provides this notice of potential time and cost impacts to the Project because of the ongoing novel Coronavirus (COVID-19) outbreak.

On March 11, 2020, the World Health Organization declared COVID-19 a global pandemic. According to the Center for Disease Control, COVID-19 represents a Public Health Emergency. On March 13, 2020, the President of the United States declared the outbreak a national emergency. As COVID-19 spreads throughout our communities and the world, we continue to see additional governmental actions and declarations, including increased quarantines, event cancellations, crowd size restrictions, and widespread travel and import bans. The ongoing effects of COVID-19 grow by the day and have the potential to impact Lane's operations in a variety of ways, including staff and labor shortages, subcontractor impacts, delayed material orders or shipments, price and labor cost escalations, or other impacts.

Although the impacts and spread of COVID-19 are still evolving and changing, Lane is providing this notice of potential time and cost impacts to ensure we are complying with the Contract Documents as we continue to evaluate the impacts of this event. Because the COVID-19 outbreak and its effects are outside of our control, Lane considers any potential cost and time impacts caused by this unforeseeable event to be recoverable under the Contract Documents. As such, please be advised that to the extent the COVID-19 outbreak impacts the Project's operations, Lane will exercise its rights to secure additional contract time and money under all applicable provisions of the Contract Documents, including any provisions for Force Majeure, changed conditions, suspensions, delays, or altered work.

Lane is actively monitoring this ongoing situation and will continue to keep you advised of any impacts on this Project. In the meantime, Lane will continue to partner with Knoxville Utilities

The Lane Construction Corporation
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Alpharetta, GA 30022
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An Equal Opportunity Employer M / F / D / V

Board on this Project and will work with Knoxville Utilities Board to mitigate the impacts of this pandemic while keeping the safety, health, and wellbeing of all involved at the forefront.

Lane submits this notice without prejudice to its rights to assert any claims, cumulative impacts, or damages related to or arising from any impacts to the Project. Lane further reserves all rights, claims, damages, and remedies available to it under the Contract Documents and applicable law.

Please do not hesitate to contact Lane should you have any questions or wish to discuss this further.

Sincerely,

The Lane Construction Corporation

Jeffrey A. Tedder

Digitally signed by Jeffrey A. Tedder
DN: E=JATedder@laneconstruct.com, CN=Jeffrey A. Tedder, OU=Users, OU=ALPH, OU=GA, OU=Southeast Region, OU=Laneconstruct, DC=laneconstruct, DC=com
Date: 2020.03.19 16:54:41-04'00'

Jeff Tedder
Project Manager

Cc: Mike Holt, Greg Dills, Chris Ciancanelli

March 19, 2020

Att. Matt Hardy
Project Manager
Lane Construction
3010 Royal Blvd. South
Alpharetta, GA 30022

Reference: KUB Kuwahee, TN – Project Number - 5700242801
Subject: Coronavirus outbreak impact

Subject: Coronavirus Outbreak

Matt,

As a consequence of the Severe Acute Respiratory Syndrome Coronavirus 2 outbreak (SARS-CoV-2), and the disease it causes known as COVID-19, the rapid and sustained spread of the disease in communities around the World and the potential severity of the same, Veolia has suspended all employee travel outside of the Veolia offices until further notice.

Although there have not been any confirmed or suspected cases of the virus among the Veolia employee group, we feel it prudent to take this action in order to support the safety of both your employees and our own as we continue our business operations during this extraordinary outbreak.

As you are aware, governments around the World have taken unprecedented steps in response to the growing public health threat posed by COVID-19 in order to protect their populations and contain the spread of the virus, including declarations of states of emergency, travel restrictions, quarantines, and/or lockdowns. Such governmental actions are outside Veolia's control and in large part, mandatory. As such, they may neither be prevented nor ignored by Veolia.

As the virus continues to spread from its epicenter in China into other corners of the world, including the European Union and the United States where Veolia maintains offices, please note that certain aspects of the Project could be impacted, such as engineering design, procurement,

Veolia Water Technologies, Inc.
d/b/a Kruger
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logistics, and/or onsite commissioning activities. The extent by which Veolia may be delayed in the performance of its obligations under the Contract is unclear at this stage as our knowledge of COVID-19 continues to evolve and resulting responses and events are rapidly occurring.

The COVID-19 outbreak and ensuing precautions and governmental actions constitute a force majeure/excusable event under the Contract and Veolia is hereby notifying Lane Construction accordingly. As discussed above, the potential impact is unknown at this time, however, please be assured that Veolia will make every effort to work with your company to investigate and discuss possible actions to mitigate the effects of these events on your Project.

With offices and operations around the world, Veolia is monitoring the situation on a continuous basis and will keep you duly informed as the situation develops. We appreciate your understanding and cooperation through this difficult time.

Yours faithfully,

Todd Casey
Project Manager, Kruger
VEOLIA WATER TECHNOLOGIES

Veolia Water Technologies, Inc.
d/b/a Kruger
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On 4/6 had call with Matt Koyl (current owner of Koyl Oil, Inc.)

I reached out to Mr. Koyl on __ via email in regard to a noncompliance letter that required a response letter be mailed to EPA Region 5 Office. In response to Covid-19, I requested that an electronic copy of this response letter be sent to me while our regional office is teleworking and not delivering mail at our standard capacity.

During this phone call Mr. Koyl expressed that, due to issues relating to COVID-19 pandemic, he is worried about potentially losing his business. He mentioned that with oil and gas production being reduced that he is having a hard time getting his disposal well in compliance with the required state standards. He is in the process of ordering new parts and addressing the violations identified for the Permit but shipment and installation has been delayed (has already installed a new flow meter and waiting for gauges to be mailed). He expressed that his oil and gas production profit may not be enough to offset the expenses of the parts and modifications he needs to make. He also expressed concern that he would not be able to afford fines or penalties that EPA may give as a result of not being able to meet the compliance requirements.

In response to this I explained to Mr. Koyl that our office is taking into consideration the strain that the ongoing pandemic maybe having on his business. I also explained we have received additional guidance in regard to enforcement and compliance during the time and that we consider all of these aspects when deciding proceedings with our cases. On the phone I verbally extended the deadline for the response letter and requested he include what we discussed on the phone in this letter.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

Carolyn M. Brown
Dinsmore & Shohl, LLP
City Center, 100 W. Main St., Suite 900
Lexington, Kentucky 40507

Via email: carolyn.brown@dinsmore.com

Re: Lexington-Fayette County Urban Government (LFUCG) Consent Decree
Entered in Civil Action No. 5:06-cv-386
Response to Force Majeure Notification for COVID-19 State of Emergency

Dear Ms. Brown:

The U.S. Environmental Protection Agency, the U.S. Department of Justice, and the Kentucky Department of Environmental Protection (KYDEP) are in receipt of your letter of April 29, 2020, on behalf of your client, the Lexington-Fayette Urban County Government's (LFUCG), issued pursuant to Section XII, Paragraph 55 of the above-referenced Consent Decree (the "CD"), providing notice of a *force majeure* event that may cause a delay or impediment to performance in complying with certain provisions of the CD, including CD provisions requiring completion of capital projects, performance of certain program activities such as regular inspections, and requiring submittal of various deliverables and reports by specific deadlines. LFUCG attached to its letter a list of requirements and deadlines that LFUCG believes could be potentially impacted. LFUCG's April 29, 2020, letter specifically asserts a *force majeure* event based on the current COVID-19 public health emergency, which has disrupted the availability of contractor and LFUCG staff to carry out CD obligations. The EPA has consulted with DOJ and KYDEP in preparing this response.

Your April 29 letter cites and was submitted in accordance with the EPA's March 26, 2020, temporary Policy, "COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program" (Policy), which addresses the EPA's enforcement of environmental legal obligations during the pendency of the Policy. As provided in Section I.C of the Policy, claims of an inability to comply with the terms of a judicial consent decree are properly handled pursuant to the consent decree's *force majeure* provisions. Paragraph 54 of the CD requires LFUCG to "exercise best efforts to fulfill" the obligations of the CD, including the use of best efforts to anticipate any potential *force majeure* event. Further, these efforts should "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." Paragraph 55 sets forth specific information that must be included in *force majeure* notifications. Such notifications must include (1) the anticipated duration of any delay, (2) its cause(s), (3) LFUCG's past and proposed actions to prevent or minimize any delay, (4) a schedule for carrying out those actions, and (5) LFUCG's rationale for attributing any delay to a *force majeure* event. Failure to provide oral and written notice as required by this Paragraph may be grounds for the United States to deny any claim of force majeure.

LFUCG stated in its April 29 letter that, due to the still-evolving nature of the ongoing state of emergency, it was not able to provide in that letter all of the information that is required to be included in a *force majeure* notice pursuant to Paragraph 55 of the CD. For example, LFUCG was not able to provide the anticipated duration of the delay. In its April 29 letter, LFUCG states that, at this point in time, it is not possible to predict the duration of the current event of *force majeure*. LFUCG's letter also lacks detail regarding its proposed actions to prevent or minimize any delay, and a schedule for carrying out those actions, as required by the CD. However, LFUCG states that it will continue to monitor events relating to the COVID-19 pandemic and government actions relating thereto so that it may fully perform its obligations under the CD as soon as it is able to do so.

Because of the uncertainty surrounding the COVID-19 public health emergency, we understand that LFUCG may not have complete information at this time, but it must provide additional information in accordance with Paragraph 55 of the CD as more information becomes available and it is able to do so.

Notwithstanding LFUCG's inability to determine the full duration of the anticipated delay, it does seek initial relief from deadlines and performance obligations that are imminently approaching in 2020. Specifically, LFUCG requests that it be granted a six-month extension for any and all deliverable deadlines, including all reporting requirement deadlines, occurring on or before December 31, 2020. LFUCG further requests that, in the event it is unable to perform inspection requirements under the CD due to the *force majeure* event, that it not be penalized for such failures for inspections required to be performed through June 30, 2020. LFUCG also states that it reserves the right to request a further extension based on the unknown duration of the COVID-19 state of emergency and associated disruptions.

LFUCG has requested a six-month extension of deadlines for certain capital projects with deliverable deadlines on or before December 31, 2020. LFUCG stated that easement acquisition efforts had been forced to cease as a result of stay-at-home work requirements and court closures, and that this had affected the following projects:

> WR4 and WR5: Wolf Run D&E Trunk Sewer; WH-9: Southeastern Hills Trunk Sewer;
> CR-14: New Circle Trunk A; NE-3: Liberty Road Trunk; EH-5: Overbrook PS;
> CR-10: Upper Cane Rune WWS.

In addition, LFUCG indicated that WR2, WR3 and Wolf Run B&C Trunk Sewer projects had been affected by a contractor staffing shortage related to the state of emergency. Due to these concerns, LFUCG requests that it be granted a six-month extension for these capital project deadlines occuring on or before December 31, 2020.

After consultation with DOJ and KYDEP, regarding LFUCG's request for a six-month extension of these capital project deadlines, as set forth in the second table of Appendix A to LFUCG's request letter, the EPA agrees that a force majeure event has occurred and that the requested six month extension is justified.

With respect to the request for a six-month extension of any and all [other] deliverable deadlines including all reporting requirement deadlines that are due before December 31, 2020, the EPA finds this request to be lacking justification for each deadline being impacted or for the duration of relief sought, and it is not granted. It is also unclear as to which deliverables are subject to the request. While the letter refers to "all reporting deadlines" that are due before December 31, 2020, the only report listed on

Appendix A of the request is the Quarterly Report that was due on April 30. The Quarterly Report has already been granted a one-month extension in response to a prior request. The remaining Quarterly and Annual reports due in 2020 are not listed, leaving in question whether force majeure relief is being sought for each of these reports. To request an extension of specific submittals or deadlines, please submit the appropriate description, justification, and timeframe for each impacted deliverable.

With respect to LFUCG's request not to be penalized for any failure to perform inspections required to be conducted through June 30, 2020, the EPA and KYDEP find that LFUCG's request remains too speculative to qualify for *force majeure* relief. LFUCG itself indicates that it will attempt to perform such inspections but is requesting relief in the event that it is unable to perform them. Based on the uncertain nature of the request, the EPA and KYDEP find that LFUCG should update its request when it knows whether the state of emergency will render it unable to perform specific inspections.

With respect to LFUCG's request for an extension of the stormwater best management practices video, since this is not a specific requirement under the CD, the EPA refers LFUCG to KYDEP to discuss issues related to this MS4 permit requirement.

In addition to compliance with the express provisions of the CD, LFUCG is encouraged to maintain an open and continuing dialogue with the EPA, DOJ, and KYDEP. This will serve to protect human health and the environment, minimize potential misunderstandings, and facilitate timely and appropriate decision-making as this situation unfolds. We suggest at a minimum that the parties either plan on monthly written updates from LFUCG or schedule regular calls to discuss these ongoing issues on a monthly basis. We request that you provide your views on what form these regular communications should take.

Should you have any questions regarding the above or any aspect of this matter, please do not hesitate to contact Paul Schwartz in our Office of Water Legal Support at (404) 562-9576 or via email at schwartz.paul@epa.gov.

Sincerely,

CAROL KEMKER Digitally signed by CAROL KEMKER Date: 2020.06.10 16:17:54 -04'00'

Carol L. Kemker
Director
Enforcement and Compliance Assurance Division

cc: Valerie Mann, USDOJ (Valerie.Mann@usdoj.gov)
Robert Fentress, EPA OECA (fentress.robert@epa.gov)
Carolyn M. Brown, Dinsmore & Shoh, LLP (carolyn.brown@dinsmore.com)
Anna Claire Skinner, Dinsmore & Shoh, LLP (anna.skinner@dinsmore.com)
Michael Kroeger, KyDEP (Michael.Kroeger@ky.gov)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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ATLANTA, GEORGIA 30303-8960

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. James A. Parrott
Executive Director
Louisville and Jefferson County Metropolitan Sewer District
700 West Liberty Street
Louisville, Kentucky 40203

Re: United States v. Louisville and Jefferson County Metropolitan Sewer District,
Civil Action No. 3:08-cv-00608-CRS
COVID-19 Related Force Majeure Notification

Dear Mr. Parrott:

The Kentucky Department for Environmental Protection ("KyDEP") and the U.S. Environmental Protection Agency Region 4 ("EPA") are in receipt of Louisville and Jefferson County Metropolitan Sewer District's ("MSD's") March 23, 2020 letter, notifying KyDEP and EPA pursuant to Paragraphs 67 and 68 of the above-referenced Consent Decree (the "CD") of an anticipated *force majeure* event that may prevent or delay performance of certain provisions of the CD. MSD's notice asserts *force majeure* in the event it experiences issues that lead to non-compliance stemming from the COVID-19 public health emergency. EPA has consulted with the U.S. Department of Justice ("DOJ") and KyDEP in preparing this response.

As you may be aware, on March 26, 2020, EPA issued a temporary Policy: "COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program" ("Policy") that addresses EPA enforcement of environmental legal obligations during this time. As provided in Section I.C of the Policy, claims of an inability to comply with the terms of a judicial consent decree are properly handled pursuant to the CD's *force majeure* provisions. We are enclosing a copy of that Policy.

This response is intended to cover the facilities that are subject to the above-referenced CD and directs MSD to Paragraphs 67 to 70 [*force majeure* provisions] of the CD. Pursuant Paragraph 67 of the CD, a *force majeure* is defined as any event arising from causes not reasonably foreseeable and beyond the control of MSD, or MSD's consultants and contractors, *which could not be overcome by due diligence* [emphasis added], and which delays or prevents performance by a date required by the CD. *Force majeure* events do not include unanticipated or increased costs of· performance, changed economic or financial conditions, the failure by a contractor to perform, or the failure by a supplier to deliver. Further, Paragraph 68 of the CD provides that MSD's *force majeure* notice must estimate the anticipated length of delay, including necessary demobilization and remobilization, its cause, measures taken or to be taken to minimize the delay and an estimated timetable for implementation of these measures.

MSD's March 23, 2020 letter expresses concern regarding the current COVID-19 public health emergency and explains that MSD "could experience project delays" and expects to "adjust staffing to

comply with the directives of health officials and to protect our work force so that we are in position to sustain the public health services of the wastewater utility. Additionally, MSD stated that it may experience delays in its supply chain" and that "MSD will track all such issues and will keep the Regulators apprised of its progress." We understand from MSD's letter and from conversations the parties had during a conference call on April 15, 2020 that MSD is still evaluating the impacts of the ongoing COVID-19 public health emergency and is currently unable to address the additional items required under Paragraphs 67 and 68 of the CD, including a more detailed explanation of specific delays and the duration of any such delay.

Because MSD's current notice remains speculative as to the impact COVID-19 may have on any CD obligations at this point, the KyDEP and EPA must defer judgment on MSD's *force majeure* claim at this time. KyDEP's and EPA's decision to defer judgment should not be construed as acceptance of any potential noncompliance covered by the CD. For a *force majeure* claim to be ripe for decision, MSD should, in accordance with Paragraph 68 of the CD, provide an estimate of the anticipated length of delay, including necessary demobilization and remobilization, its cause, measures taken or to be taken to minimize the delay and an estimated timetable for implementation of these measures. Because of the uncertainty surrounding the COVID-19 public health emergency, we understand that MSD may not have complete information at this time, but it should provide additional information in accordance with that Paragraph as more information becomes available. Failure to comply with the notice provision of Paragraph 68 shall be grounds for KyDEP and EPA to deny an extension of time for performance. As we discussed during our April 15 call, MSD has agreed to provide updates to KyDEP and EPA every two (2) weeks with the first such update due on April 29, 2020.

In addition to compliance with the express provisions of the CD, MSD is encouraged to maintain an open and continuing dialogue with KyDEP and EPA regarding the potential for a claim under Paragraphs 67 and 68 of the CD. This will serve to protect human health and the environment, minimize potential misunderstandings, and facilitate timely and appropriate decision-making as this situation unfolds. Should you have any questions regarding the above or any aspect of this matter, please do not hesitate to contact Dennis Sayre of EPA at sayre.dennis@epa.gov or 404-562-9756.

Sincerely,

CAROL KEMKER Digitally signed by CAROL KEMKER Date: 2020.05.26 15:29:49 -04'00'

Carol L. Kemker
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency

Cc: Ms. Sarah Rae (email)
USEPA, Office of Enforcement and Compliance Assurance

Mr. William Weinischke (email)
USDOJ, Environment and Natural Resources Division

2905861

PHYSICAL DOCUMENT

ENV_ENFORCEMENT-n2905861-v1

NOTICE OF FORCE MAJEURE EVENT

Author:	Long, Kenneth
Document Type:	LETTER
LSA(s):	DDIGGS
Co-Counsel:	
Counsel LSA(s):	
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Fileroom:	4Con - 5th Floor
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Court:	TX W.D. Tex.; 5th Cir.
Notes:	
Double-Sided:	N
Received Date:	3/30/2020
Urgent:	N
Oversize:	N
Bound Document:	N

Long, Kenneth

Marathon Petroleum Company LP

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U.S. DEPARTMENT OF JUSTICE
ENVIRONMENT AND NATURAL
RESOURCES DIVISION

MAR 30 2020

EXECUTIVE OFFICE

March 27, 2020

SENT VIA EMAIL AND U.S.MAIL

Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044-7611

U.S. Environmental Protection Agency
Director, Air Enforcement Division
Office of Civil Enforcement
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code 2242-A
Washington, DC 20460

Director, Air Enforcement Division
Office of Civil Enforcement
c/o Matrix New World Engineering Inc.
120 Eagle Rock Ave., Suite 207
East Hanover, NJ 07936-3159

Chief
Air, Toxics, and Inspections Coordination Branch
Environmental Protection Agency, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Re: Notice of *Force Majeure* Event
Consent Decree in *United States v. Western Refining Company, L.P.*
Case No. 3:11-cv-00276 (W.D. Texas))

On behalf of Western Refining Company, L.P., which is a wholly-owned, indirect subsidiary of Marathon Petroleum Corporation (collectively, "MPC"), and pursuant to United States' and various states efforts to respond to the novel coronavirus (COVID-19), this letter serves as notice of a *force majeure* event under Paragraph 153 of the above-referenced Consent Decree. MPC requests temporary relief from certain provisions of the Consent Decree in support of its efforts to minimize risk of exposure and otherwise respond to COVID-19 without sacrificing the protection of human health and the environment at its refinery located in El Paso, Texas.

MPC is committed to safe and environmentally responsible operation of its operating sites and fully embraces the emergency actions necessary to protect public health. To protect its employees, site contractors, and the general public, MPC is seeking to temporarily limit certain on-site activities by company personnel and contract personnel as part of its larger COVID-19 response to reduce social contact and comport with the "social distancing" guidelines issued by the Centers for Disease Control and Prevention (CDC) and the President of the United States through his "Coronavirus Guidelines for America" issued on March 16, 2020. These guidelines recommend avoiding close contact with other individuals (within 6 feet), avoidance of social gatherings of more than 10 people, avoiding discretionary travel, and working from home

corr

90-52-1-07629/1

whenever possible. In addition, various states and cities, including the City of El Paso, have issued "stay-at-home" orders for those not engaged in critical work activities.

As a member of a critical infrastructure industry, MPC has a special responsibility to continue the safe and environmentally responsible operation of our facilities to ensure fuel supplies are maintained so that other critical infrastructure continues to function during the ongoing COVID-19 pandemic. We have already instituted a "work-from-home" policy for non-essential personnel consistent with CDC guidance. Despite many of the present actions taken by governments and businesses, the virus continues to spread. Many more cases are being reported daily. We believe that additional restrictions to site personnel will likely be necessary to slow the spread and protect our operations and maintenance personnel essential to running our assets safely and reliably. These steps could include, but are not limited to, restricted access for third-party contractors, further restriction of on-site staff to only core operating and maintenance personnel, and reduction of laboratory personnel. As continued restrictions persist, we are also preparing for potential consequences in the supply chain, including inability to transport samples to third-party laboratories and inability to receive consumables.

To achieve the common goal of inhibiting the spread of COVID-19, some periodic sampling, testing, recordkeeping and reporting activities required under the Consent Decree can and should be deferred during the present phase of the response in order to protect essential personnel necessary for safe refinery operations. These actions can be safely and responsibly deferred and then resumed as soon as conditions are appropriate.

MPC, therefore, submits this notice that ongoing events surrounding COVID-19 constitute a *force majeure* event under Paragraph 153 of the Consent Decree, and that the events may delay performance of certain obligations under the Consent Decree. Obligations under the Consent Decree that may be delayed due to the *force majeure* event include, but are not limited to, those that require third-party contractors or other non-essential personnel to be physically present at the refineries; that require international, interstate or other currently-restricted travel by employees or contractors; that require international or interstate shipment of samples for analysis; or that require actions of third parties (e.g., accredited laboratories) that may also have personnel and resource limitations or restrictions due to their own or their political jurisdictions' responses to COVID-19.

Central to MPC's claim of *force majeure* is the recognition that many of these activities drive increased social interactions with third-party contractors that enter and leave our facilities, and other neighboring facilities, daily. Some of the functions identified in this letter also require contractors and consultants to engage in significant travel and overnight accommodations, which further increases the chances of spreading the virus. This runs counter to the "social distancing" recommendations from the CDC, the President of the United States, and various state and city directives. Complicating matters further, many contractors and consultants will not be reporting daily to their normal workplaces and have instituted travel bans for their employees, meaning there is a shortage of qualified personnel to complete certain regulatory requirements. Even though we are prepared to conduct much of our work remotely, it is unprecedented to carry out certain work entirely via remote communications, and indeed impossible to carry out others. As reflected in this notice, most of the anticipated delays in compliance reflect a focus on

responsibly minimizing onsite activities and social interaction and lesser access to complete information due to self-isolation (*e.g.*. employee or contractor personnel held home, sick or quarantined).

This letter is intended to serve as an initial, advance notification that the ongoing events surrounding COVID-19 constitute a *force majeure* event. Events surrounding COVID-19, and the efforts of MPC and federal, state, and local authorities to combat the spread of the novel coronavirus remain fluid. Accordingly, MPC intends to supplement this advance notification with additional information to support this claim of *force majeure* as set forth in Paragraph 153 of the Consent Decree.

Significantly, the obligations that may be delayed by the *force majeure* event described in this letter will not, in MPC's judgment, cause or contribute to an endangerment to public health, welfare, or the environment.

We believe that by taking these measures, we can do our part to slow the spread of COVID-19. This notice of *force majeure* covers only those provisions requiring activities that are inconsistent with implementation of MPC's COVID-19 response, while maintaining safe and environmentally responsible operation. If you have any questions about this request, please contact me with any questions at 419-421-3871 or racade@marathonpetroleum.com.

Sincerely,

Ruth A Cade

Ruth A. Cade
Director, Refining Environmental & Assurance
Marathon Petroleum Company LP

Electronic Copy in .pdf format to:

csullivan@matrixworld.com

Marathon Petroleum Company LP

539 South Main Street
Findlay, OH 45840
Telephone 419/422-2121
FAX 419/425-7040

March 27, 2020

SENT VIA EMAIL AND U.S. MAIL
(RETURN RECEIPT REQUESTED)

Chief, Environmental Enforcement Section
Environmental and Natural Resources Division
U.S. Department of Justice
Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611

Director, Air Enforcement Division
Office of Civil Enforcement, Mail Code 2242-A
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Director, Air Enforcement Division
U.S. Environmental Protection Agency
c/o Matrix Environmental & Geotechnical Services
Matrix New World Engineering, Inc.
26 Columbia Turnpike
Florham Park, N.J. 07932

Director. Air Division (Air-1)
U.S. Environmental Protection Agency.
Region 9
75 Hawthorne Street
San Francisco. CA 94105

Re: Notice of *Force Majeure* Event
Consent Decree in *United States, et.al. v. Equilon Enterprises LLC et. al.*
Civil Action No. H-01-0978 (S.D. Texas)

On behalf of Tesoro Refining & Marketing Company LLC, which is a wholly-owned, indirect subsidiary of Marathon Petroleum Corporation (collectively, "MPC"), and pursuant to United States' and various states efforts to respond to the novel coronavirus (COVID-19), this letter serves as notice of a *force majeure* event under Paragraph 167 of the above-referenced Consent Decree. MPC requests temporary relief from certain provisions of the Consent Decree in support of its efforts to minimize risk of exposure and otherwise respond to COVID-19 without sacrificing the protection of human health and the environment at its refinery located in Wilmington, California.

MPC is committed to safe and environmentally responsible operation of its operating sites and fully embraces the emergency actions necessary to protect public health. To protect its employees, site contractors, and the general public, MPC is seeking to temporarily limit certain

on-site activities by company personnel and contract personnel as part of its larger COVID-19 response to reduce social contact and comport with the "social distancing" guidelines issued by the Centers for Disease Control and Prevention (CDC) and the President of the United States through his "Coronavirus Guidelines for America" issued on March 16, 2020. These guidelines recommend avoiding close contact with other individuals (within 6 feet), avoidance of social gatherings of more than 10 people, avoiding discretionary travel, and working from home whenever possible. In addition, various states and cities have issued "stay-at-home" orders for those not engaged in critical work activities.

As a member of a critical infrastructure industry, MPC has a special responsibility to continue the safe and environmentally responsible operation of our facilities to ensure fuel supplies are maintained so that other critical infrastructure continues to function during the ongoing COVID-19 pandemic. We have already instituted a "work-from-home" policy for non-essential personnel consistent with CDC guidance. Despite many of the present actions taken by governments and businesses, the virus continues to spread. Many more cases are being reported daily. We believe that additional restrictions to site personnel will likely be necessary to slow the spread and protect our operations and maintenance personnel essential to running our assets safely and reliably. These steps could include, but are not limited to, restricted access for third-party contractors, further restriction of on-site staff to only core operating and maintenance personnel, and reduction of laboratory personnel. As continued restrictions persist, we are also preparing for potential consequences in the supply chain, including inability to transport samples to third-party laboratories and inability to receive consumables.

To achieve the common goal of inhibiting the spread of COVID-19, some periodic sampling, testing, recordkeeping and reporting activities required under the Consent Decree can and should be deferred during the present phase of the response in order to protect essential personnel necessary for safe refinery operations. These actions can be safely and responsibly deferred and then resumed as soon as conditions are appropriate.

MPC, therefore, submits this notice that ongoing events surrounding COVID-19 constitute a *force majeure* event under Paragraph 167 of the Consent Decree, and that the events may delay performance of certain obligations under the Consent Decree. Obligations under the Consent Decree that may be delayed due to the *force majeure* event include, but are not limited to, those that require third-party contractors or other non-essential personnel to be physically present at the refineries; that require international, interstate or other currently-restricted travel by employees or contractors; that require international or interstate shipment of samples for analysis; or that require actions of third parties (e.g., accredited laboratories) that may also have personnel and resource limitations or restrictions due to their own or their political jurisdictions' responses to COVID-19.

Central to MPC's claim of *force majeure* is the recognition that many of these activities drive increased social interactions with third-party contractors that enter and leave our facilities, and other neighboring facilities, daily. Some of the functions identified in this letter also require contractors and consultants to engage in significant travel and overnight accommodations, which further increases the chances of spreading the virus. This runs counter to the "social distancing" recommendations from the CDC, the President of the United States, and various state and city

directives. Complicating matters further, many contractors and consultants will not be reporting daily to their normal workplaces and have instituted travel bans for their employees, meaning there is a shortage of qualified personnel to complete certain regulatory requirements. Even though we are prepared to conduct much of our work remotely, it is unprecedented to carry out certain work entirely via remote communications, and indeed impossible to carry out others. As reflected in this notice, most of the anticipated delays in compliance reflect a focus on responsibly minimizing onsite activities and social interaction and lesser access to complete information due to self-isolation (*e.g.*, employee or contractor personnel held home, sick or quarantined).

This letter is intended to serve as an initial, advance notification that the ongoing events surrounding COVID-19 constitute a *force majeure* event. Events surrounding COVID-19, and the efforts of MPC and federal, state, and local authorities to combat the spread of the novel coronavirus remain fluid. Accordingly, MPC intends to supplement this advance notification with additional information to support this claim of *force majeure* as set forth in Paragraph 167 of the Consent Decree.

Significantly, the obligations that may be delayed by the *force majeure* event described in this letter will not, in MPC's judgment, cause or contribute to an endangerment to public health, welfare, or the environment.

We believe that by taking these measures, we can do our part to slow the spread of COVID-19. This notice of *force majeure* covers only those provisions requiring activities that are inconsistent with implementation of MPC's COVID-19 response, while maintaining safe and environmentally responsible operation. If you have any questions about this request, please contact me with any questions at 419-421-3871 or racade@marathonpetroleum.com.

Sincerely,

Ruth A Cade

Ruth A. Cade
Director, Refining Environmental & Assurance
Marathon Petroleum Company LP

Electronic Copy in .pdf format to:

jmack@matrixneworld.com
foley.patrick@epa.gov
frank.nathan@epa.gov
messina.edward@epa.gov

Marathon Petroleum Company LP

539 South Main Street
Findlay, OH 45840
Telephone 419/422-2121
FAX 419/425-7040

March 27, 2020

SENT VIA EMAIL AND U.S. MAIL
(RETURN RECEIPT REQUESTED)

Chief, Environmental Enforcement Section
Environmental and Natural Resources Division
U.S. Department of Justice
Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611

Director, Air Enforcement Division
Office of Civil Enforcement, Mail Code 2242-A
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Director, Air Enforcement Division
U.S. Environmental Protection Agency
c/o Matrix Environmental & Geotechnical Services
Matrix New World Engineering, Inc.
26 Columbia Turnpike
Florham Park, N.J. 07932

Attn: Chief, Air Enforcement Branch
U.S. Environmental Protection Agency – Region 6
Mail Code: ECDA
1201 Elm Street, Suite 500
Dallas, TX 75270

Director. Air Division (Air-1)
U.S. Environmental Protection Agency.
Region 9
75 Hawthorne Street
San Francisco. CA 94105

Re: Notice of *Force Majeure* Event
Consent Decree in *United States, et.al. v. BP Exploration & Oil, et.al.*
Civil Action No. 2:96 CV 095 RL (N.D. Indiana)

On behalf of Tesoro Refining & Marketing Company LLC and Blanchard Refining Company LLC, each of which is a wholly-owned, indirect subsidiary of Marathon Petroleum Corporation (collectively, "MPC"), and pursuant to United States' and various states efforts to respond to the novel coronavirus (COVID-19), this letter serves as notice of a *force majeure* event under Paragraph 56 of the above-referenced Consent Decree. MPC requests temporary relief from certain provisions of the Consent Decree in support of its efforts to minimize risk of exposure and otherwise respond to COVID-19 without sacrificing the protection of human health and the environment at its refineries located in Carson, California and Texas City, Texas.

MPC is committed to safe and environmentally responsible operation of its operating sites and fully embraces the emergency actions necessary to protect public health. To protect its employees, site contractors, and the general public, MPC is seeking to temporarily limit certain

on-site activities by company personnel and contract personnel as part of its larger COVID-19 response to reduce social contact and comport with the "social distancing" guidelines issued by the Centers for Disease Control and Prevention (CDC), and the President of the United States through his "Coronavirus Guidelines for America" issued on March 16, 2020. These guidelines recommend avoiding close contact with other individuals (within 6 feet), avoidance of social gatherings of more than 10 people, avoiding discretionary travel, and working from home whenever possible. In addition, various states and cities have issued "stay-at-home" orders for those not engaged in critical work activities.

As a member of a critical infrastructure industry, MPC has a special responsibility to continue the safe and environmentally responsible operation of our facilities to ensure fuel supplies are maintained so that other critical infrastructure continues to function during the ongoing COVID-19 pandemic. We have already instituted a "work-from-home" policy for non-essential personnel consistent with CDC guidance. Despite many of the present actions taken by governments and businesses, the virus continues to spread. Many more cases are being reported daily. We believe that additional restrictions to site personnel will likely be necessary to slow the spread and protect our operations and maintenance personnel essential to running our assets safely and reliably. These steps could include, but are not limited to, restricted access for third-party contractors, further restriction of on-site staff to only core operating and maintenance personnel, and reduction of laboratory personnel. As continued restrictions persist, we are also preparing for potential consequences in the supply chain, including inability to transport samples to third-party laboratories and inability to receive consumables.

To achieve the common goal of inhibiting the spread of COVID-19, some periodic sampling, testing, recordkeeping and reporting activities required under the Consent Decree can and should be deferred during the present phase of the response in order to protect essential personnel necessary for safe refinery operations. These actions can be safely and responsibly deferred and then resumed as soon as conditions are appropriate.

MPC, therefore, submits this notice that ongoing events surrounding COVID-19 constitute a *force majeure* event under Paragraph 56 of the Consent Decree, and that the events may delay performance of certain obligations under the Consent Decree. Obligations under the Consent Decree that may be delayed due to the *force majeure* event include, but are not limited to, those that require third-party contractors or other non-essential personnel to be physically present at the refineries; that require international, interstate or other currently-restricted travel by employees or contractors; that require international or interstate shipment of samples for analysis; or that require actions of third parties (e.g., accredited laboratories) that may also have personnel and resource limitations or restrictions due to their own or their political jurisdictions' responses to COVID-19.

Central to MPC's claim of *force majeure* is the recognition that many of these activities drive increased social interactions with third-party contractors that enter and leave our facilities, and other neighboring facilities, daily. Some of the functions identified in this letter also require contractors and consultants to engage in significant travel and overnight accommodations, which further increases the chances of spreading the virus. This runs counter to the "social distancing" recommendations from the CDC, the President of the United States, and various state and city

directives. Complicating matters further, many contractors and consultants will not be reporting daily to their normal workplaces and have instituted travel bans for their employees, meaning there is a shortage of qualified personnel to complete certain regulatory requirements. Even though we are prepared to conduct much of our work remotely, it is unprecedented to carry out certain work entirely via remote communications, and indeed impossible to carry out others. As reflected in this notice, most of the anticipated delays in compliance reflect a focus on responsibly minimizing onsite activities and social interaction and lesser access to complete information due to self-isolation (*e.g.*, employee or contractor personnel held home, sick or quarantined).

This letter is intended to serve as an initial, advance notification that the ongoing events surrounding COVID-19 constitute a *force majeure* event. Events surrounding COVID-19, and the efforts of MPC and federal, state, and local authorities to combat the spread of the novel coronavirus remain fluid. Accordingly, MPC intends to supplement this advance notification with additional information to support this claim of *force majeure* as set forth in Paragraph 56 of the Consent Decree.

Significantly, the obligations that may be delayed by the *force majeure* event described in this letter will not, in MPC's judgment, cause or contribute to an endangerment to public health, welfare, or the environment.

We believe that by taking these measures, we can do our part to slow the spread of COVID-19. This notice of *force majeure* covers only those provisions requiring activities that are inconsistent with implementation of MPC's COVID-19 response, while maintaining safe and environmentally responsible operation. If you have any questions about this request, please contact me with any questions at 419-421-3871 or racade@marathonpetroleum.com.

Sincerely,

Ruth A Cade

Ruth A. Cade
Director, Refining Environmental & Assurance
Marathon Petroleum Company LP

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csullivan@matrixneworld.com
prentice.dakota@epa.gov
lundelius.diana@epa.gov

jmack@matrixneworld.com
foley.patrick@epa.gov
frank.nathan@epa.gov
messina.edward@epa.gov

Marathon Petroleum Company LP

539 South Main Street
Findlay, OH 45840
Telephone 419/422-2121
FAX 419/425-7040

March 27, 2020

SENT VIA EMAIL AND U.S. MAIL
(RETURN RECEIPT REQUESTED)

Chief, Environmental Enforcement Section
Environmental and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, DC 20044-7611
Re: DOJ No. 90-5-2-1-09915

Director, Air Enforcement Division
Office of Civil Enforcement
U.S. Environmental Protection Agency
Mail Code 2242-A
1200 Pennsylvania Avenue, N. W.
Ariel Rios Building South
Room 1119
Washington, DC 20460-0001

Associate Director
Air, Toxics, and Inspections Coordination Branch
(6 EN-A)
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, Texas 75202

Director
Air, Pesticides and Toxics Management Division
EPA Region 4
61 Forsyth Street (4APTMD-AEEB)
Atlanta, Georgia 30303

Air and Radiation Division
EPA Region 5
77 W. Jackson Blvd. (AE – 17J)
Chicago, IL 60604
Attn: Compliance Tracker

Re: Notice of *Force Majeure* Event
Consent Decree in *United States v. Marathon Petroleum Company LP, et al.*
Case No. 1:12-cv-11544 (E.D. Mich.)

On behalf of Marathon Petroleum Company LP and Catlettsburg Refining, LLC, each of which is a wholly-owned, indirect subsidiary of Marathon Petroleum Corporation (collectively, "MPC"), and pursuant to United States' and various states efforts to respond to the novel coronavirus (COVID-19), this letter serves as notice of a *force majeure* event under Paragraph 89 of the above-referenced Consent Decree. MPC requests temporary relief from certain provisions of the Consent Decree in support of its efforts to minimize risk of exposure and otherwise respond to COVID-19 without sacrificing the protection of human health and the environment at its refineries located in Canton, Ohio; Catlettsburg, Kentucky; Detroit, Michigan;

Garyville, Louisiana; Robinson, Illinois; and Texas City, Texas (each a "Covered Refinery," as defined in the Consent Decree).

MPC is committed to safe and environmentally responsible operation of its operating sites and fully embraces the emergency actions necessary to protect public health. To protect its employees, site contractors, and the general public, MPC is seeking to temporarily limit certain on-site activities by company personnel and contract personnel as part of its larger COVID-19 response to reduce social contact and comport with the "social distancing" guidelines issued by the Centers for Disease Control and Prevention (CDC) and the President of the United States through his "Coronavirus Guidelines for America" issued on March 16, 2020. These guidelines recommend avoiding close contact with other individuals (within 6 feet), avoidance of social gatherings of more than 10 people, avoiding discretionary travel, and working from home whenever possible. In addition, various states and cities have issued "stay-at-home" orders for those not engaged in critical work activities.

As a member of a critical infrastructure industry, MPC has a special responsibility to continue the safe and environmentally responsible operation of our facilities to ensure fuel supplies are maintained so that other critical infrastructure continues to function during the ongoing pandemic. We have already instituted a "work-from-home" policy for non-essential personnel consistent with CDC guidance. Despite many of the present actions taken by governments and businesses, the virus continues to spread. Many more cases are being reported daily. We believe that additional restrictions to site personnel will likely be necessary to slow the spread and protect our operations and maintenance personnel essential to running our assets safely and reliably. These steps could include, but are not limited to, restricted access for third-party contractors, further restriction of on-site staff to only core operating and maintenance personnel, and reduction of laboratory personnel. As continued restrictions persist, we are also preparing for potential consequences in the supply chain, including inability to transport samples to third-party laboratories and inability to receive consumables.

To achieve the common goal of inhibiting the spread of COVID-19, some periodic sampling, testing, recordkeeping and reporting activities required under the Consent Decree can and should be deferred during the present phase of the response in order to protect essential personnel necessary for safe refinery operations. These actions can be safely and responsibly deferred then resumed as soon as conditions are appropriate.

MPC, therefore, submits this notice to the United States that ongoing events surrounding COVID-19 constitute a *force majeure* event under Paragraph 89 of the Consent Decree, and that the events may delay performance of certain obligations under the Consent Decree. Obligations under the Consent Decree that may be delayed due to the *force majeure* event include, but are not limited to, those that require third-party contractors or other non-essential personnel to be physically present at the refineries; that require international, interstate or other currently-restricted travel by employees or contractors; that require international or interstate shipment of samples for analysis; or that require actions of third parties (e.g., accredited laboratories) that may also have personnel and resource limitations or restrictions due to their own or their political jurisdictions' responses to COVID-19.

Central to MPC's claim of *force majeure* is the recognition that many of these activities drive increased social interactions with third-party contractors that enter and leave our facilities, and other neighboring facilities, daily. Some of the functions identified in this letter also require contractors and consultants to engage in significant travel and overnight accommodations, which further increases the chances of spreading the virus. This runs counter to the "social distancing" recommendations from the CDC, the President of the United States, and various state and city directives. Complicating matters further, many contractors and consultants will be not be reporting daily to their normal workplaces and have instituted travel bans for their employees, meaning there is a shortage of qualified personnel to complete certain regulatory requirements. Even though we are prepared to conduct much of our work remotely, it is unprecedented to carry out certain work entirely via remote communications, and indeed impossible to carry out others. As reflected in this notice, most of the anticipated delays in compliance reflect a focus on responsibly minimizing onsite activities and social interaction and a lesser access to complete information due to self-isolation (*e.g.*, employee or contractor personnel held home, sick or quarantined).

This letter is intended to serve as an initial, advance notification that the ongoing events surrounding COVID-19 constitute a *force majeure* event. Events surrounding COVID-19, and the efforts of MPC and federal, state, and local authorities to combat the spread of the novel coronavirus remain fluid. Accordingly, MPC intends to supplement this advance notification with additional information to support this claim of *force majeure* as set forth in Paragraph 89 of the Consent Decree.

Significantly, the obligations that may be delayed by the *force majeure* event described in this letter will not, in MPC's judgment, cause or contribute to an endangerment to public health, welfare, or the environment.

We believe that by taking these measures, we can do our part to slow the spread of the COVID-19 virus. This notice of *force majeure* covers only those provisions requiring activities that are inconsistent with implementation of MPC's COVID-19 response, while maintaining safe and environmentally responsible operation. If you have any questions about this request, please contact me with any questions at 419-421-3871 or racade@marathonpetroleum.com.

Sincerely,

Ruth A Cade

Ruth A. Cade
Director, Refining Environmental & Assurance
Marathon Petroleum Company LP

Electronic Copy in .pdf format to:
parrish.robert@epa.gov
foley.patrick@epa.gov
dickens.brian@epa.gov

CERTIFIED MAIL®

7016 0340 0000 4724 8514

Chief, Environmental Enforcement Section
Environmental & Natural Resources Div
US Department of Justice
Box 7611 Ben Franklin Station
Washington, DC 20044-7611

GOBIERNO DE PUERTO RICO
Departamento de Transportación y Obras Públicas
Autoridad Metropolitana de Autobuses

May 6, 2020

Eduardo González, PE, DEE. MBA
Environmental Engineer
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency - Region 2
City View Plaza II – Suite 7000
#48 Road. 165 Km. 1.2
Guaynabo, Puerto Rico 00968-8073

Subject: Consent Decree Case 3:10-cv-01631 - Force Majeure

Dear Mr. González:

As you know, the COVID-19 pandemic has modified the way of life of all world citizens. As the spread of the disease progresses, further precautionary measures to mitigate the propagation of this terrible pandemic are being set forth by government agencies. The Government of Puerto Rico is not an exception. Pursuant to Executive Orders OE-2020-020, OE-2020-023, OE-2020-033 and OE-2020-038, the Governor of Puerto Rico, Honorable Wanda Vázquez Garced established lockdown orders throughout all public service, including the operations of the Puerto Rico Metropolitan Bus Authority (PRMBA). On March 15, 2020, José L. Rodríguez Macias, Esq., PRMBA Director of Environmental Quality and Industrial Security, verbally communicated, via telephone conversation with the EPA, the closure of all operations within the PRMBA.

Section VIII 5.1, of the Order and Concent Decree (CD) between the Environmental Protection Agency (MBA) and PRMBA defines Force Majeure as "*any event arising from causes beyond the control of MBA, of any entity controlled by MBA, or of MBA contractors, that delays or prevents the performance of any obligation under this Consent Decree despite MBA's best efforts to fulfill the obligation"*. Except for twelve (12) vehicles of our paratransit (*Llame y Viaje)* fleet that are being used to service dialysis patients, all other business of the PRMBA is hereby suspended until further notice, including repair and maintenance duties.

Currently, the COVID-19 pandemic precludes the Puerto Rico Metropolitan Bus Authority from fully performing its duties, as dictated within our agreement. We hereby, respectfully, request the suspension of all obligations within the **Consent Decree, Case 3:10-cv-01631** and exercise our right of Force Majeure, as set forth by Section VIII 5.2.

Electronic copy of this request will be forwarded to gonzalez.eduardo@epa.gov, and hard copy of this document will be sent to the following address:

Carmen R. Guerrero Pérez, Director
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency - Region 2
City View Plaza II – Suite 7000
#48 Road. 165 Km. 1.2
Guaynabo, Puerto Rico 00968-8073

To further reinforce our obligations and compromise, once operations within our company normalize, immediate notification of the renewal of business will be given to the EPA. Should you have any inquiries regarding this or any other matter, feel free to contact me at your earliest convenience.

Yours truly,

Josué L. Menéndez Agosto
President and General Manager
Puerto Rico Metropolitan Bus Authority

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
CARIBBEAN ENVIRONMENTAL PROTECTION DIVISION
CITY VIEW PLAZA II BUILDING, 7TH FLOOR
ROUTE 165 GUAYNABO, PUERTO RICO 00968

June 30, 2020

Mr. Josué L. Menéndez Agosto
President and General Manager
Metropolitan Bus Authority
37 De Diego Ave.
Urb. San Francisco
Rio Piedras, PR 00927-5800
Sent Via Email: jlmenendez@dtop.pr.gov

Re: ***U.S. v. Metropolitan Bus Authority of Puerto Rico*, Civil Action No. 3:10-cv-01631-SEC**
COVID-19 Related Force Majeure Notification

Dear Mr. Menéndez Agosto:

The U.S. Environmental Protection Agency ("EPA") received from the Puerto Rico Metropolitan Bus Authority ("MBA") a written *force majeure* notice, dated May, 6, 2020, made pursuant to Section VIII of the above referenced Consent Decree ("CD") to defer the implementation of the compliance measures detailed in the CD for addressing the current COVID19 public health emergency. In a letter dated June 14, 2020, MBA supplemented its *force majeure* request by asking the deferment of all obligations set forth in the CD until December 1, 2020. As you may be aware, on March 26, 2020, EPA issued a temporary Policy: "COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program" ("Policy") that addresses EPA enforcement of environmental legal obligations during this time. As provided in Section I.C of the Policy, claims of an inability to comply with the terms of a judicial consent decree are properly handled pursuant to the consent decree's *force majeure* provisions. We are enclosing a copy of that Policy.

This response is intended to cover the facility that is subject of the above-referenced CD, and directs MBA to Paragraphs 51 and 52 of the CD. Among other things, note that Paragraph 51 of the CD requires MBA to exercise the best efforts to fulfill the obligations required under terms and conditions of the CD, and to address the effects of such *force majeure* event as it is occurring and after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. Additionally, under Paragraph 52 of the CD, MBA is required, among others things, to provide in writing an explanation and description of 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; and the rationale for attributing such delay to a *force majeure* event.

Both, the May 6, 2020 letter and the June 14, 2020 letter are requesting deferment of all obligations within the CD by asserting that the lockdown established by the Governor of Puerto Rico in numerous Executive Orders issued since March 16, 2020, due to the COVID-19 pandemic emergency, precludes MBA from fully performing its duties, as dictated by CD.

However, meaningful compliance with the *force majeure* provisions set forth in Section VIII of the CD requires more than alluding the government lockdown orders set forth in MBA's *force majeure* letters, for an extension of time until December 1, 2020, be granted to MBA to comply with the obligations under the CD.

A *force majeure* request must at a minimum: identify the specific CD provisions with which MBA will not be able to comply due to this event; describe the anticipated length of time the delayed compliance may persist; the cause or causes of the delayed compliance; the measures taken or to be taken by MBA to prevent or minimize the nature and duration of such effects on those CD obligations; and, provide details of the proposed schedule for when and how MBA will comply with each CD obligation at the earliest practicable date. Because of the uncertainty surrounding the COVID-19 public health emergency, we understand that MBA may not have complete information at this time, but it should provide additional information in accordance with that Section VIII as more information becomes available.

Thank you for maintaining an open and continuing dialogue with EPA during this difficult time. This will serve to protect human health and the environment, minimize potential misunderstandings, and facilitate timely and appropriate decision-making as this situation unfolds.

If you have any questions or would like to discuss the matter with EPA, please do not hesitate to contact me at (787) 977-5875 or have your staff contact Eng. Eduardo González of our Response and Remediation Branch at (787) 977-5839 or via electronic mail at gonzalez.eduardo@epa.gov. Legal matters should be addressed to Ms. Evelyn Rivera at (787) 977-5859 or via electronic mail at rivera-ocasio.evelyn@epa.gov.

Sincerely,

Carmen R. Guerrero Pérez
Director
Caribbean Environmental Protection Division

cc: Laura Rowley, U.S. Department of Justice

miamidade.gov

Water and Sewer
PO Box 330316 • 3071 SW 38 Avenue
Miami, Florida 33233-0316
T 305-665-7471

VIA ELECTRONIC CORRESPONDENCE

May 5, 2020

CCN: 63183
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

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,
Delay Notification for Consent Decree Appendix D-2, Capital Improvement Project 5.3
Upgrade of Pump Station No.0692

Dear Sir/Madam:

In accordance with the provisions of Section XI, Paragraph 52 of the above referenced Consent Decree (CD), on April 21, 2020, Miami-Dade County (County) electronically 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) 5.3 Upgrade of Pump Station No.0692 located at 30211 SW 147th Avenue Homestead, Florida, 33033. Delays have occurred in the execution of this project during the construction phase including Force Majeure COVID-19 Pandemic impacts. These delays will impact the project's CD compliance date of June 17, 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 5.3 is the replacement of pumping and electrical equipment at Pump Station (PS) 0692. The contractor's scope of work includes: demolition of existing equipment, replacement of booster and wet well pumps, piping, valves, appurtenances, building roof, doors, windows, louvers, HVAC, plumbing, field instruments, site work and bypass piping. The Work also includes removal of an existing indoor generator, converting the existing generator room into an electrical room and adding a new outdoor generator with integral fuel storage tank. The new electrical room will encompass new self-contained Variable Frequency Drives (VFD) to control each booster pump motor, new light-emitting diode (LED) lighting, new panel boards, MCC, automatic transfer switch, and a dry-type step-down transformer. The control systems for the wet well pumps and booster pumps will be replaced with a new control system which includes new Programmable Logic Controllers (PLCs) with HMI screen, a Multismart controller and the Remote Telemetry Unit (RTU).

Explanation and description of the reasons for the delay

On March 18, 2020 the Contractor sent a letter notifying that Miami-Dade County Department of Regulatory and Economic Resources will close the Permitting and Inspection Center (PIC) due to COVID-19. This closure of the Miami-Dade County PIC will impact the required permit inspections for all permits on the project.

On March 18, 2020 the Contractor sent another letter advising that considering the COVID-19 Pandemic, it is anticipated that equipment and material supply chains, labor availability, support service availability, and project accessibility will be impacted. The Contractor is reserving its rights to submit a claim in accordance with the Contract Documents for any delays and impacts which may be attributable to COVID-19 until such a time that the full effect of COVID-19 upon the Project is known.

On April 10, 2020, the Contractor advised that one of their employees working at the PS 0692 had tested positive for COVID-19. This employee had been working in the lower level of the pump station. Per the Contractor's COVID response plan, the Contractor directed all employees who were working in the general area of the employee not to report to work for a week and closed the access to the lower level of the pump station. The Contractor notified all subcontractors of the matter. On April 15, 2020, the Contractor disinfected the lower level of the pump station. On April 21, 2020, the Contractor resumed the work at the Station.

The above listed COVID-19 circumstances, along with some scope modifications to facilitate enhanced operational efficiencies and to improve safety, are affecting the schedule for the manufacture, delivery and installation of various electrical and instrumentation equipment required for the commissioning of the rehabilitated pump station.

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

Additionally, the County will take the following steps:

1. Implement COVID-19 preventative safety measures to avoid further contamination.
2. Evaluate contractor's recovery schedule and propose any alternative to minimize delay, when applicable.
3. 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 5.3.

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 ramifications are still developing. The County will provide an update for the anticipated duration of the delay, upon completion of the time impact analysis for the above activities. 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 as the County notified the EPA and FDEP in the April 3, 2020 Force Majeure Notification due to the COVID-19 Impacts letter.

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

Consent Decree Exhibit D-1 identified that the existing equipment is beyond its useful life. There is no indication that delays in CD 5.3, Upgrade of PS 0692, present an immediate endangerment to the public health, welfare or the environment. The PS 0692 is and will continue to be bypassed until upgrades works are completed.

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

ec: Barbara Jean Throne
Senior Assistant Attorney General, Complex Litigation
Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32399-1050
850-414-3808
Barbara.throne@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
Meghan.Ticknor@dep.state.fl.us

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

Kevin T. Lynskey, Director
Miami-Dade Water and Sewer Department
3071 SW 38th Avenue
Miami, Florida 33146

Jack Osterholt, Deputy Mayor/Director
Miami-Dade Regulatory and
Economic Resources
111 NW 1st Street. 29th Floor
Miami, FL 33128
Josterholt@miamidade.gov

Henry Gillman
Miami-Dade Assistant County Attorney
Miami-Dade County Attorney's Office
111 NW First Street Suite 2810
Miami, Florida 33128

Richard Elliott, P.E., PMP
Environmental Engineer
Water Protection Division
U.S. Environmental Protection Agency - Region 4
61 Forsyth Street. S.W.
Atlanta, GA 30303
Elliott.Richard@epa.gov

Paul Schwartz
Associate Regional Counsel
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303
Schwartz.Paul@epa.gov

William A. Weinischke
Senior Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044
Bill.Weinischke@usdoj.gov

Attachment

Contractor COVID-19 Notifications

Poole & Kent Company of Florida
1781 N.W. North River Drive
Miami, FL 33125
P.O. Box 420556
Miami, FL 33242

Phone: 305.325.1930
Fax: 305.324.0522

March 18, 2020

MDWASD PM/CM Team
3071 SW 38th Ave.
Miami, Florida 33146

Attn: Rennie Lopez

Re: CD 5.3 Upgrade of Pump Station 692

Sub: Notice of Delay and Notice of Impact – Novel Coronavirus Disease 2019 (COVID-19)
MIAMI-DADE COUNTY PERMITTING AND INSPECTION CENTER (PIC) CLOSURE FOR 14 DAYS

Mr. Lopez,

On March 24, 2020, Poole & Kent has been notified that Miami-Dade County Department of Regulatory and Economic Resources will be closing the Permitting and Inspection Center for 14 days, effective March 25, 2020 due to COVID-19. This closure of the Miami-Dade County PIC will impact the required permit inspections for all permits on the project.

In accordance with Article 8 and Article 11 of the General Terms and Conditions, Poole & Kent is issuing formal notice for any delays and impacts which may be attributable to COVID-19. Until such a time that the full effect of COVID-19 upon the Project is known, Poole & Kent is reserving its rights to submit a claim in accordance with the Contract Documents and to be compensated for all cost and time adjustments allowable by the Contract Documents.

As you are aware, the situation is constantly evolving and beyond our reasonable control. We are committed to remain in communication with you and trust that you will do the same with us. We want to get back to normal work activities as soon as possible after these unprecedented circumstances have passed. In the meantime, if you have concerns regarding our approach, please contact me.

Sincerely,
Poole & Kent Company of Florida

Mitchell MacClugage
Project Manager

CC: Brian MacClugage, Poole & Kent
Chris Marrero, Poole & Kent

Media Contact:

Tere Florin
tflorin@miamidade.gov
305-781-0399

Miami-Dade County Department of Regulatory and Economic Resources closing Permitting and Inspection Center for 14 days

MIAMI (March 24, 2020) — The Miami-Dade County Department of Regulatory and Economic Resources (RER) will close its Permitting and Inspection Center (PIC) located at 11805 SW 26 Street for 14 days, effective March 25, 2020.

The department has learned that three PIC employees have tested positive for coronavirus (COVID-19), bringing the total to four. RER is working closely with the Florida Department of Health (DOH) and following their recommendations. All PIC employees have been informed and instructed to self-isolate and self-monitor for 14 days.

All inspections scheduled for tomorrow are canceled, except for new construction inspections by Miami-Dade Fire Rescue's New Construction Bureau.

During the closure, online services will be available.

Further, staff will be available at the following emails:

Board and Code Administration: General inquiries: gascon@miamidade.gov or michael.goolsby@miamidade.gov. Board Administration: KAT045@miamidade.gov; Contractor Licensing: JL045@miamidade.gov; and Product Control: helmy@miamidade.gov.

Code Compliance: Lien services: lspic@miamidade.gov; building support (unsafe structures, work without permits, contractor enforcement): 311WWPR@miamidade.gov or 311CER@miamidade.gov.

Construction Permitting and Building Code: General inquiries: bldgdept@miamidade.gov. For subsidiary permits or permits requiring no plan review, e-mail the application to RER_SPA@miamidade.gov.

Department of Health: new construction or repair of septic tank systems, call 305 623-3500.

As this is a fluid and evolving situation, service updates will be announced as decisions are made. RER is also working with DOH to implement a new service plan when the PIC reopens in two weeks.

Individuals in Miami-Dade County who believe they may have been exposed to COVID-19 should call the Florida Department of Health at 305-324-2400. If you have a medical provider, call them. If traveling to a medical office or facility, call ahead. For questions about COVID-19 in Florida, please call the Florida Department of Health at 1-866-779-6121. For a medical emergency, call 911.

For updated information, visit www.miamidade.gov/coronavirus.

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To request materials in accessible format, sign language interpreters, and/or any accommodation to participate in any County-sponsored program or meeting, please call Alain Donderiz, 305-372-6779 or email,

dondea@miamidade.gov, five days in advance to initiate your request. TTY users may also call 711 (Florida Relay Service).

Regulatory and Economic Resources
111 NW 1st Street, Suite 2910
Miami, FL 33128

Poole & Kent Company of Florida
1781 N.W. North River Drive
Miami, FL 33125
P.O. Box 420556
Miami, FL 33242

Phone: 305.325.1930
Fax: 305.324.0522

March 18, 2020

MDWASD PM/CM Team
3071 SW 38th Ave.
Miami, Florida 33146

Attn: Rennie Lopez

Re: CD 5.3 Upgrades of Pump Station 692
Notice of Delay and Notice of Impact – Novel Coronavirus Disease 2019 (COVID-19)

Mr. Lopez,

On March 9, 2020 Governor Ron DeSantis issued an Executive Order declaring a state of emergency for the State of Florida due to the COVID-19 Pandemic. Over the past week, it has become more and more apparent that, in light of the COVID-19 Pandemic, it is anticipated that equipment and material supply chains, labor availability, support service availability, and project accessibility will be impacted. In accordance with the Contract Documents CD 5.3 UPGRADES OF PUMP STATION 692, Poole & Kent is issuing formal notice for any delays and impacts which may be attributable to COVID-19. Until such a time that the full effect of COVID-19 upon the Project is known, Poole & Kent is reserving its rights to submit a claim in accordance with the Contract Documents and to be compensated for all cost and time adjustments allowable by the Contract Documents.

As you are aware, the situation is constantly evolving and beyond our reasonable control. We are committed to remain in communication with you and trust that you will do the same with us. We want to get back to normal work activities as soon as possible after these unprecedented circumstances have passed. In the meantime, if you have concerns regarding our approach, please contact me.

Sincerely,
Poole & Kent Company of Florida

Mitchell MacClugage
Project Manager

CC: Brian MacClugage, Poole & Kent

Poole & Kent
Contractors
An EMCOR Company

April 10, 2020

To: Rennie Lopez, PMCM

Re: Homestead Pump Station, S-908R: Positive COVID-19 Case

Mr. Lopez,

Poole & Kent has been advised that one of our employees has tested positive for COVID-19. This employee has been working at the above mentioned project in the lower level of the pump station. This to serve as notice in accordance with our COVID-19 Prevention and Reporting Plan.

Poole & Kent, is following the protocols included in our plan. Additionally, we have directed all employees who were working in the general area of the employee (that is the lower level of the pump station) not to report to work for the next week, and we have closed off access to the lower level of the pump station for the next week. We are now in the process of notifying all subcontractors of the matter.

Should you have any questions please contact me at Cell: 305-525-7165.

Regards,

David Lockhart, CHST
Poole & Kent Company of Florida
Safety Manager

CC: Brian MacClugage, Exec. VP

Mitch MacClugage, Project Manager

File

miamidade.gov

Water and Sewer
PO Box 330316 • 3071 SW 38 Avenue
Miami, Florida 33233-0316
T 305-665-7471

VIA ELECTRONIC CORRESPONDENCE

May 5, 2020

CCN: 63182
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

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,
Delay Notification 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 April 21, 2020, Miami-Dade County (County) electronically 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) 3.6 Disinfection, located at the North District Wastewater Treatment Plant (NDWWTP), 2575 NE 156th Street, North Miami Beach, 33160. Delays have occurred in the execution of this project during the construction phase including Force Majeure COVID-19 Pandemic impacts. These delays will impact 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 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.

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.

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 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 is preparing a time- impact analysis for this switchover.

Action taken or to be taken to prevent or minimize the delay
Additionally, the County will take the following steps:

1. Implement 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 transmit the duration of the delay, upon completion of the time impact analysis for the above activities. 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. Contractor has issued a letter with attachments from their electrical and door subcontractor notifying of COVID-19 impacts.

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 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

Attachment: Contractor's COVID-19 Notification

ec: Barbara Jean Throne
Senior Assistant Attorney General, Complex Litigation
Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32399-1050
850-414-3808
Barbara.throne@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
Meghan.Ticknor@dep.state.fl.us

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

Kevin T. Lynskey, Director
Miami-Dade Water and Sewer Department
3071 SW 38th Avenue
Miami, Florida 33146

Jack Osterholt, Deputy Mayor/Director
Miami-Dade Regulatory and
Economic Resources
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Henry Gillman
Miami-Dade Assistant County Attorney
Miami-Dade County Attorney's Office
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Miami, Florida 33128

Richard Elliott, P.E., PMP
Environmental Engineer
Water Protection Division
U.S. Environmental Protection Agency - Region 4
61 Forsyth Street. S.W.
Atlanta, GA 30303
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William A. Weinischke
Senior Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044
Bill.Weinischke@usdoj.gov

Attachment

Contractor COVID-19 Notification

ESTABLISHED 1879

Daniel O'Connell's Sons
Construction Managers and
General Contractors

2999 NE 191st St
Suite 906
Aventura, FL 33180
786-864-0003
www.oconnells.com

April 9, 2020 Transmittal Method: Via Email

Mr. Pedro Angel
Construction Manager
Consent Decree PM/CM Team

RE: CD 3.06 North District WWTP Disinfection Improvements
NOTICE OF FORCE MAJEURE EVENT
WASD Contract No. S-912, DOC 2018-104

Mr. Angel,

Please be advised Daniel O'Connell's Sons (DOC) continues to comply with applicable guidelines and direction from WASD regarding the current COVID 19 pandemic. These efforts have had an impact on productivity on a daily basis as initial screening and self certifications are required before work commences. DOC has complied with the WASD request for a COVID-19 plan and applies the plan requirements daily to mitigate the effects of the COVID-19 disease. However, this past week DOC received letters (Attachments A & B) from subcontractors and suppliers stating their concerns and expectations of the adverse impacts on their operations in prosecuting the work on this Project.

The COVID-19 pandemic is considered by DOC to be a Force Majeure event. We expect an impact on the availability of healthy workforce and potential impacts to the fabrication and delivery of materials and equipment to the project timely and meeting schedules.

Article 1 of the Supplemental General Terms and Conditions defines "Force Majeure" as an Act of God including but not limited to an epidemic which impacts the materials, supplies, labor, services, permits, etc required to complete the Project and is outside of the control of all parties involved.

DOC shall provide documentation of specific incidences as they occur. Accordingly, DOC reserves its rights under this Notice to claim relief from delays and damages incurred due to the COVID-19 pandemic.

Sincerely,
DANIEL O'CONNELL'S SONS

Jaime Vélez
Project Manager

CC: Robert Murphy, P.E. – DOC
George Brodeur – DOC

José Murphy, P.E. – DOC
Enrique Cardona – PMCM
DOC File No. 2018-104

ATTACHMENT "A"

Loveland Electric

04/03/2020

Notice of Force Majeure Event

Dear Clients:

We are closely monitoring the outbreak and spread of COVID-19 and the impact it may have on our business and our clients. We are working to continue providing and delivering the same level of work and service you have come to expect, while remaining in compliance with all guidelines issued by municipalities, counties, states and the federal government.

At this time, it is reasonable to expect that the COVID-19 virus will have an adverse impact upon our ability to continue providing labor and materials to your project and timely perform all of our obligations under our contract. The scope of this potential impact is currently unknown. We can expect a reduction in available labor due to policies requiring social distancing and self-isolation to prevent the spread of the virus. In addition, the impact on our supply chains for materials, many of which are shipped from overseas, may be severe.

Therefore, we write to provide notice that we consider the COVID-19 outbreak a Force Majeure event in relation to the Project. As a result, to the extent permitted by our contract, we reserve all rights to: (1) an extension of time based upon any delay to the project caused by COVID-19; (2) additional compensation based upon costs incurred related to any delay to the project caused by COVID-19; and (3) additional compensation based upon increased costs of materials.

While we provide this notice as a precaution, we assure you that we are doing everything in our power to avoid any delays or increased costs to the project, while remaining compliant with the directions, guidelines and requirements issued by municipalities, counties, states and the federal government.

We will continue to share information as it becomes available and do our very best to keep you informed about any further actions as it relates to your project. If you have any further questions, please feel free to contact me directly.

Sincerely,

David M Loveland

Vice President

Commercial Industrial Service
1344 South Killian Drive Lake Park, Florida 33403 (561) 882-0401 Fax (561) 882-0555
Lic #EC13007552

ATTACHMENT "B"

CORRIM Company

Corrosion Immune Fiberglass Doors and Frames
1870 Stillman Drive · Oshkosh, WI 54901-1010
www.corrim.com
P: (920) 231-2000 · F: (920) 231-2238

April 6, 2020

To whom it may concern,

As a country we are going through difficult times with the Covid-19 Stay at Home orders by our state governments. With this being said Corrim Company has been classified as an essential company due to the product we supply.

Due to this essential manufacturer order, Corrim Company has received letters from the US Military classifying specific projects as Mission Essential which states that those orders have a priority and have preference ahead of all other orders.

Corrim Company is doing our best to get these orders through our plant and try to not upset our current lead time but due to the nature of these orders we may be see a delay of the original estimated ship date by 2 to 4 weeks.

Please bear with us as we work through these strenuous times together.

Sincerely,

Mark Miller
President

John Morelli
Vice President

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
SAM NUNN ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Lynnette M. Ramirez, P.E.
Senior Advisor, Capital Improvement Programs
& Regulatory Compliance
Miami-Dade County Water and Sewer Department
PO Box 330316
3071 SW 38 Avenue
Miami, Florida 33233-0316

Duplicate sent via email: Lynnette.Ramirez@miamidade.gov

Re: United States et al vs. Miami-Dade County, Florida
Consent Decree (Case: No. 1:12-cv-24400-FAM),
DOJ Case No. 90-5-1-1-4022/1,
COVID-19 Related Force Majeure Notification

Dear Ms. Ramirez:

The U.S. Department of Justice (DOJ), the U.S. Environmental Protection Agency (EPA) and the Florida Department of Environmental Protection (FDEP) are in receipt of Miami-Dade County's (Miami-Dade's) April 3, 2020, letter under Section XI, Paragraph 52 of the above-referenced Consent Decree (the CD), notifying EPA and FDEP of a potential force majeure event that may cause a delay or impediment to performance of obligations under the CD. As you may be aware, on March 26, 2020, the EPA issued a temporary Policy: "COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program" (Policy) that addresses EPA enforcement of environmental legal obligations during this time. As provided in Section I.C of the Policy, claims of an inability to comply with the terms of a judicial consent decree are properly handled pursuant to the consent decree's force majeure provisions. We are enclosing a copy of that Policy.

Miami-Dade's notice asserts a potential force majeure event based on the current COVID-19 public health emergency. Following declarations of emergency at the national, state and local levels, Miami-Dade has received notices from contractors, consultants, and vendors regarding anticipated delays in obtaining permits, supplies and equipment, and challenges in maintaining adequate staffing as a result of the public health emergency. Miami-Dade states that these impacts will affect its implementation of CD Appendix D Capital Improvement Projects.

The EPA and DOJ have consulted with the FDEP in preparing this response. Your letter of April 3, 2020, notes that, under Section XI, Paragraph 52 of the CD, Miami-Dade is required to include in a force majeure notification letter (1) a description and explanation of the reasons for the delay, (2) the anticipated duration of the delay, (3) all actions taken or to be taken to prevent or minimize the delay, (4) a schedule for implementation of any measures to be taken to prevent or minimize the delay or the effect of the delay, (5) Miami-Dade's rationale for attributing such delay to a force majeure event if it

intends to assert such a claim, (6) a statement as to whether, in the opinion of Miami-Dade, such event may cause or contribute to an endangerment to public health or the environment, and (7) documentation to support such force majeure claim. Your letter provides some of the required information but acknowledges that, at this point, there is uncertainty regarding some of the required information that was provided. For example, there is uncertainty regarding the scope and anticipated duration of the delay. In the letter, Miami-Dade indicates that it will continue to provide updates to the EPA and FDEP as the situation evolves.

It should be noted that Paragraph 52 of the CD requires Miami-Dade to undertake best efforts to fulfill the obligations of the CD, including the use of best efforts to anticipate any potential force majeure event both as it is occurring and after it has occurred, to prevent or minimize delay. The EPA, DOJ, and FDEP expect Miami-Dade to continue to use its best efforts to prevent or minimize delays as the situation evolves. In addition, we appreciate Miami-Dade's commitment, in light of the uncertainty surrounding the COVID-19 public health emergency, to provide additional information as it becomes available. Such information should include details of the proposed schedule for when and how Miami-Dade will comply with each CD obligation at the earliest practicable date.

At the time of its April 3, 2020, notice, Miami-Dade was still uncertain as to the duration of the delay and the extent of the impact of the event on specific obligations. Therefore, no specific relief was requested in Miami-Dade's April 3rd force majeure notice. Accordingly, EPA and FDEP make no specific determination with respect to force majeure relief at this time. We will respond more specifically as more information is provided. We note that Miami-Dade, on May 5, 2020, submitted two project-specific force majeure notifications with respect to Capital Improvement Project 3.6 and Capital Improvement Project 5.3. Those notifications, like the April 3 notification, indicate that the duration of the delay remains uncertain. Thus, EPA will also await further information before making a formal determination regarding particular relief for those additional notifications.

In order to facilitate the timely provision of information required under the force majeure provisions of the CD, Miami-Dade is encouraged to maintain an open and continuing dialogue with the EPA, DOJ, and FDEP. This will serve to protect human health and the environment, minimize potential misunderstandings, and facilitate timely and appropriate decision-making as this situation unfolds. Should you have any questions regarding the above or any aspect of this matter, please do not hesitate to contact Mr. Brad Ammons, at (404) 562-9769 or via email at ammons.brad@epa.gov.

Sincerely,

CAROL KEMKER Digitally signed by CAROL KEMKER Date: 2020.05.28 17:36:51 -04'00'

Carol L. Kemker
Director
Enforcement and Compliance Assurance Division

Enclosure

cc: Lisa Self
FDEP (via email to lisa.m.self@dep.state.fl.us)

Lourdes Bufill
EPA OECA (via email to Bufill.Lourdes@epa.gov)

Rachael Kamons
U.S. DOJ (via email to Rachael.Kamons@usdoj.gov)

Cynthia Doyon
Miami-Dade (via email to Cynthia.Doyon@miamidade.gov)

Mita Ghosh
Office of Water Legal Support (via email to Ghosh.Mita@epa.gov)

From: Remnek, Alexandre
To: Richter, John; Wong, Virginia; Arvizu, Christy
Subject: RE: Spring/Fall sanitary sampling
Date: Tuesday, April 07, 2020 1:16:00 PM

John,

You can postpone monitoring due to problems with coronavirus, you just need to document the reasons and also state those reasons in the annual report. While the facility will technically be in NOV, you do not need to pursue further action in your ERP in case of force majeure.

There was a memo primarily for EPA and States regarding compliance enforcement on March 26. https://www.epa.gov/sites/production/files/2020-03/documents/oecamemooncovid19implications.pdf

We have requested that the Office of Water provide more meaningful guidance to wastewater treatment plants, and we are still waiting…but you have some leeway on how to run the program.

I suggest not monitoring in locations where you definitely feel there are risks, like in this instance, plus a history of compliance. In the meantime, one option is to keep in touch with the hospital by phone and verify that all chemicals are stored properly, or help them with avoiding potential slug loads given that the hospitals are in process of expanding and reconfiguring their space. That is assuming that there is a person on the other end who is not overwhelmed by what is going on…

Take care,

Alexi

Alexandre Remnek
Environmental Engineer
Pretreatment Expert
Unconventional Oil and Gas Regional Contact

NPDES Section
Clean Water Regulatory Branch, Water Division
Environmental Protection Agency, Region 2

290 Broadway
New York, NY 10007

Work: 212-637-3774
Fax: 212-637-3889
E-mail: remnek.alexandre@epa.gov

From: Richter, John <JRichter@amherst.ny.us>
Sent: Tuesday, April 07, 2020 12:45 PM

To: Wong, Virginia <Wong.Virginia@epa.gov>; Remnek, Alexandre <Remnek.Alexandre@epa.gov>; Arvizu, Christy <Arvizu.Christy@epa.gov>
Subject: FW: Spring/Fall sanitary sampling

Good afternoon Virginia, Alexandre and Christy,

I hope all is well and things are ok.
Below is an email I have just received minutes ago from our sampling firm that takes care of the sampling requirements for all of our SIU's.
The contract cancellation is for Millard Fillmore Hospital.
As you may be aware, Millard Fillmore currently houses several COVID 19 patients and their discharge point from toilet to sump pit is relatively close (~200 – 400 feet).
I am not sure if the COVID 19 event may have had something to do with the below contract cancellation? I can definitely understand why for health concerns.
I am reaching out to other sampling firms within the Buffalo regional area. I will keep everyone posted to anything I may hear regarding the above.
For now, the spring sampling event for Millard Fillmore Suburban Hospital is cancelled until we can rectify the above.

Thank you for your consideration in the above,

John Richter
Pretreatment Coordinator
Town of Amherst
Environmental Control Division

From: Kathy Wager [mailto:Kathy.Wager@frontiertechnical.com]
Sent: Tuesday, April 07, 2020 12:02 PM
To: Bortz, James <jbortz@kaleidahealth.org>; Burysh, Kateryna <KBurysh@kaleidahealth.org>
Cc: Richter, John <JRichter@amherst.ny.us>
Subject: Spring/Fall sanitary sampling

CAUTION: This email originated from outside of the organization.
Please do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon Jim:

Frontier has decided to not renew our contract with Kaleida Health for this calendar year. We apologize for the inconvenience. Kathy

--
Kathy Wager
Vice President
Frontier Technical Associates, Inc.
8675 Main Street
Williamsville, NY 14221
Telephone: 716-634-2293

From:	Sayre, Dennis
To:	Minas Myrtidis; Fabio Nicora; Ramos Jeff
Cc:	Kemker, Carol; Lamberth, Larry; Bragan, Mary Jo; Castillo, Jairo; Shell, Karrie-Jo
Subject:	EPA Region 4 Response to Temporary Waiver from the VGP Incidental Discharge Requirements
Date:	Friday, March 27, 2020 1:54:42 PM
Attachments:	oecamemooncovid19implications Bodine.pdf

Thank you for your patience. This email serves as EPA Region 4's response to your request to waive certain conditions of the Vessel General Permit. In addition to the information found below, you are to maintain records required in Section 4.2 of the Vessel General Permit (VGP) and report to the EPA any instances of non-compliance in your annual report in accordance with Section 4.4 of the VGP.

Please let me know if I can be of any further assistance.

Best Regards,

Dennis J. Sayre
Drinking Water & Wastewater Section
(404) 562-9756

In response to your request regarding the discharge of graywater from ships within 3nm of shore and per the attached *COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program* policy signed on 3/26/2020 by Susan Bodine, Assistant Administrator for EPA's Office of Enforcement and Compliance Assurance, you should make every effort to comply with your environmental compliance obligations. However, should compliance not be reasonably practicable, please take the following actions:

1. Act responsibly under the circumstances in order to minimize the effects and duration of any noncompliance;

2. Identify the specific nature and dates of the noncompliance;

3. Identify how COVID-19 was the cause of the noncompliance, and the decisions and actions taken in response, including best efforts to comply and steps taken to come into compliance at the earliest opportunity;

4. Return to compliance as soon as possible; and

5. Document the information, action, or condition specified in a. through d.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

Mr. Scott Potter
Director
Metro Water Services
1600 2nd Avenue North
Nashville, TN 37208

Sent via email: Scott.Potter@nashville.gov

Re: United States v. Metropolitan Government of Nashville and Davidson County, Tennessee,
Civil Action No. 3-07-1056
COVID-19 Related Force Majeure Notification

Dear Mr. Potter:

The U.S. Environmental Protection Agency Region 4, Tennessee Department of Energy and Conservation ("TDEC"), and the U.S. Department of Justice ("DOJ") are in receipt of Metropolitan Government of Nashville and Davidson County's ("Metro's") April 1, 2020 Notice of Force Majeure Event (Notice), notifying TDEC and EPA pursuant to Section XI of the above-referenced Consent Decree (the "CD") of an actual *force majeure* event that may cause a delay to performance in complying with certain provisions of the CD.

As you may be aware, on March 26, 2020, the EPA issued a temporary Policy: "COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program" ("Policy") that addresses the EPA's enforcement of environmental legal obligations during this time. As provided in Section I.C of the Policy, claims of an inability to comply with the terms of a judicial consent decree are properly handled pursuant to the CD's *force majeure* provisions. We are enclosing a copy of that Policy.

Metro's notice asserts a *force majeure* event based on the current COVID19 public health emergency. The EPA and DOJ have consulted with TDEC in preparing this response. This response is intended to cover the facilities that are subject to the above-referenced CD and directs Metro to Section XI of the CD. Section XI, Paragraph A of the CD requires Metro to "exercise "best efforts to fulfill the obligation" which "includes using best efforts to anticipate any potential Force Majeure event and best efforts to address the effects of any potential Force Majeure event (1) as it is occurring and (2) following the potential Force Majeure event, such that delay is minimized to the greatest extent possible."

Metro's April 1, 2020 letter asserts a potential *force majeure* event based on the current COVID-19 public health emergency's impacts that have "forced Metro Water Services ("MWS") to delay bidding on the Central Headworks Project for a minimum of five weeks," which will impact "the single largest project under the Consent Decree and a key element under the [Long-Term Control Plan]." Metro also asserts anticipated *force majeure* events, claiming extensions to compliance deadlines in the CD "may be necessary" and that "it is difficult to determine where and the extent to which extensions may be necessary."

In effect, Metro asserts in its letter that because COVID-19 and its effects are unpredictable and outside its control, Metro cannot currently address the additional items required under Section XI, Paragraph D, including the anticipated duration of the delay and steps that could be taken to minimize the delay. However, the *force majeure* Section of the *CD* requires that the notice must at a minimum: identify the obligations for which Metro believes performance will be delayed; the anticipated length of the delay; the precise cause or causes of the delay; the measures taken or to be taken by Metro to prevent or minimize the delay; and the timetable by which those measure will be implemented. Because of the uncertainty surrounding the COVID-19 public health emergency, we understand that Metro may not have complete information at this time, but it should provide additional information in accordance with Section XI as more information becomes available.

Because additional information is needed to identify specific CD compliance requirements in need of deadline extension, TDEC and the EPA must defer judgment on Metro's *force majeure* claim at this time. TDEC's and the EPA's decision to defer judgment should not be construed as acceptance of any potential noncompliance covered by the CD. For a *force majeure* claim to be ripe for decision, Metro should, in accordance with Section XI, Paragraph D of the CD, describe in detail "the obligations for which Metro believes performance will be delayed; the anticipated length of the delay; the precise cause or causes of the delay; the measures taken or to be taken to prevent or minimize the delay; and the timetable by which those measures will be implemented."

In addition to compliance with the express provisions of the CD, Metro is encouraged to maintain an open and continuing dialogue with TDEC, DOJ, and the EPA regarding the potential for a claim under Section XI of the CD. This will serve to protect human health and the environment, minimize potential misunderstandings, and facilitate timely and appropriate decision-making as this situation unfolds. Should you have any questions regarding the above or any aspect of this matter, please do not hesitate to contact Dennis Sayre of EPA at sayre.dennis@epa.gov or 404-562-9756.

Sincerely,

CAROL KEMKER

Digitally signed by CAROL KEMKER
Date: 2020.06.24 09:26:59 -04'00'

Carol L. Kemker
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency

Enclosure (1)

cc (via email):

Thomas G. Cross, Nashville Metro Water Services
Ron Taylor, Nashville Metro Water Services
Tom.Cross, Nashville Metro Water Services
Ron.Taylor, Nashville Metro Water Services
Jennifer.Dodd, Tennessee Department of Energy and Conservation
Bill Weinischke, U.S. Department of Justice

From:	O"Lone, Dan
To:	Lucas, Annette
Cc:	Bragan, Mary Jo; Thomas, Chris; Hesterlee, Craig; Mitchell, Mike; Dromgoole, Ahmad; Robertson, Mark
Subject:	RE: Q re the Construction General Permit
Date:	Friday, May 1, 2020 3:33:51 PM
Attachments:	oecamemooncovid19implications Bodine.pdf

Annette,

In response to your request regarding construction sites going inactive and per the attached *COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program* policy signed on 3/26/2020 by Susan Bodine, Assistant Administrator for EPA's Office of Enforcement and Compliance Assurance, our expectation is that permittees continue to comply with their permit. However, At the EPA, we are cognizant of potential worker shortages due to the COVID-19 pandemic, as well as the travel and social distancing restrictions imposed by both governments and corporations, and as recommended by the Centers for Disease Control and Prevention, to limit the spread of COVID-19.

To reiterate what Mike Mitchell provided earlier, sites should be stabilized to minimize the potential for erosion and sedimentation. Second, there must be assurances that BMPs are operating properly and repaired when they are compromised. With qualifying conditions (temporary stabilization measures), it may be possible to reduce the necessity to inspect weekly (if no measurable storm event occurs). Third we have to assume that these sites are in a temporary status. This does not alleviate the permittee from implementing corrective measures to prevent or eliminate discharges from the site, however, should compliance not be reasonably practicable, please make sure permittees take the following actions:

I hope this clarifies EPA expectations for environmental compliance during the pandemic. Please call me or email me if you have additional questions.

I hope that you and all those close to you are safe.

Regards,
Dan
****

Daniel J. O'Lone, Chief
Surface Water and Groundwater Section
WEB/ECAD, Region 4
404.562.9434, (c) 404.783.8342
olone.dan@epa.gov
****

"The single biggest problem in communication is the illusion that it has taken place."
George Bernard Shaw

From: Bragan, Mary Jo <Bragan.Maryjo@epa.gov>
Sent: Thursday, April 30, 2020 8:54 AM
To: O'Lone, Dan <Olone.Dan@epa.gov>
Subject: FW: Q re the Construction General Permit

From: Thomas, Chris <Thomas.Chris@epa.gov>
Sent: Friday, April 24, 2020 10:47 AM
To: Bragan, Mary Jo <Bragan.Maryjo@epa.gov>; O'Lone, Dan <Olone.Dan@epa.gov>; Castillo, Jairo <Castillo.Jairo@epa.gov>
Cc: Hesterlee, Craig <Hesterlee.Craig@epa.gov>; Mitchell, Mike <Mitchell.Michael@epa.gov>; Allenbach, Becky <Allenbach.Becky@epa.gov>; Gettle, Jeaneanne <Gettle.Jeaneanne@epa.gov>
Subject: FW: Q re the Construction General Permit

MaryJo, Dan, & Jairo

Note the communication below between Mike and the permitting folks in NC. They are indicating that some of the construction sites in NC are going "inactive", although the permit doesn't recognize an "inactive" status. NC is raising questions about how to handle the site inspections and reporting for these "inactive" sites. This is really an enforcement issue so I'm handing it off to you.

Please keep us in the loop on how ECAD deals with this so we'll have situational awareness. If you need any perspective from us on the permit language or intent of the permit conditions, please let us know. Thanks!

Chris

From: Hesterlee, Craig <Hesterlee.Craig@epa.gov>
Sent: Friday, April 24, 2020 10:24 AM
To: Thomas, Chris <Thomas.Chris@epa.gov>
Cc: Mitchell, Mike <Mitchell.Michael@epa.gov>
Subject: FW: Q re the Construction General Permit

Chris- can you coordinate this compliance (request for monitoring relief from CGP) question with ECAD? I am not sure how DD wants to send these over. Please have ECAD staff reach out to Mike and coordinate their response with NPDES permitting.

Craig Hesterlee, Chief
NPDES Permitting Section
EPA Region 4 Water Division
404.562.9749

From: Mitchell, Mike <Mitchell.Michael@epa.gov>
Sent: Friday, April 24, 2020 10:03 AM
To: Hesterlee, Craig <Hesterlee.Craig@epa.gov>
Subject: FW: Q re the Construction General Permit

Craig:
This is the email from NCDENR regarding construction sites shutdown due to COVID-19

From: Lucas, Annette <annette.lucas@ncdenr.gov>
Sent: Wednesday, April 22, 2020 2:16 PM
To: Mitchell, Mike <Mitchell.Michael@epa.gov>
Subject: Q re the Construction General Permit

Mike -

So you asked me about this a while back, but now we are starting to have some construction sites go inactive. Our NC CGP doesn't provide for an "inactive" status. What are EPA's expectations for monitoring requirements for inactive construction sites that have provided temporary stabilization? Even if our CGP doesn't provide for an inactive status for monitoring relief, would it be possible for us to allow less frequent inspections, perhaps just after significant storm events or bi-weekly for example?

Please let me know your thoughts.

Sincerely,
Annette

41877 Hwy 212
P.O. Box 747
Lame Deer, MT 59043

NORTHERN CHEYENNE UTILITY COMMISSION

Phone: 406.477.6318.6118
Fax: 406.477.6779
Email:ncuc@rangeweb.net

April 9, 2020

Amy Swanson
Section Chief
Regulatory Enforcement
Office of Regional Counsel
USEPA Region 8
303.312.6906
swanson.amy@epa.gov

Adam Spang
Director
Northern Cheyenne Utility Commission
adamspang.ncuc@gmail.com

Sent by email only

Ms. Swanson,

This letter responds to a letter sent by Director Suzanne Bohan on March 26, 2020 to the Northern Cheyenne Tribe. I am responding because the Northern Cheyenne Utilities Commission (NCUC) is the entity responsible for management of drinking water and wastewater on the Northern Cheyenne Reservation.

Ms. Bohan's letter raises two concerns: 1) Cleaning of the west well in Busby, and 2) Development of a plan to restore an "iron curtain" to treat iron and manganese.

At the outset, I note that while we are prioritizing addressing the concerns raised, our understanding is that the current water supply does not present health or safety risks to water users. With respect to the west well, an independent contractor recently cleaned the well. NCUC has attached to this letter reimbursement paperwork submitted to the Indian Health Service. The invoice for cleaning the west well is dated December 4, 2019, indicating that the well was cleaned in late 2019.

With respect to the plan to restore the iron curtain, I have been in ongoing discussions with James Courtney from the Indian Health Service regarding the best way to maintain water quality in Busby. There is concern that restoring the iron curtain system is not the best solution and would not address other longstanding issues concerning water taste. We are therefore evaluating

identifying a replacement well, which would either be an existing but unused well at the Bureau of Indian Education school in Busby or a new well to the east of the current wells. It appears that the water in both these locations naturally has lower levels of iron, manganese, and other minerals that affect water taste.

The timeline for the plan going forward is as follows:

1) By April 10, 2020, in consultation with NCUC, IHS will take water samples at the current well at the school in Busby and submit those samples to a laboratory for a full suite of testing.

2) By April 30, 2020, in consultation with NCUC, IHS will attempt to evaluate the Busby school well supply to determine if it is sufficient to meet demand in Busby. It is possible that this evaluation requires assistance of a well driller, in which case it would take more time to get funding and a contract in place.

3) Based on these evaluations, by April 30, 2020, IHS anticipates making an initial evaluation of whether the school well can be connected to the existing water system and replace the existing wells. The ultimate recommendation will likely necessitate a preliminary engineering report (PER). The IHS is currently working to commit funds to complete a PER by an independent engineering consulting firm.

4) If the school well cannot be used, IHS will determine if it is possible to allocate funds to evaluate a well site to the east of the current well. If funding is available, NCUC will conduct procurement in coordination with IHS to hire a contractor to drill and evaluate a test well.

We are doing our best to quickly resolve EPA's concerns, and plan to follow the deadlines set forth above. However, the ongoing pandemic may cause delays outside of our control. We will continue to keep you regularly updated. I suggest that it would be helpful for you, James Courtney at IHS, NCUC's attorney, and me to hold a conference call to discuss these matters at your convenience.

Finally, we note that a separate letter issued from your office concerns the need to hire a certified operator. NCUC is currently undertaking efforts to identify or train a certified operator and raise funds to hire such a person. These efforts are complicated by the pending negotiations of a consent decree relating to operation of Lame Deer lagoon and NCUC, NCUC's limited funding, and the relatively limited number of available certified operators in rural southeastern Montana.

While difficulties identifying a certified operator preceded the COVID-19 pandemic, the pandemic causes further unanticipated challenges. The Tribe has declared a state of emergency and issued a shelter in place order. The pandemic limits our ability to convene NCUC staff, hold public meetings relating to rate studies, and is anticipated to reduce revenue as Tribal members shelter in place and face increased unemployment. We therefore respectfully request your discretion and flexibility, in accordance with EPA's March 26, 2020 policy titled "COVID-19 Implications for

EPA's Enforcement and Compliance Assurance Program." We would be happy to update you on a call or in a separate communication.

Sincerely,

/s Adam Spang

Adam Spang, Director
NCUC

Encl.
cc:
Rynalea Peña, President, Northern Cheyenne Tribe
William Walksalong, Tribal Administrator, Northern Cheyenne Tribe
Suzanne Bohan, Director, Enforcement and Compliance Assurance Division, USEPA
James Courtney, Senior Engineer, Indian Health Service
Wyatt Golding and Brian Chestnut, Attorneys, Northern Cheyenne Tribe

Northeast Ohio Regional Sewer District

April 14, 2020

Chief, Environmental Enforcement Section
Environmental and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-1-1-08177/1

Gary Pritchard
Attorney/Advisor
U.S. Environmental Protection Agency
Region 5 (C-14J)
77 West Jackson Boulevard
Chicago, Illinois 60604

Chief, Water Enforcement and Compliance
Assurance Branch
U.S. Environmental Protection Agency
Region 5
77 West Jackson Blvd., Mail Code C-15WC
Chicago, IL 60604-3590

Chief, Environmental Enforcement Section
Office of Ohio Attorney General
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3400

Chief, Division of Surface Water
Ohio Environmental Protection Agency
50 West Town Street, Suite 700
Columbus, OH 43215

Re: 30-Day Notice of Force Majeure Event for Control Measure 14 – Westerly Tunnel System

Dear Regulators:

This letter notifies the US Environmental Protection Agency ("US EPA") and the Ohio Environmental Protection Agency ("Ohio EPA") pursuant to Sections XI and XII of the Northeast Ohio Regional Sewer District's (the "Sewer District") Consent Decree of events relating to Control Measure 14–*Westerly Tunnel System* ("CM14") that may impact the Sewer District's ability to meet the Achievement of Full Operation milestone by December 31, 2024. This delay may also impact the Sewer District's ability to achieve Corrective Action under Appendix 3 of the Consent Decree by the July 7, 2023 Achievement of Full Operation date.

BACKGROUND, SUMMARY, AND REASON FOR DELAY

The Westerly Tunnel System will include a 25-foot diameter storage tunnel system with a dewatering pump station. This system will capture and store the combined sewer overflow from Westerly tributary sewersheds. The Westerly Tunnel System will help control overflows at two locations along the Cuyahoga River and reduce combined sewer overflow to the environment by 250 million gallons per year. Appendix 1 of the Consent Decree requires the Sewer District to construct a 24-foot diameter storage tunnel system. The Sewer District, however, chose to upsize

the Westerly Tunnel System to capture additional volume that will be used to achieve Corrective Action under Appendix 3.[1]

Construction of the Westerly Tunnel System began on May 7, 2018. Presently, all three shafts are mined and the tunnel boring machine has been launched. Construction at Westerly Storage Tunnel Shafts 1 and 3 ("WST 1 and WST 3") involves mining operations in a confined space. Construction at Shaft 2 ("WST 2") involves the forming and pouring of the final concrete liner in confined space.

As you know, the COVID-19 global pandemic has forced the entire workforce to adapt to new social distancing requirements. The Ohio Department of Health ("ODH") took early steps in Ohio and issued "stay at home" orders to avoid an imminent threat of widespread exposure to COVID-19 and a significant risk of substantial harm to a large number of people in the general population. Guidelines issued by the U.S. Centers for Disease Control and Prevention, the World Health Organization, and local government in response to COVID-19 recommended the practice of social distancing.

Beginning in March 2020, the ODH and the Governor of Ohio began issuing orders relating to public health protection during the COVID-19 pandemic. The relevant orders include:

1) March 17, 2020: The ODH released the attached amended order prohibiting non-family social gatherings of more than ten (10) people.[2]
2) April 2, 2020: The ODH released an Amended Director's Stay at Home Order, requiring that Essential Businesses and Operations take proactive measures to ensure compliance with Social Distancing.[3]

On March 18, 2020, the contractor for the Westerly Storage Tunnels, Jay Dee Obayashi JV (the "Contractor"), notified the Sewer District that it would shut down operations at WST 1 and WST 3 beginning on March 20, 2020 for at least two weeks.[4] In its notice to the District, the Contractor emphasized that operations at WST 1 and WST 3 involve mining operations in a confined space that placed workers in close proximity to each other. On April 3, 2020, the Contractor notified the District that it would continue the shut-down at WST 1 and WST 3 for another two weeks, beginning April 6, 2020.[5] In this subsequent notice to the District, the Contractor stated that it could not resume "TBM mining operations on Monday [April 6] due to the inability to effective[sic] maintain the social distancing recommended by the CDC and the shortages of PPE that are being experienced nationwide. We have been attempting to procure N95 masks and are being told by our suppliers that their inventories are reserved for Health Care workers and Emergency Responders." The Contractor will continue to work at WST 2, provided

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[1] See Letter from NEORSD to US DOJ, US EPA, Ohio AG and Ohio EPA (dated January 27, 2017), attached to this letter.
[2] See Amended Order, A. Acton, Director, Ohio Department of Health (March 17, 2020), attached to this letter.
[3] See Amended Order, A. Acton, Director, Ohio Department of Health (April 2, 2020), attached to this letter.
[4] See Letter from M. DiPonio (Contractor) to R. Sullivan (Sewer District) (March 18, 2020), attached to this letter.
[5] See Email from N. Long (Contractor) to R. Sullivan (Sewer District) (April 1, 2020), attached to this letter.

that the health and safety of its workforce can be maintained, and material deliveries are not interrupted.

ANTICIPATED DURATION OF THE DELAY AND ACTIONS TAKEN OR TO BE TAKEN TO PREVENT OR MINIMIZE DELAY

The impact to the Achievement of Operation milestone in Appendix 1 of the CD from the delay is currently unknown. Since the duration and impact of COVID-19 is uncertain and rapidly evolving, there may be additional construction delays to this project. To minimize delays on its end, Jay Dee Obayashi JV is continuing the non-mining structural work at WST 2, provided that the health and safety of its workforce can be maintained and that material deliveries are not interrupted.

NO IMPACT TO PUBLIC HEALTH, WELFARE, OR THE ENVIRONMENT

At this time, since the duration and impact of COVID-19 is uncertain and rapidly evolving, and since the December 31, 2024 milestone is more than four years in the future, it is unclear whether there will be any impact to the CM14's Achievement of Full Operation milestone. As such, the Sewer District does not believe that there will be any negative impact to public health, welfare, or the environment from this force majeure event at this time.

***

This unprecedented global pandemic and the strict governmental measures taken to prevent widespread exposure to COVID-19 make this a clear force majeure event in accordance with Sections XI and XII of the Sewer District's CD. The Sewer District will use its best efforts to address the effects of the work delay, but the ability to prevent or minimize any resulting delay to the Critical Milestone from the shutdown of operations at WST 1 and WST 3 is currently out of the Sewer District's control. The Sewer District will continue to communicate with you and provide any relevant updates on the status of the Contractor's ability to perform this work and the associated impact, if any, to the Critical Milestones. Please contact me with any questions at (216) 881-6600.

Sincerely,

Kyle Dreyfuss-Wells
Chief Executive Officer

Attachments (5): Letter from NEORSD to US DOJ, US EPA, Ohio AG and Ohio EPA (dated January 27, 2017)
Amended Order, A. Acton, Director, Ohio Department of Health (March 17, 2020)

Amended Order, A. Acton, Director, Ohio Department of Health (April 2, 2020)
Letter from M. DiPonio (Contractor) to R. Sullivan (Sewer District) (March 18, 2020)
Email from N. Long (Contractor) to R. Sullivan (Sewer District) (April 1, 2020)

cc:
Steve Ellis, U.S. Department of Justice
Anna Cross, U.S. Department of Justice
Scott Helkowski, Ohio Office of the Attorney General
William Fischbein, Ohio Environmental Protection Agency

Northeast Ohio Regional Sewer District

May 5, 2020

Chief, Environmental Enforcement Section
Environmental and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-1-1-08177/1

Gary Pritchard
Attorney/Advisor
U.S. Environmental Protection Agency
Region 5 (C-14J)
77 West Jackson Boulevard
Chicago, Illinois 60604

Chief, Water Enforcement and Compliance
Assurance Branch
U.S. Environmental Protection Agency
Region 5
77 West Jackson Blvd., Mail Code C-15WC
Chicago, IL 60604-3590

Chief, Environmental Enforcement Section
Office of Ohio Attorney General
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3400

Chief, Division of Surface Water
Ohio Environmental Protection Agency
50 West Town Street, Suite 700
Columbus, OH 43215

Re: 30-Day Notice of Force Majeure Event for Control Measure 6

Dear Regulators:

This letter notifies the US Environmental Protection Agency ("US EPA") and the Ohio Environmental Protection Agency ("Ohio EPA") pursuant to Sections XI and XII of the Northeast Ohio Regional Sewer District's (the "Sewer District") Consent Decree of events relating to Control Measure 6 – E. 140th St. Consolidation and Relief Sewer and London Road Relief Sewer projects ("CM6") that may impact the Sewer District's ability to meet the Achievement of Full Operation milestone by December 31, 2020. It may also impact the ability to complete the Appendix 3 Site and Sewershed-Specific post construction Monitoring/Evaluation and the Post-Construction Monitoring Report by the July 7, 2021 due date.

BACKGROUND, SUMMARY, AND REASON FOR DELAY

The E. 140th St. Consolidation and Relief Sewer and London Road Relief Sewer projects began on August 8, 2016 and July 31, 2018 respectively. Mining and pipe installation activities on E. 140th St Consolidation and Relief Sewer are complete. Installation of mechanical and electrical work at Shaft #1 is in progress along with the modifications to several upstream regulators. Mining and pipe operations on the London Road Relief Sewer Project is complete, grouting of the pipe in tunnel is scheduled for June and July 2020. Construction of near surface structures is in progress.

Once complete, Triad McNally Joint Venture (the "Contractor") will commence with activation of flow into the system.

As you know, the COVID-19 global pandemic has forced the entire workforce to adapt to new social distancing requirements. The Ohio Department of Health ("ODH") took early steps in Ohio and issued "stay at home" orders to avoid an imminent threat of widespread exposure to COVID-19 and a significant risk of substantial harm to a large number of people in the general population. Guidelines issued by the U.S. Centers for Disease Control and Prevention, the World Health Organization, and local government in response to COVID-19 recommended the practice of social distancing.

Beginning in March 2020, the ODH and the Governor of Ohio began issuing orders relating to public health protection during the COVID-19 pandemic. The relevant orders include:

1) March 17, 2020: The ODH released the attached amended order prohibiting non-family social gatherings of more than ten (10) people.[1]
2) April 2, 2020: The ODH released an Amended Director's Stay at Home Order, requiring that Essential Businesses and Operations take proactive measures to ensure compliance with Social Distancing.[2]
3) April 30, 2020: The ODH released a Director's Stay Safe Ohio Order, requiring businesses to continue to comply with Social Distancing Requirements.[3]

The Contractor for CM6 notified the Sewer District on April 6, 2020 that it is anticipating delays in E. 140th St. Consolidation and Relief Sewer and London Road Relief Sewer projects due to impacts from the COVID-19 pandemic.[4] The Contractor cites the rapidly changing recommendations and guidelines from the U.S. Centers for Disease Control and Prevention, the Word Health Organization, and local government in response to COVID-19 and notes that the next few weeks are anticipated to have "severe impacts." The Contractor explains that it has seen some impacts to its work force and it has "increasing concerns over the future impact to [its] work force and possible delays to not only [its] work but to timely deliveries of needed materials." The Contractor will continue to monitor events closely and notify the Sewer District of any developing issues.

ANTICIPATED DURATION OF THE DELAY AND ACTIONS TAKEN OR TO BE TAKEN TO PREVENT OR MINIMIZE DELAY

At this time, it is not clear there will be an impact to the Achievement of Operation milestone in Appendix 1 or the Appendix 3 due dates. However, since the duration and impact of COVID-19 are uncertain and rapidly evolving, there may ultimately be construction delays to this project. The Sewer District will continue to communicate with you and provide any relevant

[1] See Amended Order, A. Acton, Director, Ohio Department of Health (March 17, 2020), attached to this letter.
[2] See Amended Order, A. Acton, Director, Ohio Department of Health (April 2, 2020), attached to this letter.
[3] See Order, A. Acton, Director, Ohio Department of Health (April 30, 2020), attached to this letter.
[4] See Letter from C. Kassouf (Contractor) to Sewer District (April 6, 2020), attached to this letter.

updates on the status of the Contractor's ability to perform this work and the associated impact, if any, to the Critical Milestone.

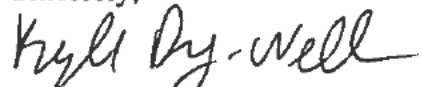
NO IMPACT TO PUBLIC HEALTH, WELFARE, OR THE ENVIRONMENT

At this time, since the duration and impact of COVID-19 is uncertain and rapidly evolving, and since the Contractor has not notified the Sewer District of any actual delays related to the COVID-19 pandemic, it is unclear whether there will be any impact to the CM6's Achievement of Full Operation milestone. As such, the Sewer District does not believe that there will be any negative impact to public health, welfare, or the environment from this force majeure event at this time.

***

This unprecedented global pandemic and the strict governmental measures taken to prevent widespread exposure to COVID-19 make this a clear force majeure event in accordance with Sections XI and XII of the Sewer District's CD. The Sewer District will continue to communicate with you and provide any relevant updates on the status of the Contractor's ability to perform this work and the associated impact, if any, to the Critical Milestone. Please contact me with any questions at (216) 881-6600.

Sincerely,



Kyle Dreyfuss-Wells
Chief Executive Officer

Attachments (4): Amended Order, A. Acton, Director, Ohio Department of Health (March 17, 2020)
Amended Order, A. Acton, Director, Ohio Department of Health (April 2, 2020)
Order, A. Acton, Director, Ohio Department of Health, (April 30, 2020)
Letter from C. Kassouf (Contractor) to Sewer District (April 6, 2020)

cc:
Steve Ellis, U.S. Department of Justice
Anna Cross, U.S. Department of Justice
Scott Helkowski, Ohio Office of the Attorney General
William Fischbein, Ohio Environmental Protection Agency

Ohio | Department of Health

Mike DeWine, Governor
Jon Husted, Lt. Governor

Amy Acton, M.D., MPH, Director

DIRECTOR'S ORDER

In Re: Amended Order to Limit and/or Prohibit Mass Gatherings and the Closure of Venues in the State of Ohio

I, Amy Acton, MD, MPH, Director of the Ohio Department of Health (ODH), pursuant to the authority granted to me in R.C. 3701.13 to "make special orders...for preventing the spread of contagious or infectious diseases" **Order** the following to prevent the spread of COVID-19 into the State of Ohio:

1. Mass gatherings are prohibited in the State of Ohio.

2. Mass gatherings are defined as any event or convening that brings together fifty (50) or more persons in a single room or single space at the same time, such as an auditorium, stadium, arena, large conference room, meeting hall, or any other confined indoor or outdoor space. This would also include parades, fairs and festivals. While not mandatory, it is strongly recommended that Ohioans avoid unnecessary non-family social gatherings of more than ten (10) people in accordance with President Trump's coronavirus guidelines issued March 16, 2020.

3. For the purpose of clarity, a mass gathering does not include normal operations at airports, bus and train stations, medical facilities, libraries, shopping malls and centers, or other spaces where 50 or more persons may be in transit. It also does not include typical office environments, schools, factories, warehouses, distribution centers, retail or grocery stores where large numbers of people are present, but it is unusual for them to be within arm's length of one another. Notwithstanding this Order, buildings and venues that traditionally host mass gatherings may continue to be used for community events such as blood drives where attendance does not exceed fifty (50) persons.

4. This Order does not apply to and/or excludes members of the media.

5. This Order does not apply to and/or excludes religious gatherings, gatherings for the purpose of the expression of First Amendment protected speech, weddings and funerals.

6. This Order does prohibit the following types of businesses from continuing operations due to the imminent threat of the spread of COVID-19 within the facility:

    a. Bowling alleys
    b. Health clubs/fitness centers/ workout facilities/gyms/yoga studios
    c. Indoor trampoline parks
    d. Indoor water parks
    e. Movie theatres and all performance theatres

246 North High Street
Columbus, Ohio 43215 U.S.A.

614 | 466-3543
www.odh.ohio.gov

The State of Ohio is an Equal Opportunity Employer and Provider of ADA Services.

f. Public Recreation Centers
g. Indoor Sports facilities

7. This Order shall take effect immediately and remain in full force and effect until the State of Emergency declared by the Governor no longer exists, or the Director of the Ohio Department of Health rescinds or modifies this Order.

8. To the extent any public official enforcing this order has questions regarding the definition of mass gathering under this Order, the Director of Health hereby delegates to local health departments the authority to answer questions in writing and consistent with this Order.

9. Regardless of whether an event or gathering falls within the definition of mass gathering, all persons are urged to maintain social distancing (approximately six feet away from other people) whenever possible and to continue to wash hands, utilize hand sanitizer and practice proper respiratory etiquette (coughing into elbow, etc.)

COVID-19 is a respiratory disease that can result in serious illness or death, is caused by the SARS-CoV-2 virus, which is a new strain of coronavirus that had not been previously identified in humans and can easily spread from person to person. The virus is spread between individuals who are in close contact with each other (within about six feet) through respiratory droplets produced when an infected person coughs or sneezes. It may be possible that individuals can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose or eyes.

On January 23, 2020, the Ohio Department of Health issued a Director's Journal Entry making COVID-19 a Class A reportable disease in Ohio.

On January 28, 2020, the Ohio Department of Health hosted the first statewide call with local health departments and healthcare providers regarding COVID-19.

On January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization declared the outbreak of COVID-19 a public health emergency of international concern.

On January 31, 2020, Health and Human Services Secretary, Alex M. Azar II, declared a public health emergency for the United States to aid the nation's healthcare community in responding to COVID-19.

On February 1, 2020, the Ohio Department of Health issued a statewide Health Alert Network to provide local health departments and healthcare providers with updated guidance for COVID-19 and revised Person Under Investigation (PUI) criteria.

On February 3, 2020, the Ohio Department of Health trained over 140 personnel to staff a call center for COVID-19, in the event it was needed.

On February 5, 2020, the Ohio Department of Health began updating and notifying the media of the number of PUIs in Ohio every Tuesday and Thursday.

On February 6, 2020, the Ohio Department of Health updated all agency assistant directors and chiefs of staff on COVID-19 preparedness and status during the Governor's cabinet meeting.

On February 7, 2020, the Ohio Department of Health and the Ohio Emergency Management Agency met to conduct advance planning for COVID-19.

On February 13, 2020, the Ohio Department of Health conducted a Pandemic Tabletop Exercise with State agencies to review responsive actions should there be a pandemic in Ohio.

On February 14, 2020, the Ohio Department of Health held a conference call with health professionals across the state. The purpose of the call was to inform and engage the healthcare community in Ohio. Presentations were provided by the Department of Health, Hamilton County Public Health, and the Ohio State University.

On February 27, 2020, the Ohio Department of Health and the Ohio Emergency Management Agency briefed the directors of State agencies during the Governor's cabinet meeting regarding preparedness and the potential activation of the Emergency Operations Center.

On February 28, 2020, the "Governor DeWine, Health Director Update COVID-19 Prevention and Preparedness Plan" was sent to a broad range of associations representing healthcare, dental, long-term care, K-12 schools, colleges and universities, business, public transit, faith-based organizations, non-profit organizations, and local governments.

On March 2, 2020, the Ohio Department of Health activated a Joint Information Center to coordinate COVID-19 communications.

On March 5, 2020, the Ohio Department of Health hosted the Governor's Summit on COVID-19 Preparedness, a meeting with the Governor, cabinet agency directors, local health department commissioners, and their staff.

On March 6, 2020, the Ohio Department of Health opened a call center to answer questions from the public regarding COVID-19.

On March 9, 2020, testing by the Department of Health confirmed that three (3) patients were positive for COVID-19 in the State of Ohio. This confirms the presence of a potentially dangerous condition which may affect the health, safety and welfare of citizens of Ohio.

On March 9, 2020, the Ohio Emergency Management Agency activated the Emergency Operations Center.

On March 9, 2020, the Governor Declared a State of Emergency in Executive Order 2020-01D.

On March 11, 2020, the head of the World Health Organization declared COVID-19 a pandemic.

On March 11, 2020, testing by the Ohio Department of Health confirmed that one (1) more patient was positive for COVID-19 in the State of Ohio.

On March 11, 2020, the Ohio Departments of Health and Veterans Services issued a Joint Directors' Order to limit access to Ohio nursing homes and similar facilities.

On March 15, 2020, the Ohio Department of Health issued a Director's Order to limit access to Ohio's jails and detention facilities.

On March 15, 2020, the Ohio Department of Health issued a Director's Order to limit the sale of food and beverages, liquor, beer and wine to carry-out and delivery only.

On March 15, 2020, the CDC issued Interim Guidance for mass gatherings or large community events, stating that such events that consist of 50 or more people should be cancelled or postponed.

Multiple areas of the United States are experiencing "community spread" of the virus that causes COVID-19. Community spread, defined as the transmission of an illness for which the source is unknown, means that isolation of known areas of infection is no longer enough to control spread.

The CDC reports that people are most contagious when they are most symptomatic (the sickest) however some spread might be possible before people show symptoms although that is not the main way the virus spreads.

Mass gatherings (50 or more persons) increase the risk of community transmission of the virus COVID-19.

Accordingly, to avoid an imminent threat with a high probability of widespread exposure to COVID-19 with a significant risk of substantial harm to a large number of people in the general population, including the elderly and people with weakened immune systems and chronic medical conditions, I hereby **ORDER** that mass gatherings are prohibited in the State of Ohio. Mass gatherings are defined as any event or convening that brings together fifty (50) or more persons in a single room or single space at the same time, such as an auditorium, stadium, arena, large conference room, meeting hall, or any other confined indoor or outdoor space. This would also include parades, fairs and festivals. While not mandatory, it is strongly recommended that Ohioans avoid unnecessary non-family social gatherings of more than ten (10) people in accordance with President Trump's coronavirus guidelines issued March 16, 2020. For the purpose of clarity, a mass gathering does not include normal operations at airports, bus and train stations, medical facilities, libraries, shopping malls and centers, or other spaces where 50 or more persons may be in transit. It also does not include typical office environments, schools, restaurants, factories, or retail or grocery stores where large numbers of people are present, but it is unusual for them to be within arm's length of one another. Notwithstanding this Order, buildings and venues that traditionally host mass gatherings may continue to be used for community events such as blood drives where attendance does not exceed fifty (50) persons. This Order does not apply to and/or excludes members of the media. This Order does not apply to and/or excludes religious gatherings, gatherings for the purpose of the expression of First Amendment protected speech, weddings and funerals. This Order does prohibit the following businesses to continue operations during this public health emergency due to the imminent threat of the spread of COVID-19: bowling alleys; health clubs/fitness centers/workout facilities/gyms/yoga studios; indoor trampoline parks; indoor water parks; movie theatres and performance theatres; public recreation facilities and indoor sports facilities. This Order shall take effect immediately and remain in full force and effect

until the State of Emergency declared by the Governor no longer exists, or the Director of the Ohio Department of Health rescinds or modifies this Order. To the extent any public official enforcing this order has questions regarding the definition of mass gathering under this Order, the Director of Health hereby delegates to local health departments the authority to answer questions in writing and consistent with this Order. Regardless of whether an event or gathering falls within the definition of mass gathering, all persons are urged to maintain social distancing (approximately six feet away from other people) whenever possible and to continue to wash hands, utilize hand sanitizer and practice proper respiratory etiquette (coughing into elbow, etc.)

Amy Acton, MD, MPH
Director of Health

March 17, 2020

Ohio | Department of Health

Mike DeWine, Governor
Jon Husted, Lt. Governor

Amy Acton, M.D., MPH, Director

AMENDED DIRECTOR'S STAY AT HOME ORDER

Re: Amended Director's Order that All Persons Stay at Home Unless Engaged in Essential Work or Activity

I, Amy Acton, MD, MPH, Director of the Ohio Department of Health (ODH), pursuant to the authority granted to me in R.C. 3701.13 to "make special orders…for preventing the spread of contagious or infectious diseases" **Order** the following to prevent the spread of COVID-19 into the State of Ohio:

1. **Stay at home or place of residence.** With exceptions as outlined below, all individuals currently living within the State of Ohio are ordered to stay at home or at their place of residence except as allowed in this Order. To the extent individuals are using shared or outdoor spaces when outside their residence, they must at all times and as much as reasonably possible, maintain social distancing of at least six feet from any other person, with the exception of family or household members, consistent with the Social Distancing Requirements set forth in this Order. All persons may leave their homes or place of residence only for Essential Activities, Essential Governmental Functions, or to participate in Essential Businesses and Operations, all as defined below.

   Individuals experiencing homelessness are exempt from this Order, but are strongly urged to obtain shelter, and governmental and other entities are strongly urged to make such shelter available as soon as possible and to the maximum extent practicable (and to use in their operation COVID-19 risk mitigation practices recommended by the U.S. Centers for Disease Control and Prevention (CDC) and the Ohio Department of Health (ODH)). This order does not apply to incarcerated individuals, they are to follow the guidance of the facility in which they are confined. Individuals whose residences are unsafe or become unsafe, such as victims of domestic violence, are permitted and urged to leave their home and stay at a safe alternative location. For purposes of this Order, homes or residences include hotels, motels, shared rental units, shelters, and similar facilities.

2. **Non-essential business and operations must cease.** All businesses and operations in the State, except Essential Businesses and Operations as defined below, are required to cease all activities within the State except Minimum Basic Operations, as defined below. For clarity, businesses, including home-based businesses, may also continue operations consisting exclusively of employees or contractors performing activities at their own residences (i.e., working from home) or where the business consists of a single person, so long as all safe workplace safety standards are met.

   All Essential Businesses and Operations are encouraged to remain open. Essential Businesses and Operations shall comply with Social Distancing Requirements as defined in this Order, including by maintaining six-foot social distancing for both employees and members of the public at all times, including, but not limited to, when any customers are standing in line.

3. **Prohibited activities.** All public and private gatherings of any number of people occurring outside a single household or living unit are prohibited, except for the limited purposes permitted by this Order. Any gathering of more than ten people is prohibited unless exempted by this Order. This is in accordance with President Trump's coronavirus guidelines issued March 16, 2020. Nothing in this Order prohibits the gathering of members of a household or residence.

   All places of public amusement, whether indoors or outdoors, including, but not limited to, locations with amusement rides, carnivals, amusement parks, water parks, aquariums, zoos, museums, arcades, fairs, children's play centers, playgrounds, funplexes, theme parks, bowling alleys, movie and other theaters, concert and music halls, and country clubs or social clubs shall be closed. Recreational sports tournaments, organized recreational sports leagues, residential and day camps shall be prohibited. Swimming pools, whether public or private, shall be closed, unless it is a swimming pool for a single household. Campgrounds shall be closed, except that persons residing in recreational vehicles ("RVs") at campgrounds who genuinely have no other viable place of residence may remain in the campground. This campground closure also excludes cabins, mobile homes, or other fixed structure, meant for a single family in situations where no other viable place of residence exists. Such persons should comply with all applicable guidance from the U.S. Centers for Disease Control and Prevention and the Ohio Department of Health regarding social distancing.

4. **Prohibited and permitted travel.** Only Essential Travel and Essential Activities as defined herein, are permitted. People riding on public transit must comply with Social Distancing Requirements to the greatest extent feasible. This Order allows travel into or out of the State to maintain Essential Businesses and Operations and Minimum Basic Operations. However, persons entering the State with the intent to stay are asked to self-quarantine for fourteen days. For purposes of clarity this does not apply to persons who as part of their normal life live in one state and work or gain essential services in another state. Persons who have tested positive for COVID-19, are presumptively diagnosed with COVID-19 or are exhibiting the symptoms identified in the screening guidance available from the U.S. Centers for Disease Control and Prevention and the Ohio Department of Health shall not enter the State, unless they are doing so under medical orders for the purposes of medical care, are being transported by Emergency Medical Services (EMS), are driving or being driven directly to a medical provider for purposes of initial care, or are a permanent resident of the State.

5. **Leaving the home for Essential Activities is permitted.** For purposes of this Order, individuals may leave their residence only to perform any of the following Essential Activities:

   a. **For health and safety.** To engage in activities or perform tasks essential to their health and safety, or to the health and safety of their family or household members or persons who are unable or should not leave their home (including, but not limited to, pets), such as, by way of example only and without limitation, seeking emergency services, obtaining medical supplies or medication, or visiting a health care professional.

   b. **For necessary supplies and services.** To obtain necessary services or supplies for themselves and their family or household members or persons who are unable or should not leave their home, or to deliver those services or supplies to others, such as, by way of example only and without limitation, groceries and food, household consumer products, supplies they need to work from home, automobile and boat supplies (including showrooms, dealers, parts, supplies,

repair, delivery of boats and vehicles, shipping, and maintenance), accessing self-storage facilities, and products necessary to maintain the safety, sanitation, and essential operation of residences.

c. **For outdoor activity.** To engage in outdoor activity, provided the individuals comply with Social Distancing Requirements, as defined below, such as, by way of example and without limitation, walking, hiking, running, or biking. Individuals may go to public parks and open outdoor recreation areas. However, public access playgrounds may increase spread of COVID-19, and therefore shall be closed.

d. **For certain types of work** To perform work providing essential products and services at Essential Businesses or Operations (which, as defined below, includes Healthcare and Public Health Operations, Human Services Operations, Essential Governmental Functions, and Essential Infrastructure) or to otherwise carry out activities specifically permitted in this Order, including Minimum Basic Operations.

e. **To take care of others.** To care for a family member, friend, or pet in another household, and to transport family members, friends, or pets as allowed by this Order. This includes attending weddings and funerals.

6. **Elderly people and those who are vulnerable as a result of illness should take additional precautions.** People at high risk of severe illness from COVID-19, including elderly people and those who are sick, are urged to stay in their residence to the extent possible except as necessary to seek medical care. Nothing in this Order prevents the Department Health or local health departments from issuing and enforcing isolation and quarantine orders.

7. **Healthcare and Public Health Operations.** For purposes of this Order, individuals may leave their residence to work for or obtain services through Healthcare and Public Health Operations.

   Healthcare and Public Health Operations includes, but is not limited to: hospitals; clinics; dental offices; pharmacies; public health entities, including those that compile, model, analyze and communicate public health information; pharmaceutical, pharmacy, medical device and equipment, and biotechnology companies (including operations, research and development, manufacture, and supply chain); organizations collecting blood, platelets, plasma, and other necessary materials; licensed medical marijuana dispensaries and licensed medical marijuana cultivation centers; obstetricians and gynecologists; eye care centers, including those that sell glasses and contact lenses; home healthcare services providers; mental health and substance use providers; other healthcare facilities and suppliers and providers of any related and/or ancillary healthcare services; and entities that transport and dispose of medical materials and remains.

   Specifically included in Healthcare and Public Health Operations are manufacturers, technicians, logistics, and warehouse operators and distributors of medical equipment, personal protective equipment (PPE), medical gases, pharmaceuticals, blood and blood products, vaccines, testing materials, laboratory supplies, cleaning, sanitizing, disinfecting or sterilization supplies, and tissue and paper towel products.

   Healthcare and Public Health Operations also includes veterinary care and all healthcare services provided to animals.

Healthcare and Public Health Operations shall be construed broadly to avoid any impacts to the delivery of healthcare, broadly defined. Healthcare and Public Health Operations does not include fitness and exercise gyms, spas, salons, barber shops, tattoo parlors, and similar facilities.

8. **Human Services Operations.** For purposes of this Order, individuals may leave their residence to work for or obtain services at any Human Services Operations, including any provider funded by the Ohio Department of Aging, Department of Developmental Disabilities, Department of Health, Department of Job and Family Services, Department of Medicaid, Department of Mental Health and Addiction Services, Opportunities for Ohioans with Disabilities, Department of Veterans Services, and Department of Youth Services that is providing services to the public and including state-operated, institutional, or community-based settings providing human services to the public.

   Human Services Operations includes, but is not limited to: long-term care facilities; day care centers, day care homes, group day care homes; residential settings and shelters for adults, seniors, children, and/or people with developmental disabilities, intellectual disabilities, substance use disorders, and/or mental illness; transitional facilities; home-based settings to provide services to individuals with physical, intellectual, and/or developmental disabilities, seniors, adults, and children; field offices that provide and help to determine eligibility for basic needs including food, cash assistance, medical coverage, child care, vocational services, rehabilitation services; developmental centers; adoption agencies; businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged individuals, individuals with physical, intellectual, and/or developmental disabilities, or otherwise needy individuals.

   Human Services Operations shall be construed broadly to avoid any impacts to the delivery of human services, broadly defined.

9. **Essential Infrastructure.** For purposes of this, individuals may leave their residence to provide any services or perform any work necessary to offer, provision, operate, maintain and repair Essential Infrastructure.

   Essential Infrastructure includes, but is not limited to: food production, distribution, fulfillment centers, storage facilities, marinas, and sale; construction (including, but not limited to, construction required in response to this public health emergency, hospital construction, construction of long-term care facilities, public works construction, school construction, essential business construction, and housing construction); building management and maintenance; airport operations; operation and maintenance of utilities, including water, sewer, and gas; electrical (including power generation, distribution, and production of raw materials); distribution centers; oil and biofuel refining; roads, highways, railroads, and public transportation; ports; cybersecurity operations; flood control; solid waste and recycling collection and removal; and internet, video, and telecommunications systems (including the provision of essential global, national, and local infrastructure for computing services, business infrastructure, communications, and web-based services).

   Essential Infrastructure shall be construed broadly to avoid any impacts to essential infrastructure, broadly defined.

10. **Essential Governmental Functions.** For purposes of this Order, all first responders, emergency management personnel, emergency dispatchers, legislators, judges, court personnel, jurors and grand jurors, law enforcement and corrections personnel, hazardous materials responders, child protection and child welfare personnel, housing and shelter personnel, military, and other governmental employees working for or to support Essential Businesses and Operations are categorically exempt from this Order.

    Essential Government Functions means all services provided by the State or any municipality, township, county, political subdivision, board, commission or agency of government and needed to ensure the continuing operation of the government agencies or to provide for or support the health, safety and welfare of the public, and including contractors performing Essential Government Functions. Each government body shall determine its Essential Governmental Functions and identify employees and/or contractors necessary to the performance of those functions.

    This Order does not apply to the United States government. Nothing in this Order shall prohibit any individual from performing or accessing Essential Governmental Functions.

11. **Businesses covered by this Order.** For the purposes of this Order, covered businesses include any for-profit, non-profit, or educational entities, regardless of the nature of the service, the function it performs, or its corporate or entity structure.

12. **Essential Businesses and Operations.** For the purposes of this Order, Essential Businesses and Operations means Healthcare and Public Health Operations, Human Services Operations, Essential Governmental Functions, and Essential Infrastructure, and the following:

    a. **CISA List**. On March 28, 2020, the U.S. Department of Homeland Security, Cybersecurity & Infrastructure Security Agency (CISA), issued an updated *Advisory Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response.* The definition of Essential Businesses and Operations in this Order includes all the workers identified in that Memorandum or any updated versions of the Memorandum issued by CISA;

    b. **Stores that sell groceries and medicine.** Grocery stores, pharmacies, farmers' markets, farm and produce stands, supermarkets, convenience stores, and other establishments engaged in the retail sale of groceries, canned food, dry goods, frozen foods, fresh fruits and vegetables, pet supplies, fresh meats, fish, and poultry, prepared food, alcoholic and non-alcoholic beverages, any other household consumer products (such as cleaning and personal care products), and specifically includes their supply chain and administrative support operations. This includes stores that sell groceries, medicine, including medication not requiring a medical prescription, and also that sell other non-grocery products, and products necessary to maintaining the safety, sanitation, and essential operation of residences and Essential Businesses and Operations. Stores shall determine and enforce the maximum capacity of persons permitted in any store such that at all persons in a store at any one time may safely and comfortably maintain a six-foot distance from each other. Every store shall prominently display at every entrance the maximum capacity number. Every store shall ensure that baskets, shopping carts and the like are properly cleaned between customers. If a line is present either

inside or outside the store, a six-foot distance shall be maintained between those not residing in the same household;

c. **Food, beverage, and licensed marijuana production and agriculture.** Food and beverage manufacturing, production, processing, and cultivation, including farming, livestock, fishing, baking, and other production agriculture, including cultivation, marketing, production, and distribution of animals and goods for consumption; licensed medical marijuana use, medical marijuana dispensaries and licensed medical marijuana cultivation centers; and businesses that provide food, shelter, and other necessities of life for animals, including animal shelters, rescues, shelters, kennels, and adoption facilities;

d. **Organizations that provide charitable and social services.** Businesses and religious and secular nonprofit organizations, including food banks, when providing food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities;

e. **Religious entities.** Religious facilities, entities and groups and religious gatherings, including weddings and funerals. Wedding receptions are subject to the ten-person limitation in Section 3 of this Order. Weddings and funerals are not subject to the ten-person limitation in Section 3 of this Order;

f. **Media.** Newspapers, television, radio, and other media services;

g. **First amendment protected speech;**

h. **Gas stations and businesses needed for transportation.** Gas stations and auto supply, auto-repair, farm equipment, construction equipment, boat repair, and related facilities and bicycle shops and related facilities;

i. **Financial and insurance institutions.** Bank, currency exchanges, consumer lenders, including but not limited, to pawnbrokers, consumer installment lenders and sales finance lenders, credit unions, appraisers, title companies, financial markets, trading and futures exchanges, payday lenders, affiliates of financial institutions, entities that issue bonds, related financial institutions, and institutions selling financial products. Also insurance companies, underwriters, agents, brokers, and related insurance claims and agency services;

j. **Hardware and supply stores.** Hardware stores, garden centers, nurseries, and businesses that sell electrical, plumbing, and heating material;

k. **Critical trades.** Building and Construction Tradesmen and Tradeswomen, and other trades including but not limited to plumbers, electricians, exterminators, cleaning and janitorial staff for commercial and governmental properties, security staff, operating engineers, HVAC, painting, moving and relocation services, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, and Essential Businesses and Operations;

l. **Mail, post, shipping, logistics, delivery, and pick-up services.** Post offices and other businesses that provide shipping and delivery services, and businesses that ship or deliver groceries, food, alcoholic and non-alcoholic beverages, goods, vehicles or services to end users or through commercial channels;

m. **Educational institutions.** Educational institutions-including public and private pre-K-12 schools, colleges, and universities-for purposes of facilitating distance learning, performing critical research, or performing essential functions, provided that social distancing of six-feet per person is maintained to the greatest extent possible. This Order is consistent with and does not amend or supersede prior Orders regarding the closure of schools;

n. **Laundry services.** Laundromats, dry cleaners, industrial laundry services, and laundry service providers;

o. **Restaurants for consumption off-premises.** Restaurants and other facilities that prepare and serve food, but only for consumption off-premises, through such means as in-house delivery, third-party delivery, drive-through, curbside pick-up, and carry-out. Schools and other entities that typically provide food services to students or members of the public may continue to do so under this Order on the condition that the food is provided to students or members of the public on a pick-up and takeaway basis only. Schools and other entities that provide food services under this exemption shall not permit the food to be eaten at the site where it is provided, or at any other gathering site due to the virus's propensity to physically impact surfaces and personal property. This Order is consistent with and does not amend or supersede prior Orders regarding the closure of restaurants;

p. **Supplies to work from home.** Businesses that sell, manufacture, or supply products needed for people to work from home;

q. **Supplies for Essential Businesses and Operations.** Businesses that sell, manufacture, or supply other Essential Businesses and Operations with the support or materials necessary to operate, including computers, audio and video electronics, printing services, household appliances; IT and telecommunication equipment; hardware, paint, flat glass; electrical, plumbing and heating material; sanitary equipment; personal hygiene products; food, food additives, ingredients and components; medical and orthopedic equipment; optics and photography equipment; diagnostics, food and beverages, chemicals, soaps and detergent; and firearm and ammunition suppliers and retailers for purposes of safety and security;

r. **Transportation.** Airlines, taxis, transportation network providers (such as Uber and Lyft), vehicle rental services, paratransit, marinas, docks, boat storage, and other private, public, and commercial transportation and logistics providers necessary for Essential Activities and other purposes expressly authorized in this Order;

s. **Home-based care and services.** Home-based care for adults, seniors, children, and/or people with developmental disabilities, intellectual disabilities, substance use disorders, and/or mental illness, including caregivers such as nannies who may travel to the child's home to provide care, and other in-home services including meal delivery;

t. **Residential facilities and shelters.** Residential facilities and shelters for adults, seniors, children, pets, and/or people with developmental disabilities, intellectual disabilities, substance use disorders, and/or mental illness;

u. **Professional services.** Professional services, such as legal services, accounting services, insurance services, real estate services (including appraisal and title services);

v. **Manufacture, distribution, and supply chain for critical products and industries.** Manufacturing companies, distributors, and supply chain companies producing and supplying essential products and services in and for industries such as pharmaceutical, technology, biotechnology, healthcare, chemicals and sanitization, waste pickup and disposal, agriculture, food and beverage, transportation, energy, steel and steel products, petroleum and fuel, mining, construction, national defense, communications, as well as products used by other Essential Businesses and Operations;

w. **Critical labor union functions.** Labor Union essential activities including the administration of health and welfare funds and personnel checking on the well-being and safety of members providing services in Essential Businesses and Operations - provided that these checks should be done by telephone or remotely where possible;

x. **Hotels and motels.** Hotels and motels, to the extent used for lodging and delivery or carry-out food services;

y. **Funeral services.** Funeral, mortuary, cremation, burial, cemetery, and related services.

13. **Minimum Basic Operations.** For the purposes of this Order, Minimum Basic Operations include the following, provided that employees comply with Social Distancing Requirements, to the extent possible, while carrying out such operations:

    a. The minimum necessary activities to maintain the value of the business's inventory, preserve the condition of the business's physical plant and equipment, ensure security, process payroll and employee benefits, or for related functions.

    b. The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.

14. **Essential Travel.** For the purposes of this Order, Essential Travel includes travel for any of the following purposes. Individuals engaged in any Essential Travel must comply with all Social Distancing Requirements as defined in this Section.

    a. Any travel related to the provision of or access to Essential Activities, Essential Governmental Functions, Essential Businesses and Operations, or Minimum Basic Operations.

    b. Travel to care for elderly, minors, dependents, persons with disabilities, or other vulnerable persons.

    c. Travel to or from educational institutions for purposes of receiving materials for distance learning, for receiving meals, and any other related services.

    d. Travel to return to a place of residence from outside the jurisdiction.

    e. Travel required by law enforcement or court order, including to transport children pursuant to a custody agreement.

    f. Travel required for non-residents to return to their place of residence outside the State. Individuals are strongly encouraged to verify that their transportation out of the State remains available and functional prior to commencing such travel.

15. **Social Distancing Requirements.** For purposes of this Order, Social Distancing Requirements includes maintaining at least six-foot social distancing from other individuals, washing hands with soap and water for at least twenty seconds as frequently as possible or using hand sanitizer, covering coughs or sneezes (into the sleeve or elbow, not hands), regularly cleaning high-touch surfaces, and not shaking hands.

    a. **Required measures.** Essential Businesses and Operations and businesses engaged in Minimum Basic Operations must take proactive measures to ensure compliance with Social Distancing Requirements, including where possible:

        i. **Designate six-foot distances.** Designating with signage, tape, or by other means six-foot spacing for employees and customers in line to maintain appropriate distance;

        ii. **Hand sanitizer and sanitizing products.** Having hand sanitizer and sanitizing products readily available for employees and customers;

        iii. **Separate operating hours for vulnerable populations.** Implementing separate operating hours for elderly and vulnerable customers; and

        iv. **Online and remote access.** Posting online whether a facility is open and how best to reach the facility and continue services by phone or remotely.

16. **Intent of this Order.** The intent of this Order is to ensure that the maximum number of people self-isolate in their places of residence to the maximum extent feasible, while enabling essential services to continue, to slow the spread of COVID-19 to the greatest extent possible. When people need to leave their places of residence, whether to perform Essential Activities, or to otherwise facilitate authorized activities necessary for continuity of social and commercial life, they should at all times and as much as reasonably possible comply with Social Distancing Requirements. All provisions of this Order should be interpreted to effectuate this intent.

17. **Enforcement.** This Order may be enforced by State and local law enforcement to the extent set forth in Ohio law. Specifically, pursuant to R.C 3701.352 "[n]o person shall violate any rule the director of health or department of health adopts or any order the director or department of health issues under this chapter to prevent a threat to the public caused by a pandemic, epidemic, or bioterrorism event." R.C. 3701.56 provides that "[b]oards of health of a general or city health district, health authorities and officials, officers of state institutions, police officers, sheriffs, constables, and other officers and employees of the state or any county, city, or township, shall enforce quarantine and isolation orders, and the rules the department of health adopts." To the extent any public official enforcing this Order has questions regarding what services are prohibited under this Order, the Director of Health hereby delegates to local health departments the authority to answer questions in writing and consistent with this Order, but does not require local health departments to provide advisory opinions to nongovernmental entities.

18. **Penalty.** A violation of R.C. 3701.352 is guilty of a misdemeanor of the second degree, which can include a fine of not more than $750 or not more than 90 days in jail, or both.

19. **COVID-19 Information and Checklist for Businesses/Employers.** Business and employers are to take the following actions:

    a. Allow as many employees as possible to work from home by implementing policies in areas such as teleworking and video conferencing.

b. Actively encourage sick employees to stay home until they are free of fever (without the use of medication) for at least 72 hours (three full days) AND symptoms have improved for at least 72 hours AND at least seven days have passed since symptoms first began. Do not require a healthcare provider's note to validate the illness or return to work of employees sick with acute respiratory illness; healthcare provider offices and medical facilities may be extremely busy and not able to provide such documentation in a timely way.

c. Ensure that your sick leave policies are up to date, flexible, and non-punitive to allow sick employees to stay home to care for themselves, children, or other family members. Consider encouraging employees to do a self-assessment each day to check if they have any COVID-19 symptoms (fever, cough, or shortness of breath).

d. Separate employees who appear to have acute respiratory illness symptoms from other employees and send them home immediately. Restrict their access to the business until they have recovered.

e. Reinforce key messages — stay home when sick, use cough and sneeze etiquette, and practice hand hygiene — to all employees, and place posters in areas where they are most likely to be seen. Provide protection supplies such as soap and water, hand sanitizer, tissues, and no-touch disposal receptacles for use by employees.

f. Frequently perform enhanced environmental cleaning of commonly touched surfaces, such as workstations, countertops, railings, door handles, and doorknobs. Use the cleaning agents that are usually used in these areas and follow the directions on the label. Provide disposable wipes so that commonly used surfaces can be wiped down by employees before each use.

g. Be prepared to change business practices if needed to maintain critical operations (e.g., identify alternative suppliers, prioritize customers, or temporarily suspend some of your operations).

20. **No limitation on authority.** Nothing in this Order shall, in any way, alter or modify any existing legal authority allowing the State or any local health department from ordering (1) any quarantine or isolation that may require an individual to remain inside a particular residential property or medical facility for a limited period of time, including the duration of this public health emergency, or (2) any closure of a specific location for a limited period of time, including the duration of this public health emergency.

21. **Savings clause.** If any provision of this Order or its application to any person or circumstance is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Order are declared to be severable.

22. **Previous Orders superseded.** This Order supersedes, only to the extent that it conflicts, and amends any previous Order which conflicts with the provisions of this Order.

23. **Dispute Resolution.** If any local health department issues a determination under Section 17 of this Order that is in conflict with a determination issued by a different local health department, then the conflict may be submitted to the ODH by either of the local health departments or an entity or person subject to the determination. A Dispute Resolution Commission appointed by the Director of Health shall review the conflict and make a determination as to the application of this Order to the conflict. The decision of the Dispute Resolution Commission shall be final.

24. **Duration.** This Order shall be effective at 11:59 p.m. on April 6, 2020 and remains in full force and effect until 11:59 p.m. on May 1, 2020, unless the Director of the Ohio Department of Health rescinds or modifies this Order at a sooner time and date.

COVID-19 is a respiratory disease that can result in serious illness or death, is caused by the SARS-CoV-2 virus, which is a new strain of coronavirus that had not been previously identified in humans and can easily spread from person to person. The virus is spread between individuals who are in close contact with each other (within about six feet) through respiratory droplets produced when an infected person coughs or sneezes. It may be possible that individuals can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose or eyes.

On January 23, 2020, the Ohio Department of Health issued a Director's Journal Entry making COVID-19 a Class A reportable disease in Ohio.

On January 28, 2020, the Ohio Department of Health hosted the first statewide call with local health departments and healthcare providers regarding COVID-19.

On January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization declared the outbreak of COVID-19 a public health emergency of international concern.

On January 31, 2020, Health and Human Services Secretary, Alex M. Azar II, declared a public health emergency for the United States to aid the nation's healthcare community in responding to COVID-19.

On February 1, 2020, the Ohio Department of Health issued a statewide Health Alert Network to provide local health departments and healthcare providers with updated guidance for COVID-19 and revised Person Under Investigation (PUI) criteria.

On February 3, 2020, the Ohio Department of Health trained over 140 personnel to staff a call center for COVID-19, in the event it was needed.

On February 5, 2020, the Ohio Department of Health began updating and notifying the media of the number of PUIs in Ohio every Tuesday and Thursday.

On February 6, 2020, the Ohio Department of Health updated all agency assistant directors and chiefs of staff on COVID-19 preparedness and status during the Governor's cabinet meeting.

On February 7, 2020, the Ohio Department of Health and the Ohio Emergency Management Agency met to conduct advance planning for COVID-19.

On February 13, 2020, the Ohio Department of Health conducted a Pandemic Tabletop Exercise with State agencies to review responsive actions should there be a pandemic in Ohio.

On February 14, 2020, the Ohio Department of Health held a conference call with health professionals across the state. The purpose of the call was to inform and engage the healthcare community in Ohio. Presentations were provided by the Department of Health, Hamilton County Public Health, and the Ohio State University.

On February 27, 2020, the Ohio Department of Health and the Ohio Emergency Management Agency briefed the directors of State agencies during the Governor's cabinet meeting regarding preparedness and the potential activation of the Emergency Operations Center.

On February 28, 2020, the "Governor DeWine, Health Director Update COVID-19 Prevention and Preparedness Plan" was sent to a broad range of associations representing healthcare, dental, long-term care, K-12 schools, colleges and universities, business, public transit, faith-based organizations, non-profit organizations, and local governments.

On March 2, 2020, the Ohio Department of Health activated a Joint Information Center to coordinate COVID-19 communications.

On March 5, 2020, the Ohio Department of Health hosted the Governor's Summit on COVID-19 Preparedness, a meeting with the Governor, cabinet agency directors, local health department commissioners, and their staff.

On March 6, 2020, the Ohio Department of Health opened a call center to answer questions from the public regarding COVID-19.

On March 9, 2020, testing by the Department of Health confirmed that three (3) patients were positive for COVID-19 in the State of Ohio. This confirms the presence of a potentially dangerous condition which may affect the health, safety and welfare of citizens of Ohio.

On March 9, 2020, the Ohio Emergency Management Agency activated the Emergency Operations Center.

On March 9, 2020, the Governor Declared a State of Emergency in Executive Order 2020-01D.

On March 11, 2020, the head of the World Health Organization declared COVID-19 a pandemic.

On March 11, 2020, testing by the Ohio Department of Health confirmed that one (1) more patient was positive for COVID-19 in the State of Ohio.

On March 11, 2020, the Ohio Departments of Health and Veterans Services issued a Joint Directors' Order to limit access to Ohio nursing homes and similar facilities.

On March 15, 2020, the Ohio Department of Health issued a Director's Order to limit access to Ohio's jails and detention facilities.

On March 15, 2020, the Ohio Department of Health issued a Director's Order to limit the sale of food and beverages, liquor, beer and wine to carry-out and delivery only.

On March 15, 2020, the CDC issued Interim Guidance for mass gatherings or large community events, stating that such events that consist of 50 or more people should be cancelled or postponed.

On March 16, 2020 the Ohio Department of Health issued a Director's Order closing polling locations for the March 17, 2020 primary election.

On March 17, 2020 the Ohio Department of Health issued a Director's Order for the management of non-essential surgeries and procedures throughout Ohio.

On March 17, 2020 the Ohio Department of Health issued an Amended Director's Order to limit and/or prohibit mass gatherings and the closure of venues in the State of Ohio.

On March 19, 2020, the Ohio Department of Health issued a Director's Order closing hair salons, nail salons, barber shops, tattoo parlors, body piercing locations, and massage therapy locations.

Multiple areas of the United States are experiencing "community spread" of the virus that causes COVID-19. Community spread, defined as the transmission of an illness for which the source is unknown, means that isolation of known areas of infection is no longer enough to control spread.

The CDC reports that people are most contagious when they are most symptomatic (the sickest) however some spread might be possible before people show symptoms although that is not the main way the virus spreads.

Mass gatherings (10 or more persons) increase the risk of community transmission of the virus COVID-19.

Accordingly, to avoid an imminent threat with a high probability of widespread exposure to COVID-19 with a significant risk of substantial harm to a large number of people in the general population, including the elderly and people with weakened immune systems and chronic medical conditions, I hereby **ORDER** all persons are to continue to stay at home or their place of residence unless they are engaged in Essential Activities, Essential Governmental Functions, or to operate Essential Businesses and Operations as set forth in this Order. This Order shall remain in full force and effect until 11:59 p.m. on May 1, 2020, unless the Director of the Ohio Department of Health rescinds or modifies this Order at a sooner time and date. To the extent any public official enforcing this Order has questions regarding what services are prohibited under this Order, the Director of Health hereby delegates to local health departments the authority to answer questions in writing and consistent with this Order.

Amy Acton MD MPH

April 2, 2020

Amy Acton, MD, MPH
Director of Health

Ohio | Department of Health

Mike DeWine, Governor
Jon Husted, Lt. Governor

Amy Acton, M.D., MPH, Director

DIRECTOR'S STAY SAFE OHIO ORDER

Re: Director's Order that Reopens Businesses, with Exceptions, and Continues a Stay Healthy and Safe at Home Order

I, Amy Acton, MD, MPH, Director of the Ohio Department of Health (ODH), pursuant to the authority granted to me in R.C. 3701.13 to "make special orders...for preventing the spread of contagious or infectious diseases" **Order** the following to prevent the spread of COVID-19 into the State of Ohio:

1. **Preamble:** The sacrifices and incredible efforts that Ohioans have undertaken, make it possible to begin to lift the mandatory requirements and restrictions that were needed during the initial phase of the COVID-19 Pandemic. The adjustment of these orders is able to proceed based upon the facts and the science existing at this time in Ohio, however if the situation continues to improve, then more restrictions will be lifted, and if the situation deteriorates additional targeted restrictions will need to be made. While government can set the baseline, it should be understood that these orders set forth the minimum acts that must be taken and if people do more than the minimum to act safely, it will benefit everyone.

2. **Business and operations to reopen.** All businesses and operations in the State, except as defined below, are permitted to reopen within the State so long as all workplace safety standards are met. All businesses and operations, except as defined below, are encouraged to either reopen or remain open if they have not ceased operation during the prior Stay at Home Orders. Businesses and operations shall continue to comply with Social Distancing Requirements as defined in this Order, including by maintaining six-foot social distancing for both employees and members of the public at all times, including, but not limited to, when any customers are standing in line.

3. **Stay at home or place of residence.** With exceptions as outlined below, all individuals currently living within the State of Ohio are ordered to stay at home or at their place of residence except as allowed in this Order. To the extent individuals are using shared or outdoor spaces when outside their residence, they must at all times and as much as reasonably possible, maintain social distancing of at least six feet from any other person, with the exception of family or household members, consistent with the Social Distancing Requirements set forth in this Order. All persons may leave their homes or place of residence only to participate in activities, businesses or operations as permitted in this Order.

   Individuals experiencing homelessness are exempt from this Order, but are strongly urged to obtain shelter, and governmental and other entities are strongly urged to make such shelter available as soon as possible and to the maximum extent practicable (and to use in their operation COVID-19 risk mitigation practices recommended by the U.S. Centers for Disease Control and

Prevention (CDC) and the Ohio Department of Health (ODH)). This order does not apply to incarcerated individuals. Incarcerated individuals are to follow the guidance of the facility in which they are confined. Individuals whose residences are unsafe or become unsafe, such as victims of domestic violence, are permitted and urged to leave their home and stay at a safe alternative location. For purposes of this Order, homes or residences include hotels, motels, shared rental units, shelters, and similar facilities.

4. **Prohibited activities.** All public and private gatherings of any number of people occurring outside a single household and connected property, or living unit and connected property are prohibited, except for the limited purposes permitted by this Order. Any gathering of more than ten people is prohibited unless exempted by this Order. This is in accordance with President Trump's coronavirus guidelines issued March 16, 2020. Nothing in this Order prohibits the gathering of members of a household, family or residence. This Section does not apply to weddings and funerals, although wedding receptions are subject to the ten-person limitation. This Section does not apply to religious facilities, entities and groups and religious gatherings. This Section does not apply to First Amendment protected speech, including petition or referendum circulators and any activity by the Media, which includes newspapers, television, radio and other media services.

5. **Prohibited and permitted travel.** People riding on public transit must comply with Social Distancing Requirements to the greatest extent feasible. This Order allows travel into or out of the State including travel that originates and ends outside of the state. However, persons entering the State with the intent to stay are asked to self-quarantine for fourteen days unless they are doing so for critical infrastructure or healthcare workforce purposes. For purposes of clarity this does not apply to persons who as part of their normal life live in one state and work or deliver services in another state. Persons who have tested positive for COVID-19, are presumptively diagnosed with COVID-19 or are exhibiting the symptoms identified in the screening guidance available from the U.S. Centers for Disease Control and Prevention and the Ohio Department of Health shall not enter the State, unless they are doing so under medical orders for the purposes of medical care, are being transported by Emergency Medical Services (EMS), are driving or being driven directly to a medical provider for purposes of initial care, or are a permanent resident of the State.

6. **Elderly people and those who are vulnerable as a result of illness should take additional precautions.** People at high risk of severe illness from COVID-19, including elderly people and those who are sick, are urged to stay in their residence to the extent possible except as necessary to seek medical care. According to CDC, those at high-risk for severe illness from COVID-19 include people who are sixty-five years or older and people of all ages with underlying medical conditions, particularly if not well controlled, including:

    a. People with chronic lung disease or moderate to severe asthma;
    b. People who have serious heart conditions;
    c. People who are immune compromised;
    d. People with severe obesity (body mass index [BMI] of 40 or higher);
    e. People with diabetes;
    f. People with chronic kidney disease undergoing dialysis; and
    g. People with liver disease.

7. **Businesses covered by this Order.** For the purposes of this Order, covered businesses include any for-profit, non-profit, educational entities, or governmental entities (other than federal)

regardless of the nature of the service, the function it performs, or its corporate or entity structure. Nothing in this Order is intended to encroach on or interfere with the separation of powers under the Ohio Constitution.

8. **Facial Coverings (Masks).** Businesses must allow all customers, patrons, visitors, contractors, vendors and similar individuals to use facial coverings, except for specifically documented legal, life, health or safety considerations and limited documented security considerations. Businesses must require all employees to wear facial coverings, except for one of the following reasons:

    a. Facial coverings in the work setting are prohibited by law or regulation;
    b. Facial coverings are in violation of documented industry standards;
    c. Facial coverings are not advisable for health reasons;
    d. Facial coverings are in violation of the business's documented safety policies;
    e. Facial coverings are not required when the employee works alone in an assigned work area; or
    f. There is a functional (practical) reason for an employee not to wear a facial covering in the workplace.

    Businesses must provide written justification, upon request, explaining why an employee is not required to wear a facial covering in the workplace. At a minimum, facial coverings (masks) should be cloth/fabric and cover an individual's nose, mouth, and chin.

9. **Medical Care.** The Director of Health Order signed March 17, 2020, for the management of non-essential surgeries and procedures throughout Ohio, is rescinded effective at 11:59 p.m. on April 30, 2020. Governor DeWine asked hospitals and other providers to reassess all surgeries and procedures that were delayed consistent with the March 17 Order. Surgeries and procedures were to be prioritized and performed if there is a:

    a. Threat to the patient's life if the surgery or procedure is delayed;
    b. Threat of permanent dysfunction of an extremity or organ system if delayed;
    c. Risk of metastasis or progression of staging if delayed;
    d. Risk of rapidly worsening to severe symptoms if delayed, or
    e. Presence of severe symptoms causing an inability to perform activities of daily living.

    Effective at 11:59 p.m. on April 30, 2020, medical providers, including dentists, in the State may resume non-essential surgeries and procedures. This type of health care typically does not require an inpatient or overnight stay. These surgeries, procedures and other health care services, that utilize minimal personal protective equipment (PPE) have a minimal impact on inpatient hospital bed capacity, may resume only if the provider meets the following conditions:

    a. The provider follows infection control and other environmental practices in accordance with the ODH and CDC guidelines;
    b. The provider maintains adequate inventories of PPE, supplies, equipment, and medicine in their facility for each patient, considering all phases of care the patient may require,
    c. The provider creates a plan for conservation and monitoring that may include decontamination and reuse protocols to preserve PPE, supplies, equipment, and medicine to be prepared for an influx of patients, including those who do not have COVID-19;

d. The provider evaluates access to a reliable supply chain to support continued operations for non-COVID-19 cases, and to respond to an unexpected surge in COVID-19 cases in a timely manner;
e. The provider frequently counts PPE inventory. For hospitals, this information will continue to be reported to the State's COVID-19 resource management system on a daily basis;
f. The provider defines processes for timely COVID-19 testing of patients and staff in accordance with the ODH guidelines;
g. The provider continues to use telehealth modalities whenever possible; and
h. The provider develops an actionable plan for communication, outreach, and equitable delivery of services that:
    i. Recognizes the underlying social determinants of health and the disproportionate impact of COVID-19 on minority populations;
    ii. Engages patients in discussion regarding the risk of contracting COVID-19; and
    iii. Engages patients in shared decision making regarding the need for and timing of health care services. Surgeries and other procedures could still be delayed based upon mutual decisions made by patients and their clinicians.

As a provider prepares to restart non-essential health care services, hospitals and other providers should review the following types of considerations:

a. Pre-restart considerations;
b. Prioritizing patient outreach and scheduling;
c. Patient Communication;
d. Patient Screening for COVID-19;
e. Facility Considerations;
f. Workforce/Staffing;
g. Sanitation Procedures;
h. Personnel Protective Equipment;
i. Supplies;
j. Patient and Staff Testing; and
k. Consultation of additional Resources.

Providers should continue to use telehealth modalities, whenever possible, and create or use existing internal strategies to prioritize cases based on the medical staff's governance and resolution structure. Providers should also follow the Responsible Restart Ohio Guide for Health Care distributed by ODH.

10. **Manufacturing, distribution and construction.** Manufacturing, distribution and construction businesses that were ordered to cease all activities pursuant to the April 2, 2020, Amended Director of Health Order that ordered all persons in the State to stay home unless engaged in essential work or activity, shall stay closed until May 4, 2020. Effective at 12:01 a.m. on May 4, 2020, the closed manufacturing, distribution and construction businesses may reopen, subject to the Sector Specific COVID-19 Information and Checklist for Businesses/Employers set forth in Section 21 of this Order.

11. **General Office Environments.** General office environments that were ordered to cease all activities pursuant to the April 2, 2020, Amended Director of Health Order that ordered all persons in the State to stay home unless engaged in essential work or activity, shall stay closed until May 4, 2020. Effective at 12:01 a.m. on May 4, 2020, the closed general office environments may reopen, subject to the Sector Specific COVID-19 Information and Checklist for Businesses/Employers set forth in Section 21 of this Order. Businesses should strongly encourage as many employees as possible to work from home by implementing policies in areas such as teleworking and video conferencing, subject to the discretion of the employer.

12. **Retail.** Retail establishments and facilities that were ordered to cease all activities pursuant to the April 2, 2020, Amended Director of Health Order that ordered all persons in the State to stay home unless engaged in essential work or activity, shall stay closed until May 12, 2020. Effective at 12:01 a.m. on May 12, 2020, the closed retail establishments and facilities may reopen, subject to the Sector Specific COVID-19 Information and Checklist for Businesses/Employers set forth in Section 21 of this Order. Currently closed retail establishments and facilities, that will restrict their operations to curbside pickup, delivery or appointment-only (limited to 10 customers at any one time) may reopen effective May 1 at 11:59 p.m.

13. **Closed Businesses and Operations.** For the purposes of this Order, the following businesses and operations are to remain closed until this Order is amended or rescinded:

    a. **Schools**. The Second Amended Director of Health Order signed April 29, 2020, or as it may be subsequently amended, that closed all K-12 schools in the State remains in effect;

    b. **Restaurants and Bars.** The Director of Health Order signed March 15, 2020, or as it may be subsequently amended, that closed restaurants and bars to all but carry-out and delivery activities in the State remains in effect;

    c. **Personal Appearance/Beauty**. The Director of Health Order signed March 19, 2020, or as it may be subsequently amended, that closed hair salons, day spas, nail salons, barber shops, tattoo parlors, body piercing locations, tanning facilities, massage therapy locations and like businesses in the State remains in effect.;

    d. **Adult Day Support or Vocational Habilitation Services in a Congregate Setting.** The Amended Director of Health Order signed March 21, 2020, or as it may be subsequently amended, that prohibited adult day support or vocational habilitation services in a congregate setting in the State remains in effect;

    e. **Older Adult Day Care Services and Senior Centers.** The Director of Health Order signed March 24, 2020, or as it may be subsequently amended, that prohibited older adult day care services and closed senior centers in the State remains in effect;

    f. **Child Care Services.** The Director of Health Order signed March 24, 2020, or as it may be subsequently amended, that prohibited child care services, except for facilities with a Temporary Pandemic Child Care License, in the State remains in effect; and

    g. **Entertainment/Recreation/Gymnasiums.** The Director of Health Order signed March 21, 2020, or as it may be subsequently amended, that closed all indoor family entertainment businesses and venues such as laser tag facilities, roller skating rinks, ice skating rinks, arcades and indoor miniature golf facilities, as well as, adult and child skill or chance game facilities

in the State remains in effect. The Amended Director of Health Order signed March 17, 2020, or as it may be subsequently amended, that closed auditoriums, stadiums, arenas, parades, fairs, festivals, bowling alleys, health clubs, fitness centers, workout facilities, gyms, yoga studios, indoor trampoline parks, indoor water parks, movie and other theatres (excluding drive-in theatres), performance theatres, all public recreation centers, and indoor sports facilities in the State remains in effect. All places of public amusement, whether indoors or outdoors, including, but not limited to, locations with amusement rides, carnivals, amusement parks, water parks, aquariums, zoos, museums, arcades, fairs, children's play centers, playgrounds, funplexes, theme parks, bowling alleys, concert and music halls, and country clubs or social clubs shall be closed. Recreational sports tournaments, organized recreational sports leagues, residential and day camps shall be prohibited. Swimming pools, whether public or private, shall be closed, unless it is a swimming pool for a single household. Campgrounds, including recreational camps and recreational vehicle (RV) parks, shall be closed, except that persons residing in recreational vehicles ("RVs") at campgrounds who genuinely have no other viable place of residence may remain in the campground. This campground closure also excludes cabins, mobile homes, or other self-contained units, meant for single families and where preexisting full season agreements already have been established. An example would be individuals who have part-time preestablished seasonal sites at campgrounds for the entire season or a long term property interest or lease agreement with a campground for residential activity. Such persons should comply with all applicable guidance from the U.S. Centers for Disease Control and Prevention and the Ohio Department of Health regarding social distancing.

14. **Minimum Basic Operations.** Any activity, business or operation, if ordered closed, is still permitted to engage in Minimum Basic Operations. For the purposes of this Order, Minimum Basic Operations include the following, provided that employees comply with Social Distancing Requirements, to the extent possible, while carrying out such operations:

    a. The minimum necessary activities to maintain the value of the business's inventory, preserve the condition of the business's physical plant and equipment, ensure security, process payroll and employee benefits, or for related functions; and

    b. The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.

15. **Travel.** For the purposes of this Order, permitted Travel includes travel for any of the following purposes. Individuals engaged in any Travel must comply with all Social Distancing Requirements as defined in this Section.

    a. Any travel related to the provision of or access to activities, businesses and operations that are permitted to be open under this Order or Minimum Basic Operations;

    b. Travel to care for elderly, minors, dependents, persons with disabilities, or other vulnerable persons;

    c. Travel to or from educational institutions for purposes of receiving materials for distance learning, for receiving meals, and any other related services;

    d. Travel to return to a place of residence from outside the jurisdiction;

e. Travel required by law enforcement or court order, including to transport children pursuant to a custody agreement; and

f. Travel required for non-residents to return to their place of residence outside the State. Individuals are strongly encouraged to verify that their transportation out of the State remains available and functional prior to commencing such travel.

16. **Social Distancing Requirements.** For purposes of this Order, Social Distancing Requirements includes maintaining at least six-foot social distancing from other individuals, washing hands with soap and water for at least twenty seconds as frequently as possible or using hand sanitizer, covering coughs or sneezes (into the sleeve or elbow, not hands), regularly cleaning high-touch surfaces, and not shaking hands.

    a. **Required measures.** Essential Businesses and Operations and businesses engaged in Minimum Basic Operations must take proactive measures to ensure compliance with Social Distancing Requirements, including where possible:

        i. **Designate six-foot distances.** Designating with signage, tape, or by other means six-foot spacing for employees and customers in line to maintain appropriate distance;

        ii. **Hand sanitizer and sanitizing products.** Having hand sanitizer and sanitizing products readily available for employees and customers;

        iii. **Separate operating hours for vulnerable populations.** Implementing separate operating hours for elderly and vulnerable customers; and

        iv. **Online and remote access.** Posting online whether a facility is open and how best to reach the facility and continue services by phone or remotely.

17. **Intent of this Order.** The intent of this Order is to ensure that the maximum number of people self-isolate in their places of residence to the maximum extent feasible, while enabling additional day to day activities to continue, to slow the spread of COVID-19 to the greatest extent possible. When people need to leave their places of residence to perform or to otherwise facilitate authorized activities necessary for continuity of social and commercial life, they should at all times and as much as reasonably possible comply with Social Distancing Requirements. All provisions of this Order should be interpreted to effectuate this intent.

18. **Enforcement.** This Order may be enforced by State and local law enforcement to the extent set forth in Ohio law. Specifically, pursuant to R.C 3701.352 "[n]o person shall violate any rule the director of health or department of health adopts or any order the director or department of health issues under this chapter to prevent a threat to the public caused by a pandemic, epidemic, or bioterrorism event." R.C. 3701.56 provides that "[b]oards of health of a general or city health district, health authorities and officials, officers of state institutions, police officers, sheriffs, constables, and other officers and employees of the state or any county, city, or township, shall enforce quarantine and isolation orders, and the rules the department of health adopts." To the extent any public official enforcing this Order has questions regarding what services are prohibited under this Order, the Director of Health hereby delegates to local health departments the authority to answer questions in writing and consistent with this Order, but does not require local health departments to provide advisory opinions to nongovernmental entities.

19. **Penalty.** A violation of R.C. 3701.352 is guilty of a misdemeanor of the second degree, which can include a fine of not more than $750 or not more than 90 days in jail, or both.

20. **General COVID-19 Information and Checklist for Businesses/Employers.** Business and employers are to take the following actions:

    a. Strongly encourage as many employees as possible to work from home by implementing policies in areas such as teleworking and video conferencing, subject to the discretion of the employer;

    b. Actively encourage sick employees to stay home until they are free of fever (without the use of medication) for at least 72 hours (three full days) AND symptoms have improved for at least 72 hours AND at least seven days have passed since symptoms first began. Do not require a healthcare provider's note to validate the illness or return to work of employees sick with acute respiratory illness; healthcare provider offices and medical facilities may be extremely busy and not able to provide such documentation in a timely way;

    c. Ensure that your sick leave policies are up to date, flexible, and non-punitive to allow sick employees to stay home to care for themselves, children, or other family members. Consider encouraging employees to do a self-assessment each day to check if they have any COVID-19 symptoms (fever, cough, or shortness of breath);

    d. Separate employees who appear to have acute respiratory illness symptoms from other employees and send them home immediately. Restrict their access to the business until they have recovered;

    e. Reinforce key messages — stay home when sick, use cough and sneeze etiquette, and practice hand hygiene — to all employees, and place posters in areas where they are most likely to be seen. Provide protection supplies such as soap and water, hand sanitizer, tissues, and no-touch disposal receptacles for use by employees;

    f. Frequently perform enhanced environmental cleaning of commonly touched surfaces, such as workstations, countertops, railings, door handles, and doorknobs. Use the cleaning agents that are usually used in these areas and follow the directions on the label. Provide disposable wipes so that commonly used surfaces can be wiped down by employees before each use; and

    g. Be prepared to change business practices if needed to maintain critical operations (e.g., identify alternative suppliers, prioritize customers, or temporarily suspend some of your operations).

    h. Comply with all applicable guidance from the U.S. Centers for Disease Control and Prevention and the Ohio Department of Health regarding social distancing.

21. **Sector Specific COVID-19 Information and Checklist for Businesses/Employers.** Businesses and employers, whether currently open or reopening, are to take the following actions:

    a. Manufacturing, distribution & construction:

        i. Ensure minimum 6 feet between people, if not possible, install barriers;
        ii. Employees must perform daily symptom assessment that should include taking temperature with a thermometer and monitoring for fever. Also watching for coughing or trouble breathing;

iii. Require employees to stay home if symptomatic;
iv. Consider having distributers and guests wear face coverings at all times;
v. Require regular handwashing;
vi. Stagger or limit arrivals of employees and guests;
vii. Have employees work from home whenever possible;
viii. Daily disinfection of desks and workstations;
ix. Change shift patterns (e.g. fewer shifts);
x. Stagger lunch and break times;
xi. Daily deep disinfection of high-contact surfaces;
xii. Space factory floor to allow for distancing;
xiii. Regulate max number of people in cafeterias/common spaces;
xiv. Establish maximum capacity;
xv. Immediately isolate and seek medical care for any individual who develops symptoms while at work;
xvi. Contact the local health district about suspected cases or exposures; and
xvii. Shutdown shop/floor for deep sanitation if possible.

b. Consumer, retail & services

i. Ensure minimum 6 feet between employees, if not possible, install barriers;
ii. Employees must perform daily symptom assessment that should include taking temperature with a thermometer and monitoring for fever. Also watching for coughing or trouble breathing;
iii. Require employees to stay home if symptomatic;
iv. Consider having customers wear face coverings at all times;
v. Require regular handwashing by employees;
vi. Place hand sanitizers in high-contact locations;
vii. Clean high-touch items after each use (e.g. carts, baskets);
viii. Ensure minimum 6 feet between customers;
ix. Specify hours for at-risk populations (e.g. elderly);
x. Ask customers and guests not to enter if symptomatic;
xi. Stagger entry of customers and guests;
xii. Post social distancing signage and disinfect high-contact surfaces hourly;
xiii. Clean merchandise before stocking if possible;
xiv. Establish maximum capacity;
xv. Discontinue self-service food stations, product samples;
xvi. Food courts remain closed;
xvii. Immediately isolate and seek medical care for any individual who develops symptoms while at work;
xviii. Contact the local health district about suspected cases or exposures; and
xix. Shutdown shop/floor for deep sanitation if possible.

c. General office environments

i. Ensure minimum 6 feet between employees, if not possible, install barriers;

ii. Personnel should work from home when possible;
iii. Employees must perform daily symptom assessment that should include taking temperature with a thermometer and monitoring for fever. Also watching for coughing or trouble breathing;
iv. Require employees to stay home if symptomatic;
v. Consider having customers wear face coverings at all times;
vi. Require regular handwashing by employees;
vii. Reduce sharing of work materials;
viii. Limit travel as much as possible;
ix. Stagger arrival of all employees and guests;
x. Post signage on health safety guidelines in common areas;
xi. Frequent disinfection of desks, workstations, and high-contact surfaces;
xii. Daily disinfection of common areas;
xiii. Cancel/postpone in person events when social distancing guidelines cannot be met;
xiv. No buffet in cafeteria;
xv. Utilize disposable tableware and other materials;
xvi. Establish maximum capacity;
xvii. Immediately isolate and seek medical care for any individual who develops symptoms while at work;
xviii. Contact the local health district about suspected cases or exposures; and
xix. Shutdown shop/floor for deep sanitation if possible.

22. **No limitation on authority.** Nothing in this Order shall, in any way, alter or modify any existing legal authority allowing the State or any local health department from ordering (1) any quarantine or isolation that may require an individual to remain inside a particular residential property or medical facility for a limited period of time, including the duration of this public health emergency, or (2) any closure of a specific location for a limited period of time, including the duration of this public health emergency.

23. **Savings clause.** If any provision of this Order or its application to any person or circumstance is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Order are declared to be severable.

24. **Previous Orders superseded.** This Order supersedes, only to the extent that it conflicts, and amends any previous Order which conflicts with the provisions of this Order.

25. **Dispute Resolution.** If any local health department issues a determination under Section 18 of this Order that is in conflict with a determination issued by a different local health department, then the conflict may be submitted to the ODH by either of the local health departments or an entity or person subject to the determination. A Dispute Resolution Commission appointed by the Director of Health shall review the conflict and make a determination as to the application of this Order to the conflict. The decision of the Dispute Resolution Commission shall be final.

26. **Duration.** This Order shall be effective at 11:59 p.m. on April 30, 2020 and remains in full force and effect until 11:59 p.m. on May 29, 2020, unless the Director of the Ohio Department of Health rescinds or modifies this Order at a sooner time and date.

COVID-19 is a respiratory disease that can result in serious illness or death, is caused by the SARS-CoV-2 virus, which is a new strain of coronavirus that had not been previously identified in humans and can easily spread from person to person. The virus is spread between individuals who are in close contact with each other (within about six feet) through respiratory droplets produced when an infected person coughs or sneezes. It may be possible that individuals can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose or eyes.

On January 23, 2020, the Ohio Department of Health issued a Director's Journal Entry making COVID-19 a Class A reportable disease in Ohio.

On January 28, 2020, the Ohio Department of Health hosted the first statewide call with local health departments and healthcare providers regarding COVID-19.

On January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization declared the outbreak of COVID-19 a public health emergency of international concern.

On January 31, 2020, Health and Human Services Secretary, Alex M. Azar II, declared a public health emergency for the United States to aid the nation's healthcare community in responding to COVID-19.

On February 1, 2020, the Ohio Department of Health issued a statewide Health Alert Network to provide local health departments and healthcare providers with updated guidance for COVID-19 and revised Person Under Investigation (PUI) criteria.

On February 3, 2020, the Ohio Department of Health trained over 140 personnel to staff a call center for COVID-19, in the event it was needed.

On February 5, 2020, the Ohio Department of Health began updating and notifying the media of the number of PUIs in Ohio every Tuesday and Thursday.

On February 6, 2020, the Ohio Department of Health updated all agency assistant directors and chiefs of staff on COVID-19 preparedness and status during the Governor's cabinet meeting.

On February 7, 2020, the Ohio Department of Health and the Ohio Emergency Management Agency met to conduct advance planning for COVID-19.

On February 13, 2020, the Ohio Department of Health conducted a Pandemic Tabletop Exercise with State agencies to review responsive actions should there be a pandemic in Ohio.

On February 14, 2020, the Ohio Department of Health held a conference call with health professionals across the state. The purpose of the call was to inform and engage the healthcare community in Ohio. Presentations were provided by the Department of Health, Hamilton County Public Health, and the Ohio State University.

On February 27, 2020, the Ohio Department of Health and the Ohio Emergency Management Agency briefed the directors of State agencies during the Governor's cabinet meeting regarding preparedness and the potential activation of the Emergency Operations Center.

On February 28, 2020, the "Governor DeWine, Health Director Update COVID-19 Prevention and Preparedness Plan" was sent to a broad range of associations representing healthcare, dental, long-term care, K-12 schools, colleges and universities, business, public transit, faith-based organizations, non-profit organizations, and local governments.

On March 2, 2020, the Ohio Department of Health activated a Joint Information Center to coordinate COVID-19 communications.

On March 5, 2020, the Ohio Department of Health hosted the Governor's Summit on COVID-19 Preparedness, a meeting with the Governor, cabinet agency directors, local health department commissioners, and their staff.

On March 6, 2020, the Ohio Department of Health opened a call center to answer questions from the public regarding COVID-19.

On March 9, 2020, testing by the Department of Health confirmed that three (3) patients were positive for COVID-19 in the State of Ohio. This confirms the presence of a potentially dangerous condition which may affect the health, safety and welfare of citizens of Ohio.

On March 9, 2020, the Ohio Emergency Management Agency activated the Emergency Operations Center.

On March 9, 2020, the Governor Declared a State of Emergency in Executive Order 2020-01D.

On March 11, 2020, the head of the World Health Organization declared COVID-19 a pandemic.

On March 11, 2020, testing by the Ohio Department of Health confirmed that one (1) more patient was positive for COVID-19 in the State of Ohio.

On March 11, 2020, the Ohio Departments of Health and Veterans Services issued a Joint Directors' Order to limit access to Ohio nursing homes and similar facilities.

On March 15, 2020, the Ohio Department of Health issued a Director's Order to limit access to Ohio's jails and detention facilities.

On March 15, 2020, the Ohio Department of Health issued a Director's Order to limit the sale of food and beverages, liquor, beer and wine to carry-out and delivery only.

On March 15, 2020, the CDC issued Interim Guidance for mass gatherings or large community events, stating that such events that consist of 50 or more people should be cancelled or postponed.

On March 16, 2020 the Ohio Department of Health issued a Director's Order closing polling locations for the March 17, 2020 primary election.

On March 17, 2020 the Ohio Department of Health issued a Director's Order for the management of non-essential surgeries and procedures throughout Ohio.

On March 17, 2020 the Ohio Department of Health issued an Amended Director's Order to limit and/or prohibit mass gatherings and the closure of venues in the State of Ohio.

On March 19, 2020, the Ohio Department of Health issued a Director's Order closing hair salons, nail salons, barber shops, tattoo parlors, body piercing locations, and massage therapy locations.

On March 21, 2020, the Ohio Department of Health issued a Director's Order closing older adult day care services and senior centers.

On March 21, 2020, the Ohio Department of Health issued a Director's Order closing family entertainment centers and internet cafes.

On March 22, 2020, the Ohio Department of Health issued a Director's Order that all persons are to stay at home unless engaged in essential work or activity.

On March 24, 2020, the Ohio Department of Health issued a Director's Order that closed facilities providing child care services.

On March 30, 2020, the Ohio Department of Health issued an Amended Director's Order that closed all K-12 schools in the State of Ohio.

On April 2, 2020, the Ohio Department of Health issued an Amended Director's Order that all persons are to stay at home unless engaged in essential work or activity.

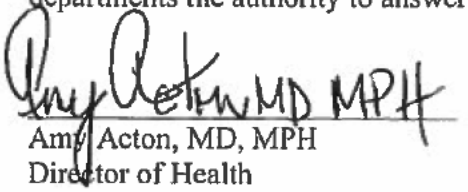
Multiple areas of the United States are experiencing "community spread" of the virus that causes COVID-19. Community spread, defined as the transmission of an illness for which the source is unknown, means that isolation of known areas of infection is no longer enough to control spread.

The CDC reports that people are most contagious when they are most symptomatic (the sickest) however some spread might be possible before people show symptoms although that is not the main way the virus spreads.

Mass gatherings (10 or more persons) increase the risk of community transmission of the virus COVID-19.

Accordingly, to avoid an imminent threat with a high probability of widespread exposure to COVID-19 with a significant risk of substantial harm to a large number of people in the general population, including the elderly and people with weakened immune systems and chronic medical conditions, I hereby **ORDER** all persons are to continue to stay at home or their place of residence unless they are engaged in Essential Activities, Essential Governmental Functions, or to operate Essential and Unrestricted Businesses and Operations as set forth in this Order. This Order shall remain in full force and effect until 11:59 p.m. on May 29, 2020, unless the Director of the Ohio Department of Health rescinds or modifies this Order at a sooner time and date. To the extent any public official enforcing this Order has questions regarding what

services are prohibited under this Order, the Director of Health hereby delegates to local health departments the authority to answer questions in writing and consistent with this Order.



Amy Acton, MD, MPH
Director of Health

April 30, 2020

Triad McNally Joint Venture

April 6, 2020

Northeast Ohio Regional Sewer District
3826 Euclid Avenue
Cleveland, OH
Attn.: Doug Gabriel
Matt Waite
Anthony Vitale

Re: COVID -19 effect on:
East 140th Street Consolidation and Relief Sewer
London Road Relief Sewers

Gentlemen:

The ongoing and changing environment from the COVID-19 virus are having effects on our projects. As noted in Section 13.2.2 of the General Conditions, we are notifying you that we are anticipating delays in the above projects. Information from the Federal Government, the Center for Disease Control, The World Health Organization, the State of Ohio and the City of Cleveland are changing daily. The next few weeks have been noted to have severe impacts. As such we are monitoring the events very closely. We have seen some impacts to our work force. TMJV continues to check and follow the necessary guidelines to keep our work force safe. However, we have increasing concerns over the future impact to our work force and possible delays to not only our work but to timely deliveries of needed materials. TMJV will continue to monitor these events and keep the NEORSD informed of any developing issues that may arise.

Triad McNally JV reserves its rights under the contract for a time extension due to any delays caused by the COVID -19 virus pandemic. Should there be any questions, please contact the undersigned.

Yours Truly,

Clifford J. Kassouf

Clifford J. Kassouf
JV Manager

Cc: Phil Kassouf

9715 Clinton Road • Brooklyn, OH 44144 • 440.786.1000 • Fax 216.651.0754

Northeast Ohio Regional Sewer District

May 5, 2020

Chief, Environmental Enforcement Section
Environmental and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-1-1-08177/1

Gary Pritchard
Attorney/Advisor
U.S. Environmental Protection Agency
Region 5 (C-14J)
77 West Jackson Boulevard
Chicago, Illinois 60604

Chief, Water Enforcement and Compliance
Assurance Branch
U.S. Environmental Protection Agency
Region 5
77 West Jackson Blvd., Mail Code C-15WC
Chicago, IL 60604-3590

Chief, Environmental Enforcement Section
Office of Ohio Attorney General
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3400

Chief, Division of Surface Water
Ohio Environmental Protection Agency
50 West Town Street, Suite 700
Columbus, OH 43215

Re: 30-Day Notice of Force Majeure Event for Control Measure 8

Dear Regulators:

This letter notifies the US Environmental Protection Agency ("US EPA") and the Ohio Environmental Protection Agency ("Ohio EPA") pursuant to Sections XI and XII of the Northeast Ohio Regional Sewer District's (the "Sewer District") Consent Decree of events relating to Control Measure 8– Doan Valley Relief and Consolidation Sewer project ("CM8") that may impact the Sewer District's ability to meet the Achievement of Full Operation milestone by December 31, 2021.

BACKGROUND, SUMMARY, AND REASON FOR DELAY

The Doan Valley Relief and Consolidation sewer project began on November 26, 2018. Presently, all tunneling and open cut operations are complete. The system is taking flow. Modifications to regulator DV-24 and restoration activities remain to be completed.

As you know, the COVID-19 global pandemic has forced the entire workforce to adapt to new social distancing requirements. The Ohio Department of Health ("ODH") took early steps in Ohio and issued "stay at home" orders to avoid an imminent threat of widespread exposure to COVID-19 and a significant risk of substantial harm to a large number of people in the general

population. Guidelines issued by the U.S. Centers for Disease Control and Prevention, the World Health Organization, and local government in response to COVID-19 recommended the practice of social distancing.

Beginning in March 2020, the ODH and the Governor of Ohio began issuing orders relating to public health protection during the COVID-19 pandemic. The relevant orders include:

1) March 17, 2020: The ODH released the attached amended order prohibiting non-family social gatherings of more than ten (10) people.[1]
2) April 2, 2020: The ODH released an Amended Director's Stay at Home Order, requiring that Essential Businesses and Operations take proactive measures to ensure compliance with Social Distancing.[2]
3) April 30, 2020: The ODH released a Director's Stay Safe Ohio Order, requiring businesses to continue to comply with Social Distancing Requirements.[3]

The contractor for CM8, Triad (the "Contractor"), notified the Sewer District on April 6, 2020 that it is anticipating delays in the Doan Valley Relief and Consolidation Sewer project due to impacts from the COVID-19 pandemic.[4] The Contractor cites the rapidly changing recommendations and guidelines from the U.S. Centers for Disease Control and Prevention, the Word Health Organization, and local government in response to COVID-19 and notes that the next few weeks are anticipated to have "severe impacts." The Contractor explains that it has seen some impacts to its work force and it has "increasing concerns over the future impact to [its] work force and possible delays to not only [its] work but to timely deliveries of needed materials." The Contractor will continue to monitor events closely and notify the Sewer District of any developing issues.

ANTICIPATED DURATION OF THE DELAY AND ACTIONS TAKEN OR TO BE TAKEN TO PREVENT OR MINIMIZE DELAY

At this time, it is not clear there will be an impact to the Achievement of Operation milestone in Appendix 1. However, since the duration and impact of COVID-19 are uncertain and rapidly evolving, there may ultimately be construction delays to this project. The Sewer District will continue to communicate with you and provide any relevant updates on the status of the Contractor's ability to perform this work and the associated impact, if any, to the Critical Milestone.

---

[1] See Amended Order, A. Acton, Director, Ohio Department of Health (March 17, 2020), attached to this letter.
[2] See Amended Order, A. Acton, Director, Ohio Department of Health (April 2, 2020), attached to this letter.
[3] See Order, A. Acton, Director, Ohio Department of Health (April 30, 2020), attached to this letter.
[4] See Letter from C. Kassouf (Contractor) to D. Gabriel and M. Waite (Sewer District) (April 6, 2020), attached to this letter.

NO IMPACT TO PUBLIC HEALTH, WELFARE, OR THE ENVIRONMENT

At this time, since the duration and impact of COVID-19 is uncertain and rapidly evolving, and since the Contractor has not notified the Sewer District of any actual delays related to the COVID-19 pandemic, it is unclear whether there will be any impact to the CM8's Achievement of Full Operation milestone. As such, the Sewer District does not believe that there will be any negative impact to public health, welfare, or the environment from this force majeure event at this time.

***

This unprecedented global pandemic and the strict governmental measures taken to prevent widespread exposure to COVID-19 make this a clear force majeure event in accordance with Sections XI and XII of the Sewer District's CD. The Sewer District will continue to communicate with you and provide any relevant updates on the status of the Contractor's ability to perform this work and the associated impact, if any, to the Critical Milestones. Please contact me with any questions at (216) 881-6600.

Sincerely,

Kyle Dreyfuss-Wells
Chief Executive Officer

Attachments (4): Amended Order, A. Acton, Director, Ohio Department of Health (March 17, 2020)
Amended Order, A. Acton, Director, Ohio Department of Health (April 2, 2020)
Order, A. Acton, Director, Ohio Department of Health, (April 30, 2020)
Letter from C. Kassouf (Contractor) to D. Gabriel and M. Waite (Sewer District) (April 6, 2020)

cc:
Steve Ellis, U.S. Department of Justice
Anna Cross, U.S. Department of Justice
Scott Helkowski, Ohio Office of the Attorney General
William Fischbein, Ohio Environmental Protection Agency

Ohio | Department of Health

Mike DeWine, Governor
Jon Husted, Lt. Governor

Amy Acton, M.D., MPH, Director

DIRECTOR'S ORDER

In Re: Amended Order to Limit and/or Prohibit Mass Gatherings and the Closure of Venues in the State of Ohio

I, Amy Acton, MD, MPH, Director of the Ohio Department of Health (ODH), pursuant to the authority granted to me in R.C. 3701.13 to "make special orders...for preventing the spread of contagious or infectious diseases" **Order** the following to prevent the spread of COVID-19 into the State of Ohio:

1. Mass gatherings are prohibited in the State of Ohio.

2. Mass gatherings are defined as any event or convening that brings together fifty (50) or more persons in a single room or single space at the same time, such as an auditorium, stadium, arena, large conference room, meeting hall, or any other confined indoor or outdoor space. This would also include parades, fairs and festivals. While not mandatory, it is strongly recommended that Ohioans avoid unnecessary non-family social gatherings of more than ten (10) people in accordance with President Trump's coronavirus guidelines issued March 16, 2020.

3. For the purpose of clarity, a mass gathering does not include normal operations at airports, bus and train stations, medical facilities, libraries, shopping malls and centers, or other spaces where 50 or more persons may be in transit. It also does not include typical office environments, schools, factories, warehouses, distribution centers, retail or grocery stores where large numbers of people are present, but it is unusual for them to be within arm's length of one another. Notwithstanding this Order, buildings and venues that traditionally host mass gatherings may continue to be used for community events such as blood drives where attendance does not exceed fifty (50) persons.

4. This Order does not apply to and/or excludes members of the media.

5. This Order does not apply to and/or excludes religious gatherings, gatherings for the purpose of the expression of First Amendment protected speech, weddings and funerals.

6. This Order does prohibit the following types of businesses from continuing operations due to the imminent threat of the spread of COVID-19 within the facility:

    a. Bowling alleys
    b. Health clubs/fitness centers/ workout facilities/gyms/yoga studios
    c. Indoor trampoline parks
    d. Indoor water parks
    e. Movie theatres and all performance theatres

246 North High Street
Columbus, Ohio 43215 U.S.A.

614 | 466-3543
www.odh.ohio.gov

The State of Ohio is an Equal Opportunity Employer and Provider of ADA Services.

f. Public Recreation Centers
g. Indoor Sports facilities

7. This Order shall take effect immediately and remain in full force and effect until the State of Emergency declared by the Governor no longer exists, or the Director of the Ohio Department of Health rescinds or modifies this Order.

8. To the extent any public official enforcing this order has questions regarding the definition of mass gathering under this Order, the Director of Health hereby delegates to local health departments the authority to answer questions in writing and consistent with this Order.

9. Regardless of whether an event or gathering falls within the definition of mass gathering, all persons are urged to maintain social distancing (approximately six feet away from other people) whenever possible and to continue to wash hands, utilize hand sanitizer and practice proper respiratory etiquette (coughing into elbow, etc.)

COVID-19 is a respiratory disease that can result in serious illness or death, is caused by the SARS-CoV-2 virus, which is a new strain of coronavirus that had not been previously identified in humans and can easily spread from person to person. The virus is spread between individuals who are in close contact with each other (within about six feet) through respiratory droplets produced when an infected person coughs or sneezes. It may be possible that individuals can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose or eyes.

On January 23, 2020, the Ohio Department of Health issued a Director's Journal Entry making COVID-19 a Class A reportable disease in Ohio.

On January 28, 2020, the Ohio Department of Health hosted the first statewide call with local health departments and healthcare providers regarding COVID-19.

On January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization declared the outbreak of COVID-19 a public health emergency of international concern.

On January 31, 2020, Health and Human Services Secretary, Alex M. Azar II, declared a public health emergency for the United States to aid the nation's healthcare community in responding to COVID-19.

On February 1, 2020, the Ohio Department of Health issued a statewide Health Alert Network to provide local health departments and healthcare providers with updated guidance for COVID-19 and revised Person Under Investigation (PUI) criteria.

On February 3, 2020, the Ohio Department of Health trained over 140 personnel to staff a call center for COVID-19, in the event it was needed.

On February 5, 2020, the Ohio Department of Health began updating and notifying the media of the number of PUIs in Ohio every Tuesday and Thursday.

On February 6, 2020, the Ohio Department of Health updated all agency assistant directors and chiefs of staff on COVID-19 preparedness and status during the Governor's cabinet meeting.

On February 7, 2020, the Ohio Department of Health and the Ohio Emergency Management Agency met to conduct advance planning for COVID-19.

On February 13, 2020, the Ohio Department of Health conducted a Pandemic Tabletop Exercise with State agencies to review responsive actions should there be a pandemic in Ohio.

On February 14, 2020, the Ohio Department of Health held a conference call with health professionals across the state. The purpose of the call was to inform and engage the healthcare community in Ohio. Presentations were provided by the Department of Health, Hamilton County Public Health, and the Ohio State University.

On February 27, 2020, the Ohio Department of Health and the Ohio Emergency Management Agency briefed the directors of State agencies during the Governor's cabinet meeting regarding preparedness and the potential activation of the Emergency Operations Center.

On February 28, 2020, the "Governor DeWine, Health Director Update COVID-19 Prevention and Preparedness Plan" was sent to a broad range of associations representing healthcare, dental, long-term care, K-12 schools, colleges and universities, business, public transit, faith-based organizations, non-profit organizations, and local governments.

On March 2, 2020, the Ohio Department of Health activated a Joint Information Center to coordinate COVID-19 communications.

On March 5, 2020, the Ohio Department of Health hosted the Governor's Summit on COVID-19 Preparedness, a meeting with the Governor, cabinet agency directors, local health department commissioners, and their staff.

On March 6, 2020, the Ohio Department of Health opened a call center to answer questions from the public regarding COVID-19.

On March 9, 2020, testing by the Department of Health confirmed that three (3) patients were positive for COVID-19 in the State of Ohio. This confirms the presence of a potentially dangerous condition which may affect the health, safety and welfare of citizens of Ohio.

On March 9, 2020, the Ohio Emergency Management Agency activated the Emergency Operations Center.

On March 9, 2020, the Governor Declared a State of Emergency in Executive Order 2020-01D.

On March 11, 2020, the head of the World Health Organization declared COVID-19 a pandemic.

On March 11, 2020, testing by the Ohio Department of Health confirmed that one (1) more patient was positive for COVID-19 in the State of Ohio.

On March 11, 2020, the Ohio Departments of Health and Veterans Services issued a Joint Directors' Order to limit access to Ohio nursing homes and similar facilities.

On March 15, 2020, the Ohio Department of Health issued a Director's Order to limit access to Ohio's jails and detention facilities.

On March 15, 2020, the Ohio Department of Health issued a Director's Order to limit the sale of food and beverages, liquor, beer and wine to carry-out and delivery only.

On March 15, 2020, the CDC issued Interim Guidance for mass gatherings or large community events, stating that such events that consist of 50 or more people should be cancelled or postponed.

Multiple areas of the United States are experiencing "community spread" of the virus that causes COVID-19. Community spread, defined as the transmission of an illness for which the source is unknown, means that isolation of known areas of infection is no longer enough to control spread.

The CDC reports that people are most contagious when they are most symptomatic (the sickest) however some spread might be possible before people show symptoms although that is not the main way the virus spreads.

Mass gatherings (50 or more persons) increase the risk of community transmission of the virus COVID-19.

Accordingly, to avoid an imminent threat with a high probability of widespread exposure to COVID-19 with a significant risk of substantial harm to a large number of people in the general population, including the elderly and people with weakened immune systems and chronic medical conditions, I hereby **ORDER** that mass gatherings are prohibited in the State of Ohio. Mass gatherings are defined as any event or convening that brings together fifty (50) or more persons in a single room or single space at the same time, such as an auditorium, stadium, arena, large conference room, meeting hall, or any other confined indoor or outdoor space. This would also include parades, fairs and festivals. While not mandatory, it is strongly recommended that Ohioans avoid unnecessary non-family social gatherings of more than ten (10) people in accordance with President Trump's coronavirus guidelines issued March 16, 2020. For the purpose of clarity, a mass gathering does not include normal operations at airports, bus and train stations, medical facilities, libraries, shopping malls and centers, or other spaces where 50 or more persons may be in transit. It also does not include typical office environments, schools, restaurants, factories, or retail or grocery stores where large numbers of people are present, but it is unusual for them to be within arm's length of one another. Notwithstanding this Order, buildings and venues that traditionally host mass gatherings may continue to be used for community events such as blood drives where attendance does not exceed fifty (50) persons. This Order does not apply to and/or excludes members of the media. This Order does not apply to and/or excludes religious gatherings, gatherings for the purpose of the expression of First Amendment protected speech, weddings and funerals. This Order does prohibit the following businesses to continue operations during this public health emergency due to the imminent threat of the spread of COVID-19: bowling alleys; health clubs/fitness centers/workout facilities/gyms/yoga studios; indoor trampoline parks; indoor water parks; movie theatres and performance theatres; public recreation facilities and indoor sports facilities. This Order shall take effect immediately and remain in full force and effect

until the State of Emergency declared by the Governor no longer exists, or the Director of the Ohio Department of Health rescinds or modifies this Order. To the extent any public official enforcing this order has questions regarding the definition of mass gathering under this Order, the Director of Health hereby delegates to local health departments the authority to answer questions in writing and consistent with this Order. Regardless of whether an event or gathering falls within the definition of mass gathering, all persons are urged to maintain social distancing (approximately six feet away from other people) whenever possible and to continue to wash hands, utilize hand sanitizer and practice proper respiratory etiquette (coughing into elbow, etc.)

Amy Acton, MD, MPH
Director of Health

March 17, 2020

Ohio | Department of Health

Mike DeWine, Governor
Jon Husted, Lt. Governor

Amy Acton, M.D., MPH, Director

AMENDED DIRECTOR'S STAY AT HOME ORDER

Re: Amended Director's Order that All Persons Stay at Home Unless Engaged in Essential Work or Activity

I, Amy Acton, MD, MPH, Director of the Ohio Department of Health (ODH), pursuant to the authority granted to me in R.C. 3701.13 to "make special orders...for preventing the spread of contagious or infectious diseases" **Order** the following to prevent the spread of COVID-19 into the State of Ohio:

1. **Stay at home or place of residence.** With exceptions as outlined below, all individuals currently living within the State of Ohio are ordered to stay at home or at their place of residence except as allowed in this Order. To the extent individuals are using shared or outdoor spaces when outside their residence, they must at all times and as much as reasonably possible, maintain social distancing of at least six feet from any other person, with the exception of family or household members, consistent with the Social Distancing Requirements set forth in this Order. All persons may leave their homes or place of residence only for Essential Activities, Essential Governmental Functions, or to participate in Essential Businesses and Operations, all as defined below.

   Individuals experiencing homelessness are exempt from this Order, but are strongly urged to obtain shelter, and governmental and other entities are strongly urged to make such shelter available as soon as possible and to the maximum extent practicable (and to use in their operation COVID-19 risk mitigation practices recommended by the U.S. Centers for Disease Control and Prevention (CDC) and the Ohio Department of Health (ODH)). This order does not apply to incarcerated individuals, they are to follow the guidance of the facility in which they are confined. Individuals whose residences are unsafe or become unsafe, such as victims of domestic violence, are permitted and urged to leave their home and stay at a safe alternative location. For purposes of this Order, homes or residences include hotels, motels, shared rental units, shelters, and similar facilities.

2. **Non-essential business and operations must cease.** All businesses and operations in the State, except Essential Businesses and Operations as defined below, are required to cease all activities within the State except Minimum Basic Operations, as defined below. For clarity, businesses, including home-based businesses, may also continue operations consisting exclusively of employees or contractors performing activities at their own residences (i.e., working from home) or where the business consists of a single person, so long as all safe workplace safety standards are met.

   All Essential Businesses and Operations are encouraged to remain open. Essential Businesses and Operations shall comply with Social Distancing Requirements as defined in this Order, including by maintaining six-foot social distancing for both employees and members of the public at all times, including, but not limited to, when any customers are standing in line.

3. **Prohibited activities.** All public and private gatherings of any number of people occurring outside a single household or living unit are prohibited, except for the limited purposes permitted by this Order. Any gathering of more than ten people is prohibited unless exempted by this Order. This is in accordance with President Trump's coronavirus guidelines issued March 16, 2020. Nothing in this Order prohibits the gathering of members of a household or residence.

   All places of public amusement, whether indoors or outdoors, including, but not limited to, locations with amusement rides, carnivals, amusement parks, water parks, aquariums, zoos, museums, arcades, fairs, children's play centers, playgrounds, funplexes, theme parks, bowling alleys, movie and other theaters, concert and music halls, and country clubs or social clubs shall be closed. Recreational sports tournaments, organized recreational sports leagues, residential and day camps shall be prohibited. Swimming pools, whether public or private, shall be closed, unless it is a swimming pool for a single household. Campgrounds shall be closed, except that persons residing in recreational vehicles ("RVs") at campgrounds who genuinely have no other viable place of residence may remain in the campground. This campground closure also excludes cabins, mobile homes, or other fixed structure, meant for a single family in situations where no other viable place of residence exists. Such persons should comply with all applicable guidance from the U.S. Centers for Disease Control and Prevention and the Ohio Department of Health regarding social distancing.

4. **Prohibited and permitted travel.** Only Essential Travel and Essential Activities as defined herein, are permitted. People riding on public transit must comply with Social Distancing Requirements to the greatest extent feasible. This Order allows travel into or out of the State to maintain Essential Businesses and Operations and Minimum Basic Operations. However, persons entering the State with the intent to stay are asked to self-quarantine for fourteen days. For purposes of clarity this does not apply to persons who as part of their normal life live in one state and work or gain essential services in another state. Persons who have tested positive for COVID-19, are presumptively diagnosed with COVID-19 or are exhibiting the symptoms identified in the screening guidance available from the U.S. Centers for Disease Control and Prevention and the Ohio Department of Health shall not enter the State, unless they are doing so under medical orders for the purposes of medical care, are being transported by Emergency Medical Services (EMS), are driving or being driven directly to a medical provider for purposes of initial care, or are a permanent resident of the State.

5. **Leaving the home for Essential Activities is permitted.** For purposes of this Order, individuals may leave their residence only to perform any of the following Essential Activities:

   a. **For health and safety**. To engage in activities or perform tasks essential to their health and safety, or to the health and safety of their family or household members or persons who are unable or should not leave their home (including, but not limited to, pets), such as, by way of example only and without limitation, seeking emergency services, obtaining medical supplies or medication, or visiting a health care professional.

   b. **For necessary supplies and services.** To obtain necessary services or supplies for themselves and their family or household members or persons who are unable or should not leave their home, or to deliver those services or supplies to others, such as, by way of example only and without limitation, groceries and food, household consumer products, supplies they need to work from home, automobile and boat supplies (including showrooms, dealers, parts, supplies,

repair, delivery of boats and vehicles, shipping, and maintenance), accessing self-storage facilities, and products necessary to maintain the safety, sanitation, and essential operation of residences.

c. **For outdoor activity.** To engage in outdoor activity, provided the individuals comply with Social Distancing Requirements, as defined below, such as, by way of example and without limitation, walking, hiking, running, or biking. Individuals may go to public parks and open outdoor recreation areas. However, public access playgrounds may increase spread of COVID-19, and therefore shall be closed.

d. **For certain types of work** To perform work providing essential products and services at Essential Businesses or Operations (which, as defined below, includes Healthcare and Public Health Operations, Human Services Operations, Essential Governmental Functions, and Essential Infrastructure) or to otherwise carry out activities specifically permitted in this Order, including Minimum Basic Operations.

e. **To take care of others.** To care for a family member, friend, or pet in another household, and to transport family members, friends, or pets as allowed by this Order. This includes attending weddings and funerals.

6. **Elderly people and those who are vulnerable as a result of illness should take additional precautions.** People at high risk of severe illness from COVID-19, including elderly people and those who are sick, are urged to stay in their residence to the extent possible except as necessary to seek medical care. Nothing in this Order prevents the Department Health or local health departments from issuing and enforcing isolation and quarantine orders.

7. **Healthcare and Public Health Operations.** For purposes of this Order, individuals may leave their residence to work for or obtain services through Healthcare and Public Health Operations.

   Healthcare and Public Health Operations includes, but is not limited to: hospitals; clinics; dental offices; pharmacies; public health entities, including those that compile, model, analyze and communicate public health information; pharmaceutical, pharmacy, medical device and equipment, and biotechnology companies (including operations, research and development, manufacture, and supply chain); organizations collecting blood, platelets, plasma, and other necessary materials; licensed medical marijuana dispensaries and licensed medical marijuana cultivation centers; obstetricians and gynecologists; eye care centers, including those that sell glasses and contact lenses; home healthcare services providers; mental health and substance use providers; other healthcare facilities and suppliers and providers of any related and/or ancillary healthcare services; and entities that transport and dispose of medical materials and remains.

   Specifically included in Healthcare and Public Health Operations are manufacturers, technicians, logistics, and warehouse operators and distributors of medical equipment, personal protective equipment (PPE), medical gases, pharmaceuticals, blood and blood products, vaccines, testing materials, laboratory supplies, cleaning, sanitizing, disinfecting or sterilization supplies, and tissue and paper towel products.

   Healthcare and Public Health Operations also includes veterinary care and all healthcare services provided to animals.

Healthcare and Public Health Operations shall be construed broadly to avoid any impacts to the delivery of healthcare, broadly defined. Healthcare and Public Health Operations does not include fitness and exercise gyms, spas, salons, barber shops, tattoo parlors, and similar facilities.

8. **Human Services Operations.** For purposes of this Order, individuals may leave their residence to work for or obtain services at any Human Services Operations, including any provider funded by the Ohio Department of Aging, Department of Developmental Disabilities, Department of Health, Department of Job and Family Services, Department of Medicaid, Department of Mental Health and Addiction Services, Opportunities for Ohioans with Disabilities, Department of Veterans Services, and Department of Youth Services that is providing services to the public and including state-operated, institutional, or community-based settings providing human services to the public.

   Human Services Operations includes, but is not limited to: long-term care facilities; day care centers, day care homes, group day care homes; residential settings and shelters for adults, seniors, children, and/or people with developmental disabilities, intellectual disabilities, substance use disorders, and/or mental illness; transitional facilities; home-based settings to provide services to individuals with physical, intellectual, and/or developmental disabilities, seniors, adults, and children; field offices that provide and help to determine eligibility for basic needs including food, cash assistance, medical coverage, child care, vocational services, rehabilitation services; developmental centers; adoption agencies; businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged individuals, individuals with physical, intellectual, and/or developmental disabilities, or otherwise needy individuals.

   Human Services Operations shall be construed broadly to avoid any impacts to the delivery of human services, broadly defined.

9. **Essential Infrastructure.** For purposes of this, individuals may leave their residence to provide any services or perform any work necessary to offer, provision, operate, maintain and repair Essential Infrastructure.

   Essential Infrastructure includes, but is not limited to: food production, distribution, fulfillment centers, storage facilities, marinas, and sale; construction (including, but not limited to, construction required in response to this public health emergency, hospital construction, construction of long-term care facilities, public works construction, school construction, essential business construction, and housing construction); building management and maintenance; airport operations; operation and maintenance of utilities, including water, sewer, and gas; electrical (including power generation, distribution, and production of raw materials); distribution centers; oil and biofuel refining; roads, highways, railroads, and public transportation; ports; cybersecurity operations; flood control; solid waste and recycling collection and removal; and internet, video, and telecommunications systems (including the provision of essential global, national, and local infrastructure for computing services, business infrastructure, communications, and web-based services).

   Essential Infrastructure shall be construed broadly to avoid any impacts to essential infrastructure, broadly defined.

10. **Essential Governmental Functions.** For purposes of this Order, all first responders, emergency management personnel, emergency dispatchers, legislators, judges, court personnel, jurors and grand jurors, law enforcement and corrections personnel, hazardous materials responders, child protection and child welfare personnel, housing and shelter personnel, military, and other governmental employees working for or to support Essential Businesses and Operations are categorically exempt from this Order.

    Essential Government Functions means all services provided by the State or any municipality, township, county, political subdivision, board, commission or agency of government and needed to ensure the continuing operation of the government agencies or to provide for or support the health, safety and welfare of the public, and including contractors performing Essential Government Functions. Each government body shall determine its Essential Governmental Functions and identify employees and/or contractors necessary to the performance of those functions.

    This Order does not apply to the United States government. Nothing in this Order shall prohibit any individual from performing or accessing Essential Governmental Functions.

11. **Businesses covered by this Order.** For the purposes of this Order, covered businesses include any for-profit, non-profit, or educational entities, regardless of the nature of the service, the function it performs, or its corporate or entity structure.

12. **Essential Businesses and Operations.** For the purposes of this Order, Essential Businesses and Operations means Healthcare and Public Health Operations, Human Services Operations, Essential Governmental Functions, and Essential Infrastructure, and the following:

    a. **CISA List.** On March 28, 2020, the U.S. Department of Homeland Security, Cybersecurity & Infrastructure Security Agency (CISA), issued an updated *Advisory Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response.* The definition of Essential Businesses and Operations in this Order includes all the workers identified in that Memorandum or any updated versions of the Memorandum issued by CISA;

    b. **Stores that sell groceries and medicine.** Grocery stores, pharmacies, farmers' markets, farm and produce stands, supermarkets, convenience stores, and other establishments engaged in the retail sale of groceries, canned food, dry goods, frozen foods, fresh fruits and vegetables, pet supplies, fresh meats, fish, and poultry, prepared food, alcoholic and non-alcoholic beverages, any other household consumer products (such as cleaning and personal care products), and specifically includes their supply chain and administrative support operations. This includes stores that sell groceries, medicine, including medication not requiring a medical prescription, and also that sell other non-grocery products, and products necessary to maintaining the safety, sanitation, and essential operation of residences and Essential Businesses and Operations. Stores shall determine and enforce the maximum capacity of persons permitted in any store such that at all persons in a store at any one time may safely and comfortably maintain a six-foot distance from each other. Every store shall prominently display at every entrance the maximum capacity number. Every store shall ensure that baskets, shopping carts and the like are properly cleaned between customers. If a line is present either

inside or outside the store, a six-foot distance shall be maintained between those not residing in the same household;

c. **Food, beverage, and licensed marijuana production and agriculture.** Food and beverage manufacturing, production, processing, and cultivation, including farming, livestock, fishing, baking, and other production agriculture, including cultivation, marketing, production, and distribution of animals and goods for consumption; licensed medical marijuana use, medical marijuana dispensaries and licensed medical marijuana cultivation centers; and businesses that provide food, shelter, and other necessities of life for animals, including animal shelters, rescues, shelters, kennels, and adoption facilities;

d. **Organizations that provide charitable and social services.** Businesses and religious and secular nonprofit organizations, including food banks, when providing food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities;

e. **Religious entities.** Religious facilities, entities and groups and religious gatherings, including weddings and funerals. Wedding receptions are subject to the ten-person limitation in Section 3 of this Order. Weddings and funerals are not subject to the ten-person limitation in Section 3 of this Order;

f. **Media.** Newspapers, television, radio, and other media services;

g. **First amendment protected speech;**

h. **Gas stations and businesses needed for transportation.** Gas stations and auto supply, auto-repair, farm equipment, construction equipment, boat repair, and related facilities and bicycle shops and related facilities;

i. **Financial and insurance institutions.** Bank, currency exchanges, consumer lenders, including but not limited, to pawnbrokers, consumer installment lenders and sales finance lenders, credit unions, appraisers, title companies, financial markets, trading and futures exchanges, payday lenders, affiliates of financial institutions, entities that issue bonds, related financial institutions, and institutions selling financial products. Also insurance companies, underwriters, agents, brokers, and related insurance claims and agency services;

j. **Hardware and supply stores.** Hardware stores, garden centers, nurseries, and businesses that sell electrical, plumbing, and heating material;

k. **Critical trades.** Building and Construction Tradesmen and Tradeswomen, and other trades including but not limited to plumbers, electricians, exterminators, cleaning and janitorial staff for commercial and governmental properties, security staff, operating engineers, HVAC, painting, moving and relocation services, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, and Essential Businesses and Operations;

l. **Mail, post, shipping, logistics, delivery, and pick-up services.** Post offices and other businesses that provide shipping and delivery services, and businesses that ship or deliver groceries, food, alcoholic and non-alcoholic beverages, goods, vehicles or services to end users or through commercial channels;

m. **Educational institutions.** Educational institutions-including public and private pre-K-12 schools, colleges, and universities-for purposes of facilitating distance learning, performing critical research, or performing essential functions, provided that social distancing of six-feet per person is maintained to the greatest extent possible. This Order is consistent with and does not amend or supersede prior Orders regarding the closure of schools;

n. **Laundry services.** Laundromats, dry cleaners, industrial laundry services, and laundry service providers;

o. **Restaurants for consumption off-premises.** Restaurants and other facilities that prepare and serve food, but only for consumption off-premises, through such means as in-house delivery, third-party delivery, drive-through, curbside pick-up, and carry-out. Schools and other entities that typically provide food services to students or members of the public may continue to do so under this Order on the condition that the food is provided to students or members of the public on a pick-up and takeaway basis only. Schools and other entities that provide food services under this exemption shall not permit the food to be eaten at the site where it is provided, or at any other gathering site due to the virus's propensity to physically impact surfaces and personal property. This Order is consistent with and does not amend or supersede prior Orders regarding the closure of restaurants;

p. **Supplies to work from home.** Businesses that sell, manufacture, or supply products needed for people to work from home;

q. **Supplies for Essential Businesses and Operations.** Businesses that sell, manufacture, or supply other Essential Businesses and Operations with the support or materials necessary to operate, including computers, audio and video electronics, printing services, household appliances; IT and telecommunication equipment; hardware, paint, flat glass; electrical, plumbing and heating material; sanitary equipment; personal hygiene products; food, food additives, ingredients and components; medical and orthopedic equipment; optics and photography equipment; diagnostics, food and beverages, chemicals, soaps and detergent; and firearm and ammunition suppliers and retailers for purposes of safety and security;

r. **Transportation.** Airlines, taxis, transportation network providers (such as Uber and Lyft), vehicle rental services, paratransit, marinas, docks, boat storage, and other private, public, and commercial transportation and logistics providers necessary for Essential Activities and other purposes expressly authorized in this Order;

s. **Home-based care and services.** Home-based care for adults, seniors, children, and/or people with developmental disabilities, intellectual disabilities, substance use disorders, and/or mental illness, including caregivers such as nannies who may travel to the child's home to provide care, and other in-home services including meal delivery;

t. **Residential facilities and shelters.** Residential facilities and shelters for adults, seniors, children, pets, and/or people with developmental disabilities, intellectual disabilities, substance use disorders, and/or mental illness;

u. **Professional services.** Professional services, such as legal services, accounting services, insurance services, real estate services (including appraisal and title services);

v. **Manufacture, distribution, and supply chain for critical products and industries.** Manufacturing companies, distributors, and supply chain companies producing and supplying essential products and services in and for industries such as pharmaceutical, technology, biotechnology, healthcare, chemicals and sanitization, waste pickup and disposal, agriculture, food and beverage, transportation, energy, steel and steel products, petroleum and fuel, mining, construction, national defense, communications, as well as products used by other Essential Businesses and Operations;

w. **Critical labor union functions.** Labor Union essential activities including the administration of health and welfare funds and personnel checking on the well-being and safety of members providing services in Essential Businesses and Operations - provided that these checks should be done by telephone or remotely where possible;

x. **Hotels and motels.** Hotels and motels, to the extent used for lodging and delivery or carry-out food services;

y. **Funeral services.** Funeral, mortuary, cremation, burial, cemetery, and related services.

13. **Minimum Basic Operations.** For the purposes of this Order, Minimum Basic Operations include the following, provided that employees comply with Social Distancing Requirements, to the extent possible, while carrying out such operations:

    a. The minimum necessary activities to maintain the value of the business's inventory, preserve the condition of the business's physical plant and equipment, ensure security, process payroll and employee benefits, or for related functions.

    b. The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.

14. **Essential Travel.** For the purposes of this Order, Essential Travel includes travel for any of the following purposes. Individuals engaged in any Essential Travel must comply with all Social Distancing Requirements as defined in this Section.

    a. Any travel related to the provision of or access to Essential Activities, Essential Governmental Functions, Essential Businesses and Operations, or Minimum Basic Operations.

    b. Travel to care for elderly, minors, dependents, persons with disabilities, or other vulnerable persons.

    c. Travel to or from educational institutions for purposes of receiving materials for distance learning, for receiving meals, and any other related services.

    d. Travel to return to a place of residence from outside the jurisdiction.

    e. Travel required by law enforcement or court order, including to transport children pursuant to a custody agreement.

    f. Travel required for non-residents to return to their place of residence outside the State. Individuals are strongly encouraged to verify that their transportation out of the State remains available and functional prior to commencing such travel.

15. **Social Distancing Requirements.** For purposes of this Order, Social Distancing Requirements includes maintaining at least six-foot social distancing from other individuals, washing hands with soap and water for at least twenty seconds as frequently as possible or using hand sanitizer, covering coughs or sneezes (into the sleeve or elbow, not hands), regularly cleaning high-touch surfaces, and not shaking hands.

    a. **Required measures.** Essential Businesses and Operations and businesses engaged in Minimum Basic Operations must take proactive measures to ensure compliance with Social Distancing Requirements, including where possible:

        i. **Designate six-foot distances.** Designating with signage, tape, or by other means six-foot spacing for employees and customers in line to maintain appropriate distance;

        ii. **Hand sanitizer and sanitizing products.** Having hand sanitizer and sanitizing products readily available for employees and customers;

        iii. **Separate operating hours for vulnerable populations.** Implementing separate operating hours for elderly and vulnerable customers; and

        iv. **Online and remote access.** Posting online whether a facility is open and how best to reach the facility and continue services by phone or remotely.

16. **Intent of this Order.** The intent of this Order is to ensure that the maximum number of people self-isolate in their places of residence to the maximum extent feasible, while enabling essential services to continue, to slow the spread of COVID-19 to the greatest extent possible. When people need to leave their places of residence, whether to perform Essential Activities, or to otherwise facilitate authorized activities necessary for continuity of social and commercial life, they should at all times and as much as reasonably possible comply with Social Distancing Requirements. All provisions of this Order should be interpreted to effectuate this intent.

17. **Enforcement.** This Order may be enforced by State and local law enforcement to the extent set forth in Ohio law. Specifically, pursuant to R.C 3701.352 "[n]o person shall violate any rule the director of health or department of health adopts or any order the director or department of health issues under this chapter to prevent a threat to the public caused by a pandemic, epidemic, or bioterrorism event." R.C. 3701.56 provides that "[b]oards of health of a general or city health district, health authorities and officials, officers of state institutions, police officers, sheriffs, constables, and other officers and employees of the state or any county, city, or township, shall enforce quarantine and isolation orders, and the rules the department of health adopts." To the extent any public official enforcing this Order has questions regarding what services are prohibited under this Order, the Director of Health hereby delegates to local health departments the authority to answer questions in writing and consistent with this Order, but does not require local health departments to provide advisory opinions to nongovernmental entities.

18. **Penalty.** A violation of R.C. 3701.352 is guilty of a misdemeanor of the second degree, which can include a fine of not more than $750 or not more than 90 days in jail, or both.

19. **COVID-19 Information and Checklist for Businesses/Employers.** Business and employers are to take the following actions:

    a. Allow as many employees as possible to work from home by implementing policies in areas such as teleworking and video conferencing.

b. Actively encourage sick employees to stay home until they are free of fever (without the use of medication) for at least 72 hours (three full days) AND symptoms have improved for at least 72 hours AND at least seven days have passed since symptoms first began. Do not require a healthcare provider's note to validate the illness or return to work of employees sick with acute respiratory illness; healthcare provider offices and medical facilities may be extremely busy and not able to provide such documentation in a timely way.

c. Ensure that your sick leave policies are up to date, flexible, and non-punitive to allow sick employees to stay home to care for themselves, children, or other family members. Consider encouraging employees to do a self-assessment each day to check if they have any COVID-19 symptoms (fever, cough, or shortness of breath).

d. Separate employees who appear to have acute respiratory illness symptoms from other employees and send them home immediately. Restrict their access to the business until they have recovered.

e. Reinforce key messages — stay home when sick, use cough and sneeze etiquette, and practice hand hygiene — to all employees, and place posters in areas where they are most likely to be seen. Provide protection supplies such as soap and water, hand sanitizer, tissues, and no-touch disposal receptacles for use by employees.

f. Frequently perform enhanced environmental cleaning of commonly touched surfaces, such as workstations, countertops, railings, door handles, and doorknobs. Use the cleaning agents that are usually used in these areas and follow the directions on the label. Provide disposable wipes so that commonly used surfaces can be wiped down by employees before each use.

g. Be prepared to change business practices if needed to maintain critical operations (e.g., identify alternative suppliers, prioritize customers, or temporarily suspend some of your operations).

20. **No limitation on authority.** Nothing in this Order shall, in any way, alter or modify any existing legal authority allowing the State or any local health department from ordering (1) any quarantine or isolation that may require an individual to remain inside a particular residential property or medical facility for a limited period of time, including the duration of this public health emergency, or (2) any closure of a specific location for a limited period of time, including the duration of this public health emergency.

21. **Savings clause.** If any provision of this Order or its application to any person or circumstance is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Order are declared to be severable.

22. **Previous Orders superseded.** This Order supersedes, only to the extent that it conflicts, and amends any previous Order which conflicts with the provisions of this Order.

23. **Dispute Resolution.** If any local health department issues a determination under Section 17 of this Order that is in conflict with a determination issued by a different local health department, then the conflict may be submitted to the ODH by either of the local health departments or an entity or person subject to the determination. A Dispute Resolution Commission appointed by the Director of Health shall review the conflict and make a determination as to the application of this Order to the conflict. The decision of the Dispute Resolution Commission shall be final.

24. **Duration.** This Order shall be effective at 11:59 p.m. on April 6, 2020 and remains in full force and effect until 11:59 p.m. on May 1, 2020, unless the Director of the Ohio Department of Health rescinds or modifies this Order at a sooner time and date.

COVID-19 is a respiratory disease that can result in serious illness or death, is caused by the SARS-CoV-2 virus, which is a new strain of coronavirus that had not been previously identified in humans and can easily spread from person to person. The virus is spread between individuals who are in close contact with each other (within about six feet) through respiratory droplets produced when an infected person coughs or sneezes. It may be possible that individuals can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose or eyes.

On January 23, 2020, the Ohio Department of Health issued a Director's Journal Entry making COVID-19 a Class A reportable disease in Ohio.

On January 28, 2020, the Ohio Department of Health hosted the first statewide call with local health departments and healthcare providers regarding COVID-19.

On January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization declared the outbreak of COVID-19 a public health emergency of international concern.

On January 31, 2020, Health and Human Services Secretary, Alex M. Azar II, declared a public health emergency for the United States to aid the nation's healthcare community in responding to COVID-19.

On February 1, 2020, the Ohio Department of Health issued a statewide Health Alert Network to provide local health departments and healthcare providers with updated guidance for COVID-19 and revised Person Under Investigation (PUI) criteria.

On February 3, 2020, the Ohio Department of Health trained over 140 personnel to staff a call center for COVID-19, in the event it was needed.

On February 5, 2020, the Ohio Department of Health began updating and notifying the media of the number of PUIs in Ohio every Tuesday and Thursday.

On February 6, 2020, the Ohio Department of Health updated all agency assistant directors and chiefs of staff on COVID-19 preparedness and status during the Governor's cabinet meeting.

On February 7, 2020, the Ohio Department of Health and the Ohio Emergency Management Agency met to conduct advance planning for COVID-19.

On February 13, 2020, the Ohio Department of Health conducted a Pandemic Tabletop Exercise with State agencies to review responsive actions should there be a pandemic in Ohio.

On February 14, 2020, the Ohio Department of Health held a conference call with health professionals across the state. The purpose of the call was to inform and engage the healthcare community in Ohio. Presentations were provided by the Department of Health, Hamilton County Public Health, and the Ohio State University.

On February 27, 2020, the Ohio Department of Health and the Ohio Emergency Management Agency briefed the directors of State agencies during the Governor's cabinet meeting regarding preparedness and the potential activation of the Emergency Operations Center.

On February 28, 2020, the "Governor DeWine, Health Director Update COVID-19 Prevention and Preparedness Plan" was sent to a broad range of associations representing healthcare, dental, long-term care, K-12 schools, colleges and universities, business, public transit, faith-based organizations, non-profit organizations, and local governments.

On March 2, 2020, the Ohio Department of Health activated a Joint Information Center to coordinate COVID-19 communications.

On March 5, 2020, the Ohio Department of Health hosted the Governor's Summit on COVID-19 Preparedness, a meeting with the Governor, cabinet agency directors, local health department commissioners, and their staff.

On March 6, 2020, the Ohio Department of Health opened a call center to answer questions from the public regarding COVID-19.

On March 9, 2020, testing by the Department of Health confirmed that three (3) patients were positive for COVID-19 in the State of Ohio. This confirms the presence of a potentially dangerous condition which may affect the health, safety and welfare of citizens of Ohio.

On March 9, 2020, the Ohio Emergency Management Agency activated the Emergency Operations Center.

On March 9, 2020, the Governor Declared a State of Emergency in Executive Order 2020-01D.

On March 11, 2020, the head of the World Health Organization declared COVID-19 a pandemic.

On March 11, 2020, testing by the Ohio Department of Health confirmed that one (1) more patient was positive for COVID-19 in the State of Ohio.

On March 11, 2020, the Ohio Departments of Health and Veterans Services issued a Joint Directors' Order to limit access to Ohio nursing homes and similar facilities.

On March 15, 2020, the Ohio Department of Health issued a Director's Order to limit access to Ohio's jails and detention facilities.

On March 15, 2020, the Ohio Department of Health issued a Director's Order to limit the sale of food and beverages, liquor, beer and wine to carry-out and delivery only.

On March 15, 2020, the CDC issued Interim Guidance for mass gatherings or large community events, stating that such events that consist of 50 or more people should be cancelled or postponed.

On March 16, 2020 the Ohio Department of Health issued a Director's Order closing polling locations for the March 17, 2020 primary election.

On March 17, 2020 the Ohio Department of Health issued a Director's Order for the management of non-essential surgeries and procedures throughout Ohio.

On March 17, 2020 the Ohio Department of Health issued an Amended Director's Order to limit and/or prohibit mass gatherings and the closure of venues in the State of Ohio.

On March 19, 2020, the Ohio Department of Health issued a Director's Order closing hair salons, nail salons, barber shops, tattoo parlors, body piercing locations, and massage therapy locations.

Multiple areas of the United States are experiencing "community spread" of the virus that causes COVID-19. Community spread, defined as the transmission of an illness for which the source is unknown, means that isolation of known areas of infection is no longer enough to control spread.

The CDC reports that people are most contagious when they are most symptomatic (the sickest) however some spread might be possible before people show symptoms although that is not the main way the virus spreads.

Mass gatherings (10 or more persons) increase the risk of community transmission of the virus COVID-19.

Accordingly, to avoid an imminent threat with a high probability of widespread exposure to COVID-19 with a significant risk of substantial harm to a large number of people in the general population, including the elderly and people with weakened immune systems and chronic medical conditions, I hereby **ORDER** all persons are to continue to stay at home or their place of residence unless they are engaged in Essential Activities, Essential Governmental Functions, or to operate Essential Businesses and Operations as set forth in this Order. This Order shall remain in full force and effect until 11:59 p.m. on May 1, 2020, unless the Director of the Ohio Department of Health rescinds or modifies this Order at a sooner time and date. To the extent any public official enforcing this Order has questions regarding what services are prohibited under this Order, the Director of Health hereby delegates to local health departments the authority to answer questions in writing and consistent with this Order.

Amy Acton MD MPH

April 2, 2020

Amy Acton, MD, MPH
Director of Health

Ohio | Department of Health

Mike DeWine, Governor
Jon Husted, Lt. Governor

Amy Acton, M.D., MPH, Director

DIRECTOR'S STAY SAFE OHIO ORDER

Re: Director's Order that Reopens Businesses, with Exceptions, and Continues a Stay Healthy and Safe at Home Order

I, Amy Acton, MD, MPH, Director of the Ohio Department of Health (ODH), pursuant to the authority granted to me in R.C. 3701.13 to "make special orders...for preventing the spread of contagious or infectious diseases" **Order** the following to prevent the spread of COVID-19 into the State of Ohio:

1. **Preamble:** The sacrifices and incredible efforts that Ohioans have undertaken, make it possible to begin to lift the mandatory requirements and restrictions that were needed during the initial phase of the COVID-19 Pandemic. The adjustment of these orders is able to proceed based upon the facts and the science existing at this time in Ohio, however if the situation continues to improve, then more restrictions will be lifted, and if the situation deteriorates additional targeted restrictions will need to be made. While government can set the baseline, it should be understood that these orders set forth the minimum acts that must be taken and if people do more than the minimum to act safely, it will benefit everyone.

2. **Business and operations to reopen.** All businesses and operations in the State, except as defined below, are permitted to reopen within the State so long as all workplace safety standards are met. All businesses and operations, except as defined below, are encouraged to either reopen or remain open if they have not ceased operation during the prior Stay at Home Orders. Businesses and operations shall continue to comply with Social Distancing Requirements as defined in this Order, including by maintaining six-foot social distancing for both employees and members of the public at all times, including, but not limited to, when any customers are standing in line.

3. **Stay at home or place of residence.** With exceptions as outlined below, all individuals currently living within the State of Ohio are ordered to stay at home or at their place of residence except as allowed in this Order. To the extent individuals are using shared or outdoor spaces when outside their residence, they must at all times and as much as reasonably possible, maintain social distancing of at least six feet from any other person, with the exception of family or household members, consistent with the Social Distancing Requirements set forth in this Order. All persons may leave their homes or place of residence only to participate in activities, businesses or operations as permitted in this Order.

   Individuals experiencing homelessness are exempt from this Order, but are strongly urged to obtain shelter, and governmental and other entities are strongly urged to make such shelter available as soon as possible and to the maximum extent practicable (and to use in their operation COVID-19 risk mitigation practices recommended by the U.S. Centers for Disease Control and

Prevention (CDC) and the Ohio Department of Health (ODH)). This order does not apply to incarcerated individuals. Incarcerated individuals are to follow the guidance of the facility in which they are confined. Individuals whose residences are unsafe or become unsafe, such as victims of domestic violence, are permitted and urged to leave their home and stay at a safe alternative location. For purposes of this Order, homes or residences include hotels, motels, shared rental units, shelters, and similar facilities.

4. **Prohibited activities.** All public and private gatherings of any number of people occurring outside a single household and connected property, or living unit and connected property are prohibited, except for the limited purposes permitted by this Order. Any gathering of more than ten people is prohibited unless exempted by this Order. This is in accordance with President Trump's coronavirus guidelines issued March 16, 2020. Nothing in this Order prohibits the gathering of members of a household, family or residence. This Section does not apply to weddings and funerals, although wedding receptions are subject to the ten-person limitation. This Section does not apply to religious facilities, entities and groups and religious gatherings. This Section does not apply to First Amendment protected speech, including petition or referendum circulators and any activity by the Media, which includes newspapers, television, radio and other media services.

5. **Prohibited and permitted travel.** People riding on public transit must comply with Social Distancing Requirements to the greatest extent feasible. This Order allows travel into or out of the State including travel that originates and ends outside of the state. However, persons entering the State with the intent to stay are asked to self-quarantine for fourteen days unless they are doing so for critical infrastructure or healthcare workforce purposes. For purposes of clarity this does not apply to persons who as part of their normal life live in one state and work or deliver services in another state. Persons who have tested positive for COVID-19, are presumptively diagnosed with COVID-19 or are exhibiting the symptoms identified in the screening guidance available from the U.S. Centers for Disease Control and Prevention and the Ohio Department of Health shall not enter the State, unless they are doing so under medical orders for the purposes of medical care, are being transported by Emergency Medical Services (EMS), are driving or being driven directly to a medical provider for purposes of initial care, or are a permanent resident of the State.

6. **Elderly people and those who are vulnerable as a result of illness should take additional precautions.** People at high risk of severe illness from COVID-19, including elderly people and those who are sick, are urged to stay in their residence to the extent possible except as necessary to seek medical care. According to CDC, those at high-risk for severe illness from COVID-19 include people who are sixty-five years or older and people of all ages with underlying medical conditions, particularly if not well controlled, including:

    a. People with chronic lung disease or moderate to severe asthma;
    b. People who have serious heart conditions;
    c. People who are immune compromised;
    d. People with severe obesity (body mass index [BMI] of 40 or higher);
    e. People with diabetes;
    f. People with chronic kidney disease undergoing dialysis; and
    g. People with liver disease.

7. **Businesses covered by this Order.** For the purposes of this Order, covered businesses include any for-profit, non-profit, educational entities, or governmental entities (other than federal)

regardless of the nature of the service, the function it performs, or its corporate or entity structure. Nothing in this Order is intended to encroach on or interfere with the separation of powers under the Ohio Constitution.

8. **Facial Coverings (Masks).** Businesses must allow all customers, patrons, visitors, contractors, vendors and similar individuals to use facial coverings, except for specifically documented legal, life, health or safety considerations and limited documented security considerations. Businesses must require all employees to wear facial coverings, except for one of the following reasons:

    a. Facial coverings in the work setting are prohibited by law or regulation;
    b. Facial coverings are in violation of documented industry standards;
    c. Facial coverings are not advisable for health reasons;
    d. Facial coverings are in violation of the business's documented safety policies;
    e. Facial coverings are not required when the employee works alone in an assigned work area; or
    f. There is a functional (practical) reason for an employee not to wear a facial covering in the workplace.

    Businesses must provide written justification, upon request, explaining why an employee is not required to wear a facial covering in the workplace. At a minimum, facial coverings (masks) should be cloth/fabric and cover an individual's nose, mouth, and chin.

9. **Medical Care.** The Director of Health Order signed March 17, 2020, for the management of non-essential surgeries and procedures throughout Ohio, is rescinded effective at 11:59 p.m. on April 30, 2020. Governor DeWine asked hospitals and other providers to reassess all surgeries and procedures that were delayed consistent with the March 17 Order. Surgeries and procedures were to be prioritized and performed if there is a:

    a. Threat to the patient's life if the surgery or procedure is delayed;
    b. Threat of permanent dysfunction of an extremity or organ system if delayed;
    c. Risk of metastasis or progression of staging if delayed;
    d. Risk of rapidly worsening to severe symptoms if delayed, or
    e. Presence of severe symptoms causing an inability to perform activities of daily living.

    Effective at 11:59 p.m. on April 30, 2020, medical providers, including dentists, in the State may resume non-essential surgeries and procedures. This type of health care typically does not require an inpatient or overnight stay. These surgeries, procedures and other health care services, that utilize minimal personal protective equipment (PPE) have a minimal impact on inpatient hospital bed capacity, may resume only if the provider meets the following conditions:

    a. The provider follows infection control and other environmental practices in accordance with the ODH and CDC guidelines;
    b. The provider maintains adequate inventories of PPE, supplies, equipment, and medicine in their facility for each patient, considering all phases of care the patient may require,
    c. The provider creates a plan for conservation and monitoring that may include decontamination and reuse protocols to preserve PPE, supplies, equipment, and medicine to be prepared for an influx of patients, including those who do not have COVID-19;

d. The provider evaluates access to a reliable supply chain to support continued operations for non-COVID-19 cases, and to respond to an unexpected surge in COVID-19 cases in a timely manner;
e. The provider frequently counts PPE inventory. For hospitals, this information will continue to be reported to the State's COVID-19 resource management system on a daily basis;
f. The provider defines processes for timely COVID-19 testing of patients and staff in accordance with the ODH guidelines;
g. The provider continues to use telehealth modalities whenever possible; and
h. The provider develops an actionable plan for communication, outreach, and equitable delivery of services that:
    i. Recognizes the underlying social determinants of health and the disproportionate impact of COVID-19 on minority populations;
    ii. Engages patients in discussion regarding the risk of contracting COVID-19; and
    iii. Engages patients in shared decision making regarding the need for and timing of health care services. Surgeries and other procedures could still be delayed based upon mutual decisions made by patients and their clinicians.

As a provider prepares to restart non-essential health care services, hospitals and other providers should review the following types of considerations:

a. Pre-restart considerations;
b. Prioritizing patient outreach and scheduling;
c. Patient Communication;
d. Patient Screening for COVID-19;
e. Facility Considerations;
f. Workforce/Staffing;
g. Sanitation Procedures;
h. Personnel Protective Equipment;
i. Supplies;
j. Patient and Staff Testing; and
k. Consultation of additional Resources.

Providers should continue to use telehealth modalities, whenever possible, and create or use existing internal strategies to prioritize cases based on the medical staff's governance and resolution structure. Providers should also follow the Responsible Restart Ohio Guide for Health Care distributed by ODH.

10. **Manufacturing, distribution and construction.** Manufacturing, distribution and construction businesses that were ordered to cease all activities pursuant to the April 2, 2020, Amended Director of Health Order that ordered all persons in the State to stay home unless engaged in essential work or activity, shall stay closed until May 4, 2020. Effective at 12:01 a.m. on May 4, 2020, the closed manufacturing, distribution and construction businesses may reopen, subject to the Sector Specific COVID-19 Information and Checklist for Businesses/Employers set forth in Section 21 of this Order.

11. **General Office Environments.** General office environments that were ordered to cease all activities pursuant to the April 2, 2020, Amended Director of Health Order that ordered all persons in the State to stay home unless engaged in essential work or activity, shall stay closed until May 4, 2020. Effective at 12:01 a.m. on May 4, 2020, the closed general office environments may reopen, subject to the Sector Specific COVID-19 Information and Checklist for Businesses/Employers set forth in Section 21 of this Order. Businesses should strongly encourage as many employees as possible to work from home by implementing policies in areas such as teleworking and video conferencing, subject to the discretion of the employer.

12. **Retail.** Retail establishments and facilities that were ordered to cease all activities pursuant to the April 2, 2020, Amended Director of Health Order that ordered all persons in the State to stay home unless engaged in essential work or activity, shall stay closed until May 12, 2020. Effective at 12:01 a.m. on May 12, 2020, the closed retail establishments and facilities may reopen, subject to the Sector Specific COVID-19 Information and Checklist for Businesses/Employers set forth in Section 21 of this Order. Currently closed retail establishments and facilities, that will restrict their operations to curbside pickup, delivery or appointment-only (limited to 10 customers at any one time) may reopen effective May 1 at 11:59 p.m.

13. **Closed Businesses and Operations.** For the purposes of this Order, the following businesses and operations are to remain closed until this Order is amended or rescinded:

    a. **Schools**. The Second Amended Director of Health Order signed April 29, 2020, or as it may be subsequently amended, that closed all K-12 schools in the State remains in effect;

    b. **Restaurants and Bars.** The Director of Health Order signed March 15, 2020, or as it may be subsequently amended, that closed restaurants and bars to all but carry-out and delivery activities in the State remains in effect;

    c. **Personal Appearance/Beauty**. The Director of Health Order signed March 19, 2020, or as it may be subsequently amended, that closed hair salons, day spas, nail salons, barber shops, tattoo parlors, body piercing locations, tanning facilities, massage therapy locations and like businesses in the State remains in effect.;

    d. **Adult Day Support or Vocational Habilitation Services in a Congregate Setting.** The Amended Director of Health Order signed March 21, 2020, or as it may be subsequently amended, that prohibited adult day support or vocational habilitation services in a congregate setting in the State remains in effect;

    e. **Older Adult Day Care Services and Senior Centers.** The Director of Health Order signed March 24, 2020, or as it may be subsequently amended, that prohibited older adult day care services and closed senior centers in the State remains in effect;

    f. **Child Care Services.** The Director of Health Order signed March 24, 2020, or as it may be subsequently amended, that prohibited child care services, except for facilities with a Temporary Pandemic Child Care License, in the State remains in effect; and

    g. **Entertainment/Recreation/Gymnasiums.** The Director of Health Order signed March 21, 2020, or as it may be subsequently amended, that closed all indoor family entertainment businesses and venues such as laser tag facilities, roller skating rinks, ice skating rinks, arcades and indoor miniature golf facilities, as well as, adult and child skill or chance game facilities

in the State remains in effect. The Amended Director of Health Order signed March 17, 2020, or as it may be subsequently amended, that closed auditoriums, stadiums, arenas, parades, fairs, festivals, bowling alleys, health clubs, fitness centers, workout facilities, gyms, yoga studios, indoor trampoline parks, indoor water parks, movie and other theatres (excluding drive-in theatres), performance theatres, all public recreation centers, and indoor sports facilities in the State remains in effect. All places of public amusement, whether indoors or outdoors, including, but not limited to, locations with amusement rides, carnivals, amusement parks, water parks, aquariums, zoos, museums, arcades, fairs, children's play centers, playgrounds, funplexes, theme parks, bowling alleys, concert and music halls, and country clubs or social clubs shall be closed. Recreational sports tournaments, organized recreational sports leagues, residential and day camps shall be prohibited. Swimming pools, whether public or private, shall be closed, unless it is a swimming pool for a single household. Campgrounds, including recreational camps and recreational vehicle (RV) parks, shall be closed, except that persons residing in recreational vehicles ("RVs") at campgrounds who genuinely have no other viable place of residence may remain in the campground. This campground closure also excludes cabins, mobile homes, or other self-contained units, meant for single families and where preexisting full season agreements already have been established. An example would be individuals who have part-time preestablished seasonal sites at campgrounds for the entire season or a long term property interest or lease agreement with a campground for residential activity. Such persons should comply with all applicable guidance from the U.S. Centers for Disease Control and Prevention and the Ohio Department of Health regarding social distancing.

14. **Minimum Basic Operations.** Any activity, business or operation, if ordered closed, is still permitted to engage in Minimum Basic Operations. For the purposes of this Order, Minimum Basic Operations include the following, provided that employees comply with Social Distancing Requirements, to the extent possible, while carrying out such operations:

    a. The minimum necessary activities to maintain the value of the business's inventory, preserve the condition of the business's physical plant and equipment, ensure security, process payroll and employee benefits, or for related functions; and

    b. The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.

15. **Travel.** For the purposes of this Order, permitted Travel includes travel for any of the following purposes. Individuals engaged in any Travel must comply with all Social Distancing Requirements as defined in this Section.

    a. Any travel related to the provision of or access to activities, businesses and operations that are permitted to be open under this Order or Minimum Basic Operations;

    b. Travel to care for elderly, minors, dependents, persons with disabilities, or other vulnerable persons;

    c. Travel to or from educational institutions for purposes of receiving materials for distance learning, for receiving meals, and any other related services;

    d. Travel to return to a place of residence from outside the jurisdiction;

e. Travel required by law enforcement or court order, including to transport children pursuant to a custody agreement; and

f. Travel required for non-residents to return to their place of residence outside the State. Individuals are strongly encouraged to verify that their transportation out of the State remains available and functional prior to commencing such travel.

16. **Social Distancing Requirements.** For purposes of this Order, Social Distancing Requirements includes maintaining at least six-foot social distancing from other individuals, washing hands with soap and water for at least twenty seconds as frequently as possible or using hand sanitizer, covering coughs or sneezes (into the sleeve or elbow, not hands), regularly cleaning high-touch surfaces, and not shaking hands.

    a. **Required measures.** Essential Businesses and Operations and businesses engaged in Minimum Basic Operations must take proactive measures to ensure compliance with Social Distancing Requirements, including where possible:

        i. **Designate six-foot distances.** Designating with signage, tape, or by other means six-foot spacing for employees and customers in line to maintain appropriate distance;

        ii. **Hand sanitizer and sanitizing products.** Having hand sanitizer and sanitizing products readily available for employees and customers;

        iii. **Separate operating hours for vulnerable populations.** Implementing separate operating hours for elderly and vulnerable customers; and

        iv. **Online and remote access.** Posting online whether a facility is open and how best to reach the facility and continue services by phone or remotely.

17. **Intent of this Order.** The intent of this Order is to ensure that the maximum number of people self-isolate in their places of residence to the maximum extent feasible, while enabling additional day to day activities to continue, to slow the spread of COVID-19 to the greatest extent possible. When people need to leave their places of residence to perform or to otherwise facilitate authorized activities necessary for continuity of social and commercial life, they should at all times and as much as reasonably possible comply with Social Distancing Requirements. All provisions of this Order should be interpreted to effectuate this intent.

18. **Enforcement.** This Order may be enforced by State and local law enforcement to the extent set forth in Ohio law. Specifically, pursuant to R.C 3701.352 "[n]o person shall violate any rule the director of health or department of health adopts or any order the director or department of health issues under this chapter to prevent a threat to the public caused by a pandemic, epidemic, or bioterrorism event." R.C. 3701.56 provides that "[b]oards of health of a general or city health district, health authorities and officials, officers of state institutions, police officers, sheriffs, constables, and other officers and employees of the state or any county, city, or township, shall enforce quarantine and isolation orders, and the rules the department of health adopts." To the extent any public official enforcing this Order has questions regarding what services are prohibited under this Order, the Director of Health hereby delegates to local health departments the authority to answer questions in writing and consistent with this Order, but does not require local health departments to provide advisory opinions to nongovernmental entities.

19. **Penalty.** A violation of R.C. 3701.352 is guilty of a misdemeanor of the second degree, which can include a fine of not more than $750 or not more than 90 days in jail, or both.

20. **General COVID-19 Information and Checklist for Businesses/Employers.** Business and employers are to take the following actions:

    a. Strongly encourage as many employees as possible to work from home by implementing policies in areas such as teleworking and video conferencing, subject to the discretion of the employer;

    b. Actively encourage sick employees to stay home until they are free of fever (without the use of medication) for at least 72 hours (three full days) AND symptoms have improved for at least 72 hours AND at least seven days have passed since symptoms first began. Do not require a healthcare provider's note to validate the illness or return to work of employees sick with acute respiratory illness; healthcare provider offices and medical facilities may be extremely busy and not able to provide such documentation in a timely way;

    c. Ensure that your sick leave policies are up to date, flexible, and non-punitive to allow sick employees to stay home to care for themselves, children, or other family members. Consider encouraging employees to do a self-assessment each day to check if they have any COVID-19 symptoms (fever, cough, or shortness of breath);

    d. Separate employees who appear to have acute respiratory illness symptoms from other employees and send them home immediately. Restrict their access to the business until they have recovered;

    e. Reinforce key messages — stay home when sick, use cough and sneeze etiquette, and practice hand hygiene — to all employees, and place posters in areas where they are most likely to be seen. Provide protection supplies such as soap and water, hand sanitizer, tissues, and no-touch disposal receptacles for use by employees;

    f. Frequently perform enhanced environmental cleaning of commonly touched surfaces, such as workstations, countertops, railings, door handles, and doorknobs. Use the cleaning agents that are usually used in these areas and follow the directions on the label. Provide disposable wipes so that commonly used surfaces can be wiped down by employees before each use; and

    g. Be prepared to change business practices if needed to maintain critical operations (e.g., identify alternative suppliers, prioritize customers, or temporarily suspend some of your operations).

    h. Comply with all applicable guidance from the U.S. Centers for Disease Control and Prevention and the Ohio Department of Health regarding social distancing.

21. **Sector Specific COVID-19 Information and Checklist for Businesses/Employers.** Businesses and employers, whether currently open or reopening, are to take the following actions:

    a. Manufacturing, distribution & construction:

        i. Ensure minimum 6 feet between people, if not possible, install barriers;
        ii. Employees must perform daily symptom assessment that should include taking temperature with a thermometer and monitoring for fever. Also watching for coughing or trouble breathing;

iii. Require employees to stay home if symptomatic;
iv. Consider having distributers and guests wear face coverings at all times;
v. Require regular handwashing;
vi. Stagger or limit arrivals of employees and guests;
vii. Have employees work from home whenever possible;
viii. Daily disinfection of desks and workstations;
ix. Change shift patterns (e.g. fewer shifts);
x. Stagger lunch and break times;
xi. Daily deep disinfection of high-contact surfaces;
xii. Space factory floor to allow for distancing;
xiii. Regulate max number of people in cafeterias/common spaces;
xiv. Establish maximum capacity;
xv. Immediately isolate and seek medical care for any individual who develops symptoms while at work;
xvi. Contact the local health district about suspected cases or exposures; and
xvii. Shutdown shop/floor for deep sanitation if possible.

b. Consumer, retail & services

i. Ensure minimum 6 feet between employees, if not possible, install barriers;
ii. Employees must perform daily symptom assessment that should include taking temperature with a thermometer and monitoring for fever. Also watching for coughing or trouble breathing;
iii. Require employees to stay home if symptomatic;
iv. Consider having customers wear face coverings at all times;
v. Require regular handwashing by employees;
vi. Place hand sanitizers in high-contact locations;
vii. Clean high-touch items after each use (e.g. carts, baskets);
viii. Ensure minimum 6 feet between customers;
ix. Specify hours for at-risk populations (e.g. elderly);
x. Ask customers and guests not to enter if symptomatic;
xi. Stagger entry of customers and guests;
xii. Post social distancing signage and disinfect high-contact surfaces hourly;
xiii. Clean merchandise before stocking if possible;
xiv. Establish maximum capacity;
xv. Discontinue self-service food stations, product samples;
xvi. Food courts remain closed;
xvii. Immediately isolate and seek medical care for any individual who develops symptoms while at work;
xviii. Contact the local health district about suspected cases or exposures; and
xix. Shutdown shop/floor for deep sanitation if possible.

c. General office environments

i. Ensure minimum 6 feet between employees, if not possible, install barriers;

ii. Personnel should work from home when possible;
iii. Employees must perform daily symptom assessment that should include taking temperature with a thermometer and monitoring for fever. Also watching for coughing or trouble breathing;
iv. Require employees to stay home if symptomatic;
v. Consider having customers wear face coverings at all times;
vi. Require regular handwashing by employees;
vii. Reduce sharing of work materials;
viii. Limit travel as much as possible;
ix. Stagger arrival of all employees and guests;
x. Post signage on health safety guidelines in common areas;
xi. Frequent disinfection of desks, workstations, and high-contact surfaces;
xii. Daily disinfection of common areas;
xiii. Cancel/postpone in person events when social distancing guidelines cannot be met;
xiv. No buffet in cafeteria;
xv. Utilize disposable tableware and other materials;
xvi. Establish maximum capacity;
xvii. Immediately isolate and seek medical care for any individual who develops symptoms while at work;
xviii. Contact the local health district about suspected cases or exposures; and
xix. Shutdown shop/floor for deep sanitation if possible.

22. **No limitation on authority.** Nothing in this Order shall, in any way, alter or modify any existing legal authority allowing the State or any local health department from ordering (1) any quarantine or isolation that may require an individual to remain inside a particular residential property or medical facility for a limited period of time, including the duration of this public health emergency, or (2) any closure of a specific location for a limited period of time, including the duration of this public health emergency.

23. **Savings clause.** If any provision of this Order or its application to any person or circumstance is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Order are declared to be severable.

24. **Previous Orders superseded.** This Order supersedes, only to the extent that it conflicts, and amends any previous Order which conflicts with the provisions of this Order.

25. **Dispute Resolution.** If any local health department issues a determination under Section 18 of this Order that is in conflict with a determination issued by a different local health department, then the conflict may be submitted to the ODH by either of the local health departments or an entity or person subject to the determination. A Dispute Resolution Commission appointed by the Director of Health shall review the conflict and make a determination as to the application of this Order to the conflict. The decision of the Dispute Resolution Commission shall be final.

26. **Duration.** This Order shall be effective at 11:59 p.m. on April 30, 2020 and remains in full force and effect until 11:59 p.m. on May 29, 2020, unless the Director of the Ohio Department of Health rescinds or modifies this Order at a sooner time and date.

COVID-19 is a respiratory disease that can result in serious illness or death, is caused by the SARS-CoV-2 virus, which is a new strain of coronavirus that had not been previously identified in humans and can easily spread from person to person. The virus is spread between individuals who are in close contact with each other (within about six feet) through respiratory droplets produced when an infected person coughs or sneezes. It may be possible that individuals can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose or eyes.

On January 23, 2020, the Ohio Department of Health issued a Director's Journal Entry making COVID-19 a Class A reportable disease in Ohio.

On January 28, 2020, the Ohio Department of Health hosted the first statewide call with local health departments and healthcare providers regarding COVID-19.

On January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization declared the outbreak of COVID-19 a public health emergency of international concern.

On January 31, 2020, Health and Human Services Secretary, Alex M. Azar II, declared a public health emergency for the United States to aid the nation's healthcare community in responding to COVID-19.

On February 1, 2020, the Ohio Department of Health issued a statewide Health Alert Network to provide local health departments and healthcare providers with updated guidance for COVID-19 and revised Person Under Investigation (PUI) criteria.

On February 3, 2020, the Ohio Department of Health trained over 140 personnel to staff a call center for COVID-19, in the event it was needed.

On February 5, 2020, the Ohio Department of Health began updating and notifying the media of the number of PUIs in Ohio every Tuesday and Thursday.

On February 6, 2020, the Ohio Department of Health updated all agency assistant directors and chiefs of staff on COVID-19 preparedness and status during the Governor's cabinet meeting.

On February 7, 2020, the Ohio Department of Health and the Ohio Emergency Management Agency met to conduct advance planning for COVID-19.

On February 13, 2020, the Ohio Department of Health conducted a Pandemic Tabletop Exercise with State agencies to review responsive actions should there be a pandemic in Ohio.

On February 14, 2020, the Ohio Department of Health held a conference call with health professionals across the state. The purpose of the call was to inform and engage the healthcare community in Ohio. Presentations were provided by the Department of Health, Hamilton County Public Health, and the Ohio State University.

On February 27, 2020, the Ohio Department of Health and the Ohio Emergency Management Agency briefed the directors of State agencies during the Governor's cabinet meeting regarding preparedness and the potential activation of the Emergency Operations Center.

On February 28, 2020, the "Governor DeWine, Health Director Update COVID-19 Prevention and Preparedness Plan" was sent to a broad range of associations representing healthcare, dental, long-term care, K-12 schools, colleges and universities, business, public transit, faith-based organizations, non-profit organizations, and local governments.

On March 2, 2020, the Ohio Department of Health activated a Joint Information Center to coordinate COVID-19 communications.

On March 5, 2020, the Ohio Department of Health hosted the Governor's Summit on COVID-19 Preparedness, a meeting with the Governor, cabinet agency directors, local health department commissioners, and their staff.

On March 6, 2020, the Ohio Department of Health opened a call center to answer questions from the public regarding COVID-19.

On March 9, 2020, testing by the Department of Health confirmed that three (3) patients were positive for COVID-19 in the State of Ohio. This confirms the presence of a potentially dangerous condition which may affect the health, safety and welfare of citizens of Ohio.

On March 9, 2020, the Ohio Emergency Management Agency activated the Emergency Operations Center.

On March 9, 2020, the Governor Declared a State of Emergency in Executive Order 2020-01D.

On March 11, 2020, the head of the World Health Organization declared COVID-19 a pandemic.

On March 11, 2020, testing by the Ohio Department of Health confirmed that one (1) more patient was positive for COVID-19 in the State of Ohio.

On March 11, 2020, the Ohio Departments of Health and Veterans Services issued a Joint Directors' Order to limit access to Ohio nursing homes and similar facilities.

On March 15, 2020, the Ohio Department of Health issued a Director's Order to limit access to Ohio's jails and detention facilities.

On March 15, 2020, the Ohio Department of Health issued a Director's Order to limit the sale of food and beverages, liquor, beer and wine to carry-out and delivery only.

On March 15, 2020, the CDC issued Interim Guidance for mass gatherings or large community events, stating that such events that consist of 50 or more people should be cancelled or postponed.

On March 16, 2020 the Ohio Department of Health issued a Director's Order closing polling locations for the March 17, 2020 primary election.

On March 17, 2020 the Ohio Department of Health issued a Director's Order for the management of non-essential surgeries and procedures throughout Ohio.

On March 17, 2020 the Ohio Department of Health issued an Amended Director's Order to limit and/or prohibit mass gatherings and the closure of venues in the State of Ohio.

On March 19, 2020, the Ohio Department of Health issued a Director's Order closing hair salons, nail salons, barber shops, tattoo parlors, body piercing locations, and massage therapy locations.

On March 21, 2020, the Ohio Department of Health issued a Director's Order closing older adult day care services and senior centers.

On March 21, 2020, the Ohio Department of Health issued a Director's Order closing family entertainment centers and internet cafes.

On March 22, 2020, the Ohio Department of Health issued a Director's Order that all persons are to stay at home unless engaged in essential work or activity.

On March 24, 2020, the Ohio Department of Health issued a Director's Order that closed facilities providing child care services.

On March 30, 2020, the Ohio Department of Health issued an Amended Director's Order that closed all K-12 schools in the State of Ohio.

On April 2, 2020, the Ohio Department of Health issued an Amended Director's Order that all persons are to stay at home unless engaged in essential work or activity.

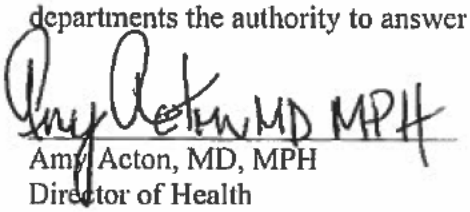
Multiple areas of the United States are experiencing "community spread" of the virus that causes COVID-19. Community spread, defined as the transmission of an illness for which the source is unknown, means that isolation of known areas of infection is no longer enough to control spread.

The CDC reports that people are most contagious when they are most symptomatic (the sickest) however some spread might be possible before people show symptoms although that is not the main way the virus spreads.

Mass gatherings (10 or more persons) increase the risk of community transmission of the virus COVID-19.

Accordingly, to avoid an imminent threat with a high probability of widespread exposure to COVID-19 with a significant risk of substantial harm to a large number of people in the general population, including the elderly and people with weakened immune systems and chronic medical conditions, I hereby **ORDER** all persons are to continue to stay at home or their place of residence unless they are engaged in Essential Activities, Essential Governmental Functions, or to operate Essential and Unrestricted Businesses and Operations as set forth in this Order. This Order shall remain in full force and effect until 11:59 p.m. on May 29, 2020, unless the Director of the Ohio Department of Health rescinds or modifies this Order at a sooner time and date. To the extent any public official enforcing this Order has questions regarding what

services are prohibited under this Order, the Director of Health hereby delegates to local health departments the authority to answer questions in writing and consistent with this Order.



Amy Acton, MD, MPH
Director of Health

April 30, 2020

TRIAD

Cleveland, OH Charleston, SC

1408_COR_015-20200406

April 6, 2020

Northeast Ohio Regional Sewer District
3826 Euclid Avenue
Cleveland, OH
Attn.: Doug Gabriel
Matt Waite

Re: COVID -19 effect on:
Doan Valley Relief and Consolidation Sewer

Gentlemen:

The ongoing and changing environment from the COVID-19 virus are having effects on our projects. As noted in Section 13.2.2 of the General Conditions, we are notifying you that we are anticipating delays in the above projects. Information from the Federal Government, the Center for Disease Control, The World Health Organization, the State of Ohio and the City of Cleveland are changing daily. The next few weeks have been noted to have severe impacts. As such we are monitoring the events very closely. We have seen some impacts to our work force. Triad continues to check and follow the necessary guidelines to keep our work force safe. However, we have increasing concerns over the future impact to our work force and possible delays to not only our work but to timely deliveries of needed materials. Triad will continue to monitor these events and keep the NEORSD informed of any developing issues that may arise.

Triad Engineering and Contracting Co reserves its rights under the contract for a time extension due to any delays caused by the COVID -19 virus pandemic. Should there be any questions, please contact the undersigned.

Yours Truly,

Clifford J. Kassouf

Clifford J. Kassouf
President

Cc: Phil Kassouf

Northeast Ohio Regional Sewer District

April 16, 2020

Chief, Environmental Enforcement Section
Environmental and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-1-1-08177/1

Gary Pritchard
Attorney/Advisor
U.S. Environmental Protection Agency
Region 5 (C-14J)
77 West Jackson Boulevard
Chicago, Illinois 60604

Chief, Water Enforcement and Compliance
Assurance Branch
U.S. Environmental Protection Agency
Region 5
77 West Jackson Blvd., Mail Code C-15WC
Chicago, IL 60604-3590

Chief, Environmental Enforcement Section
Office of Ohio Attorney General
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3400

Chief, Division of Surface Water
Ohio Environmental Protection Agency
50 West Town Street, Suite 700
Columbus, OH 43215

Re: Initial Notice of Force Majeure Event for Control Measure 6

Dear Regulators:

Pursuant to Paragraphs 66 and 70 of the Northeast Ohio Regional Sewer District's (the "Sewer District") Consent Decree ("CD") , the Sewer District is hereby providing notice of events relating to Control Measure 6 ("CM6") that may impact the Sewer District's ability to meet the Achievement of Full Operation milestone of December 31, 2020 in Appendix 1 of the CD.

The contractor for CM6, Triad McNally Joint Venture (the "Contractor"), notified the Sewer District on April 6, 2020 that it is anticipating delays in E. 140th St. Consolidation and Relief Sewer and London Road Relief Sewer projects due to impacts from the COVID-19 pandemic.[1] The Contractor cites the rapidly changing recommendations and guidelines from the U.S. Centers for Disease Control and Prevention, the Word Health Organization, and local government in response to COVID-19 and notes that the next few weeks are anticipated to have "severe impacts." The Contractor explains that it has seen some impacts to its work force and it has "increasing concerns over the future impact to [its] work force and possible delays to not only [its] work but to timely deliveries of needed materials." The Contractor will continue to monitor events closely and notify the Sewer District of any developing issues.

[1] See Letter from C. Kassouf (Contractor) to Sewer District (April 6, 2020), attached to this letter.

At this time, it is not clear there will be an impact to the Achievement of Operation milestone in Appendix 1. However, since the duration and impact of COVID-19 are uncertain and rapidly evolving, there may ultimately be construction delays to these projects. The Sewer District will continue to communicate with you and provide any relevant updates on the status of the Contractor's ability to perform this work and the associated impact, if any, to the Critical Milestone.

The Sewer District will follow this notice with a letter within 30 days providing additional information, if any, relating to this possible delay in accordance with Paragraphs 66 and 70. Please contact me with any questions at (216) 431-6119.

Sincerely,

Kyle Dreyfuss-Wells
Chief Executive Officer

Attachments (1): Letter from C. Kassouf (Contractor) to Sewer District (April 6, 2020)

cc:
Steve Ellis, U.S. Department of Justice
Anna Cross, U.S. Department of Justice
Scott Helkowski, Ohio Office of the Attorney General
William Fischbein, Ohio Environmental Protection Agency

Triad McNally Joint Venture

April 6, 2020

Northeast Ohio Regional Sewer District
3826 Euclid Avenue
Cleveland, OH
Attn.: Doug Gabriel
Matt Waite
Anthony Vitale

Re: COVID -19 effect on:
East 140th Street Consolidation and Relief Sewer
London Road Relief Sewers

Gentlemen:

The ongoing and changing environment from the COVID-19 virus are having effects on our projects. As noted in Section 13.2.2 of the General Conditions, we are notifying you that we are anticipating delays in the above projects. Information from the Federal Government, the Center for Disease Control, The World Health Organization, the State of Ohio and the City of Cleveland are changing daily. The next few weeks have been noted to have severe impacts. As such we are monitoring the events very closely. We have seen some impacts to our work force. TMJV continues to check and follow the necessary guidelines to keep our work force safe. However, we have increasing concerns over the future impact to our work force and possible delays to not only our work but to timely deliveries of needed materials. TMJV will continue to monitor these events and keep the NEORSD informed of any developing issues that may arise.

Triad McNally JV reserves its rights under the contract for a time extension due to any delays caused by the COVID -19 virus pandemic. Should there be any questions, please contact the undersigned.

Yours Truly,

Clifford J. Kassouf

Clifford J. Kassouf
JV Manager

Cc: Phil Kassouf

9715 Clinton Road • Brooklyn, OH 44144 • 440.786.1000 • Fax 216.651.0754

Northeast Ohio Regional Sewer District

April 22, 2020

Chief, Environmental Enforcement Section
Environmental and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-1-1-08177/1

Gary Pritchard
Attorney/Advisor
U.S. Environmental Protection Agency
Region 5 (C-14J)
77 West Jackson Boulevard
Chicago, Illinois 60604

Chief, Water Enforcement and Compliance
Assurance Branch
U.S. Environmental Protection Agency
Region 5
77 West Jackson Blvd., Mail Code C-15WC
Chicago, IL 60604-3590

Chief, Environmental Enforcement Section
Office of Ohio Attorney General
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3400

Chief, Division of Surface Water
Ohio Environmental Protection Agency
50 West Town Street, Suite 700
Columbus, OH 43215

Re: Initial Notice of Force Majeure Event for Control Measure 8 – COVID-19 Potential Delays

Dear Regulators:

Pursuant to Paragraphs 66 and 70 of the Northeast Ohio Regional Sewer District's (the "Sewer District") Consent Decree ("CD") , the Sewer District is hereby providing notice of events relating to Control Measure 8 ("CM8") that may impact the Sewer District's ability to meet the Achievement of Full Operation milestone of December 31, 2021 in Appendix 1 of the CD.

The contractor for CM8, McNally/Kiewit DVT JV (the "Contractor"), notified the Sewer District on April 15, 2020 that it may not be able to avoid delays to the Doan Valley Storage Tunnel due to impacts from the COVID-19 pandemic.[1] The Contractor has "adopted strict procedures and guidelines" set forth in its COVID Response Policy that it is adhering to, and cites guidelines from the U.S. Centers for Disease Control and Prevention, the World Health Organization, and national, state and, local government that it is following to protect the well-being of its employees, subcontractors, suppliers, and clients.

The Contractor explains that it has seen some impacts to its work force but is shifting crews in order to maintain critical path activities and minimize delays. The Contractor will continue to

[1] See Letter from C. Lynagh (Contractor) to Sewer District (April 15, 2020), attached to this letter.

monitor events closely and maintain close communication with the Sewer District and will provide notice of any impacts to the project.

At this time, it is not clear there will be an impact to the Achievement of Operation milestone in Appendix 1. However, since the duration and impact of COVID-19 are uncertain and rapidly evolving, there may ultimately be construction delays to this project. The Sewer District will continue to communicate with you and provide any relevant updates on the status of the Contractor's ability to perform this work and the associated impact, if any, to the Critical Milestone.

The Sewer District will follow this notice with a letter within 30 days providing additional information, if any, relating to this possible delay in accordance with Paragraphs 66 and 70. Please contact me with any questions at (216) 431-6119.

Sincerely,

Kyle Dreyfuss-Wells
Chief Executive Officer

Attachments (1): Letter from C. Lynagh (Contractor) to Sewer District (April 15, 2020)

cc:
Steve Ellis, U.S. Department of Justice
Anna Cross, U.S. Department of Justice
Scott Helkowski, Ohio Office of the Attorney General
William Fischbein, Ohio Environmental Protection Agency

McNally/Kiewit DVT JV

April 15, 2020

Miss Karrie Buxton
Northeast Ohio Regional Sewer District (NEORSD)

RE: 1293 - Doan Valley Storage Tunnel (DVT)
2.078 Notice of Potential Claim – COVID-19 Potential Project Delays

Miss Buxton,

Pursuant to Article 13.2.1.4, this letter serves as official notice of potential claim for project delays related to the current outbreak of the COVID-19 Pandemic.

McNally/Kiewit's (MK) goal is to continue cautiously and safely with the construction of the Doan Valley Tunnel Project and ensuring the proper resources are in place to maintain the critical path of the projects schedule with as little impact as possible.

We have adopted strict procedures and guidelines set forth by our "Covid Response Policy" put together by our parent company WEEKS, Inc. and senior executives across the company. This policy is updated regularly as this Covid-19 situation continues to develop and we will continue to share this policy with NEORSD representatives. In order to protect the well-being of our Employees, Subcontractors, Suppliers, Clients and their loved ones, we advise for all staff onsite at a minimum adhere to these policies, and procedures set forth in this document along with guidance from the CDC, WHO, National, State, and local governments.

We are closely monitoring our projects impacts including impacts to ongoing and future work activities. We are staying in close contact with all suppliers and vendors and monitoring their delivery goals. We are also monitoring all subcontractors and impacts to them and their scheduled activity dates. To date we have had four union craft employees voluntarily take a leave of absents due to the COVID-19 situation. In order to maintain critical path activities MK shifted crews, temporarily halting the work at MLK-1 to stay focused on critical path work as previously mentioned to ensure all project milestones are maintained.

Even with our best efforts to maintain the project schedule as much as possible during this unfortunate event, delays to the project schedule may not be completely avoidable. We will maintain close communication with NEORSD representatives on impacts to the project as they present themselves. The amount of time this event will potentially delay MK cannot be fully assessed at this time.

Thank you,
Christopher J. Lynagh P.E
Project Manager

McNally/Kiewit DVT JV
800 Westpoint Parkway, Suite 1130
Westlake, OH 44145
Phone 440-759-1947
Email clynagh@mcnallycorp.com
W mcnallycorp.com

Northeast Ohio Regional Sewer District

April 16. 2020

Chief, Environmental Enforcement Section
Environmental and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-1-1-08177/1

Gary Pritchard
Attorney/Advisor
U.S. Environmental Protection Agency
Region 5 (C-14J)
77 West Jackson Boulevard
Chicago, Illinois 60604

Chief, Water Enforcement and Compliance
Assurance Branch
U.S. Environmental Protection Agency
Region 5
77 West Jackson Blvd., Mail Code C-15WC
Chicago, IL 60604-3590

Chief, Environmental Enforcement Section
Office of Ohio Attorney General
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3400

Chief, Division of Surface Water
Ohio Environmental Protection Agency
50 West Town Street, Suite 700
Columbus, OH 43215

Re: Initial Notice of Force Majeure Event for Control Measure 8

Dear Regulators:

Pursuant to Paragraphs 66 and 70 of the Northeast Ohio Regional Sewer District's (the "Sewer District") Consent Decree ("CD"), the Sewer District is hereby providing notice of events relating to Control Measure 8 ("CM8") that may impact the Sewer District's ability to meet the Achievement of Full Operation milestone of December 31, 2021 in Appendix 1 of the CD.

The contractor for CM8, Triad (the "Contractor"), notified the Sewer District on April 6, 2020 that it is anticipating delays in the Doan Valley Relief and Consolidation Sewer project due to impacts from the COVID-19 pandemic.[1] The Contractor cites the rapidly changing recommendations and guidelines from the U.S. Centers for Disease Control and Prevention, the Word Health Organization, and local government in response to COVID-19 and notes that the next few weeks are anticipated to have "severe impacts." The Contractor explains that it has seen some impacts to its work force and it has "increasing concerns over the future impact to [its] work force and possible delays to not only [its] work but to timely deliveries of needed materials." The

[1] See Letter from C. Kassouf (Contractor) to D. Gabriel and M. Waite (Sewer District) (April 6, 2020), attached to this letter.

Contractor will continue to monitor events closely and notify the Sewer District of any developing issues.

At this time, it is not clear there will be an impact to the Achievement of Operation milestone in Appendix 1. However, since the duration and impact of COVID-19 are uncertain and rapidly evolving, there may ultimately be construction delays to this project. The Sewer District will continue to communicate with you and provide any relevant updates on the status of the Contractor's ability to perform this work and the associated impact, if any, to the Critical Milestone.

The Sewer District will follow this notice with a letter within 30 days providing additional information, if any, relating to this possible delay in accordance with Paragraphs 66 and 70. Please contact me with any questions at (216) 431-6119.

Sincerely,

Kyle Dreyfuss-Wells
Chief Executive Officer

Attachments (1): Letter from C. Kassouf (Contractor) to D. Gabriel and M. Waite (Sewer District) (April 6, 2020)

cc:
Steve Ellis, U.S. Department of Justice
Anna Cross, U.S. Department of Justice
Scott Helkowski, Ohio Office of the Attorney General
William Fischbein, Ohio Environmental Protection Agency

TRIAD

Cleveland, OH Charleston, SC

1408_COR_015-20200406

April 6, 2020

Northeast Ohio Regional Sewer District
3826 Euclid Avenue
Cleveland, OH
Attn.: Doug Gabriel
Matt Waite

Re: COVID -19 effect on:
Doan Valley Relief and Consolidation Sewer

Gentlemen:

The ongoing and changing environment from the COVID-19 virus are having effects on our projects. As noted in Section 13.2.2 of the General Conditions, we are notifying you that we are anticipating delays in the above projects. Information from the Federal Government, the Center for Disease Control, The World Health Organization, the State of Ohio and the City of Cleveland are changing daily. The next few weeks have been noted to have severe impacts. As such we are monitoring the events very closely. We have seen some impacts to our work force. Triad continues to check and follow the necessary guidelines to keep our work force safe. However, we have increasing concerns over the future impact to our work force and possible delays to not only our work but to timely deliveries of needed materials. Triad will continue to monitor these events and keep the NEORSD informed of any developing issues that may arise.

Triad Engineering and Contracting Co reserves its rights under the contract for a time extension due to any delays caused by the COVID -19 virus pandemic. Should there be any questions, please contact the undersigned.

Yours Truly,

Clifford J. Kassouf

Clifford J. Kassouf
President

Cc: Phil Kassouf

Main Office
9715 Clinton Road • Brooklyn, OH 44144
Phone: 440.786.1000 • Fax: 216.651.0754

Triad Engineering & Contracting Company
www.triad-engineering.com

South Carolina Office
480 Jessen Lane, Unit H • Charleston, SC 29492
Phone: 843.416.1112 • Fax: 843.416.1192

Northeast Ohio Regional Sewer District

April 30, 2020

Chief, Environmental Enforcement Section
Environmental and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-1-1-08177/1

Gary Pritchard
Attorney/Advisor
U.S. Environmental Protection Agency
Region 5 (C-14J)
77 West Jackson Boulevard
Chicago, Illinois 60604

Chief, Water Enforcement and Compliance
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77 West Jackson Blvd., Mail Code C-15WC
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Chief, Environmental Enforcement Section
Office of Ohio Attorney General
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3400

Chief, Division of Surface Water
Ohio Environmental Protection Agency
50 West Town Street, Suite 700
Columbus, OH 43215

Re: 30-Day Notice of Force Majeure Event for Control Measure 8 – Doan Valley Tunnel System

Dear Regulators:

This letter notifies the US Environmental Protection Agency ("US EPA") and the Ohio Environmental Protection Agency ("Ohio EPA") pursuant to Sections XI and XII of the Northeast Ohio Regional Sewer District's (the "Sewer District") Consent Decree of events relating to Control Measure 8–*Doan Valley Tunnel System* ("CM8" or "DVT System") that may impact the Sewer District's ability to meet the Achievement of Full Operation milestone.[1]

BACKGROUND, SUMMARY, AND REASON FOR DELAY

The Doan Valley Tunnel System includes an 18-foot diameter storage tunnel and consolidation sewers that capture and store combined CSO from the Doan Brook area to the Dugway West Interceptor relief sewer. This includes an 8.5-foot consolidation sewer (the MLK/Chester Conveyance Tunnel) that will convey captured flow from the western CSO regulator

[1] The extreme wet weather event on April 14-15, 2018 caused flooding to inundate the Woodhill Conveyance Tunnel ("WCT") mining shaft and damaged the tunnel-boring machine for the WCT and the MLK tunnel. This wet weather event caused the initial delay to the Achievement of Full Operation date from December 2021 to May 2022. See NEORSD Semi-Annual Progress Report No. 13, July 27, 2018, page 13, attached to this letter.

locations along Doan Brook and an 8.5-foot consolidation sewer (the WCT) to convey combined sewer flow, a portion of relief flow, and some dry weather flow. Appendix 1 of the Consent Decree requires the Sewer District to construct a 17-foot diameter storage tunnel and a 6-foot consolidation sewer. The Sewer District, however, chose to upsize these elements of the DVT System to capture additional volume that will be used to achieve Corrective Action under Appendix 3.[2] The DVT System will help control overflows at 11 locations along Doan Brook, from Shaker Heights to Lake Erie.

Construction of the DVT System began on July 10, 2017. The main line tunnel is mined and lined, the Woodhill and MLK Conveyance Tunnels are mined and pipe installed. Grouting of the Woodhill and MLK conveyance tunnels is scheduled to commence in mid-summer 2020. The tunneling support equipment at Ambler Park has been demobilized and the near surface structures at Ambler Park are being excavated.

On March 31, 2020, the contractor for the DVT System, McNally/Kiewit DVT JV (the "Contractor"), sent the Sewer District its official notice of claim for project delays related to the extreme wet weather and flood event that occurred in the Sewer District's service area on March 29, 2020.[3] The Contractor cited its reason for the notice of delay as the "area-wide flooding from the significant rain event that occurred on Sunday March 29, 2020", which caused the DVT System mining site (Ambler Park) to flood and also caused extensive erosion and water damage to the site facilities. Flooding from the Doan Brook filled the WCT gate control vault and damaged the hydraulic power unit beyond repair in the WCT gate control vault.

The March 28 - 29, 2020 wet weather event involved between 2.2 inches to 3.6 inches of rain over a 48-hour period across the Sewer District's service area. This wet weather event caused area-wide flooding in the University Circle area of Cleveland including Ambler Park where the DVT System's main mining site is located. The wet weather event had widespread coverage and relatively consistent rainfall depth and intensity. The Sewer District's service area had wet antecedent conditions prior to the March 29, 2020 storm (approximately 1.25 to 1.75 inches of rain fell from Thursday through Saturday before the Sunday burst). In particular, the major area rivers (Cuyahoga, Rocky, and Chagrin) had elevated flows. Certain stream gage heights were either at, or close to, their maximum heights over their period of record.

Anticipated Duration of the Delay and Actions Taken or to be Taken to Prevent or Minimize Delay

While the flooding from the severe wet weather event damaged the hydraulic power unit in the WCT gate control vault beyond repair, this work is not currently on the critical path so there appears to be very little impact to the Achievement of Operation milestone at this time. The Contractor has ordered a replacement for the hydraulic power unit, due be delivered within 12 weeks. If the replacement equipment is delivered on time, the delay to this project should be minimal. However, if delivery of the equipment is delayed by impacts from the COVID-19

[2] See Letter from NEORSD to US DOJ, US EPA, Ohio AG and Ohio EPA, January 27, 2017, attached to this letter.
[3] See Letter from C. Lynagh (Contractor) to R. Auber (Sewer District), March 31, 2020, attached to this letter.

pandemic or other events, the critical path of the DVT System will be delayed and there will likely be impacts to the Achievement of Full Operation milestone.

Currently, the timeline for this project is:

- Tunnel Activation/Flow Control: September 2021
- Substantial Completion: January 2022
- Achievement of Full Operation: May 2022

The Sewer District will continue to provide updates if these dates are further delayed because of the flooding event or the COVID-19 pandemic.

NO IMPACT TO PUBLIC HEALTH, WELFARE, OR THE ENVIRONMENT

At this time, it appears that there may not be any impact to CM8's anticipated Achievement of Full Operation date of May 2022 from this force majeure event. Since the DVT System is due to be activated and controlling flow by September of 2021 – several months before the December 31, 2021 Achievement of Full Operation critical milestone in Appendix 1 – the Sewer District does not believe that there will be any impacts to public health, welfare, or the environment from this force majeure event. The DVT System is scheduled to be performing as designed in September of 2021 and will be providing its full environmental benefit.

***

The Sewer District will continue to communicate with you and provide any relevant updates on the status of the Contractor's ability to perform this work and the associated impact, if any, to the Achievement of Full Operation milestone. Please contact me with any questions at (216) 881-6600.

Sincerely,

Kyle Dreyfuss-Wells
Chief Executive Officer

Attachments (3): NEORSD Semi-Annual Progress Report No. 13 (July 27, 2018)
Letter from NEORSD to US DOJ, US EPA, Ohio AG and Ohio EPA (dated January 27, 2017)
Letter from C. Lynagh (Contractor) to R. Auber (Sewer District) (March 31, 2020)

cc:
Steve Ellis, U.S. Department of Justice
Anna Cross, U.S. Department of Justice
Scott Helkowski, Ohio Office of the Attorney General
William Fischbein, Ohio Environmental Protection Agency

Combined Sewer Overflow (CSO) Long-Term Control Plan Consent Decree

Case 1:10-CV-02895-DCN

Semi-Annual Progress Report No. 13

July 27, 2018

Northeast Ohio Regional Sewer District

July 27, 2018

Chief, Environmental Enforcement Section
Environmental and Natural Resources Division
U.S. Department of Justice
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Washington, D.C. 20044-7611

Chief, Water Enforcement and Compliance
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Nicole Cantello
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Chief, Environmental Enforcement Section
Office of the Ohio Attorney General
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3400

Chief, Division of Surface Water
Ohio Environmental Protection Agency
50 West Town Street, Suite 700
Columbus, Ohio 43215

Re: Consent Decree Case 1:10-CV-02895-DCN
Semi-Annual Progress Report No. 13

To Whom It May Concern:

The NEORSD is pleased to submit the enclosed Semi-Annual Progress Report (Progress Report) pursuant to Section IX of the above referenced Consent Decree. This Progress Report covers the period from January 1, 2018 through June 30, 2018.

Sincerely,

Kyle Dreyfuss-Wells
Chief Executive Officer

Cc: E. Luckage
D. Marshall/Project Clean Lake File

TABLE OF CONTENTS

1. Current Reporting Period Consent Decree Requirements (IX. Paragraph 46.a.)
2. Current Work and Next Reporting Period Projected Work (IX. Paragraph 46.b.)
3. Current Reporting Period Consent Decree Submissions (IX. Paragraph 46.c.)
4. Certification Statement (IX. Paragraph 48)

ATTACHMENT 1: Appendix 3 Green Infrastructure Site-Specific Flow Monitoring Performance Summaries (actual raw and edited data provided electronically):

Fleet Avenue Green Infrastructure Project

Green Ambassador Urban Agriculture

Green Ambassador Fairhill/MLK

APPENDIX: Current CSO and Bypass Reports Submitted to OEPA (IX. Paragraph 46.d.).

1. Current Reporting Period Consent Decree Requirements (IX. Paragraph 46.a.)

"A statement setting forth the deadlines and other terms that NEORSD is required by this Consent Decree to meet since the date of the last Semi-Annual Progress report, whether and to what extent NEORSD has met these requirements, and the reasons for any noncompliance".

Table 1: Current Reporting Period CD Requirements

Reference	Description	Milestone(s) in CD	Calendar Milestone(s)	Compliance Status
Consent Decree Paragraph 26/ Appendix 5	Federal Supplemental Environmental Project – Collection and Disposal of Household Hazardous Waste at Special Waste Convenience Center or Alternative Location	Conduct and fund at least one collection day per month for four years or until NEORSD spends at least $1,000,000 in creditable operating expenses, whichever is longer	Monthly starting no later than April 30, 2011	In compliance: On March 24, 2011, the NEORSD and Cuyahoga County Solid Waste District (CCSWD) entered into an intergovernmental agreement for the collection and disposal of Household Hazardous Waste. First collection was held on April 28, 2011. 11 collections occurred during the reporting period at a total expense of $124,401.89. For the reporting period, NEORSD was invoiced $20,024.52. As of June 30, 2018, 167 collections have occurred, and NEORSD has been invoiced a total of $963,927.85.

Table 1: Current Reporting Period CD Requirements

Reference	Description	Milestone(s) in CD	Calendar Milestone(s)	Compliance Status
Consent Decree Paragraph 36/ Appendix 6	State Supplemental Environmental Project – Canal Pump Station Operation and Maintenance	Commence operation and maintenance of pump station following completion of Canal Pump Station construction Or Payment of $800,000 to USEPA within sixty (60) days after NEORSD receives notice from OEPA that the Canal Diversion Dam Removal will not be implemented, or by January 31, 2012 whichever occurs later	TBD	In compliance: The National Parks Service Regional Director signed a Finding of No Significant Impact for the Environmental Assessment Report on February 13, 2018. A kickoff meeting with the interested stakeholders was held on June 18, 2018. The Request for Qualifications (RFQ) was public-noticed on June 30, 2018 with a response deadline of July 30, 2018.

Table 1: Current Reporting Period CD Requirements

Reference	Description	Milestone(s) in CD	Calendar Milestone(s)	Compliance Status
Consent Decree Appendix 2 Section 2.6.2	Progress Reports to the Public	Public outreach activities will continue with periodic updates using various media	N/A	In compliance: • 5 blog posts and updated neorsd.org content regarding Project Clean Lake-related projects, funding or initiatives between January and June 2018 http://neorsd.org/blog • Hosted groundbreaking ceremony for Westerly Storage Tunnel May 18, 2018, a key component of Infrastructure Week. https://medium.com/@neorsd/time-to-build-groundbreaking-may-18-will-launch-our-latest-tunnel-project-59cb17e571d5 • Recorded "Sewer University (SewerU)" presentation on Cleveland's public access channel TV20 for future outreach • 11 public meetings discussing Project Clean Lake construction and green infrastructure updates • At least 22 meetings with business owners and city council members to communicate project information and updates • Appearance on PBS IdeaStream on June 6th, 2018, for the "Making It: The Giant Underground Tunnels Cleaning Up the Lake" segment
Appendix 1 Control Measure 1	Easterly WWTP - Increase secondary capacity from 300 MGD to a sustained capacity of 400 MGD	Bid Year: 2014 Achievement of Full Operation: 2016	December 31, 2014 December 31, 2016	In compliance: Achievement of Full Operation on January 1, 2018.

2. Current Work and Next Reporting Period Projected Work (IX. Paragraph 46.b.)

"A general description of the work completed within the Six-month Period, and a projection of work to be performed pursuant to this Consent Decree during the next or succeeding Six-month Period. Notifications to the U.S. EPA and Ohio EPA of any anticipated delay shall not, by itself, excuse the delay".

Table 2a: Description of this Reporting Period's Current Work

Reference	Description	Milestone(s) in CD	Calendar Milestone(s)	Current Period Work Summary
Appendix 3	Implementation of GI Plan	Implementation of GI Plan within eight (8) years of Entry of Decree	July 7, 2019	Completed site-specific post construction monitoring of the Fleet Avenue GI Project and compiled data for submittal in Attachment 1 of this Progress Report. Completed site-specific post construction monitoring of the Green Ambassador Fairhill/MLK project and compiled data for submittal in Attachment 1 of this Progress Report. Completed site-specific post construction monitoring of the Green Ambassador Urban Agriculture project and compiled data for submittal in Attachment 1 of this Progress Report. Continued construction of the E. 140th Street Consolidation Sewer project. The estimated post-gray CSO reduction for this project is 5.8 MG. Continued construction of the Union/Buckeye GI Project. The estimated post-gray CSO reduction for this project is 1.0 MG. Continued construction of the Woodland Central GI project. The estimated post-gray CSO reduction for this project is 4.2 MG.

Table 2a: Description of this Reporting Period's Current Work

Reference	Description	Milestone(s) in CD	Calendar Milestone(s)	Current Period Work Summary
Appendix 1 Control Measure 1	Easterly WWTP - Increase Secondary Treatment Capacity	Bid Year 2014 Achievement of Full Operation 2016	December 31, 2014 December 31, 2016	Commenced post-construction monitoring activities.
Appendix 1 Control Measure 2	Treatment and Disinfection of CSO 001 Using CEHRT	Work Plan Submittal Pilot Testing Report within 42 months of Work Plan Approval Design Commencement within 6 months of Pilot Testing Report Approval Construction Award within 24 months of Pilot Testing Report Approval Construction Completion Within 54 months of Pilot Testing Report Approval	January 1, 2011 March 20, 2015 Pending Pilot Testing Report Approval	This Control Measure is subject to Modification Request 2 submitted June 21, 2018.

Table 2a: Description of this Reporting Period's Current Work

Reference	Description	Milestone(s) in CD	Calendar Milestone(s)	Current Period Work Summary
Appendix 1 Control Measure 3	Treatment and Disinfection of CSO 002 using CEHRT in all 6 Quadrants (quads)	Work Plan Submittal Demonstration Testing Report within 54 months of Work Plan Approval Design Commencement of 2 additional quads within 6 months of Demonstration Testing Report Approval Construction Award within 24 months of Demonstration Testing Report Approval Construction Completion within 54 months of Demonstration Testing Report Approval	January 1, 2011 March 20, 2016 Pending Demonstration Testing Report Approval	Ongoing engagement with EPA during scheduled monthly conference calls to address issues identified in EPA's disapproval of the Pilot Testing Report.

Table 2a: Description of this Reporting Period's Current Work

Reference	Description	Milestone(s) in CD	Calendar Milestone(s)	Current Period Work Summary
Appendix 1 Control Measure 4	Southerly WWTP - Treatment of Primary Effluent Bypass Demonstration/Pilot Project	Work Plan Submittal Pilot Testing Report within 42 months of Work Plan Approval	January 1, 2011 March 20, 2015	Ongoing engagement with EPA during scheduled conference calls to address issues identified in EPA's conditional approval of the Pilot Testing Report.
Appendix 1 Control Measure 5	Increase Secondary Treatment Capacity and Treat Primary Effluent Bypass with CEHRT	Commencement of design of plant improvements and PEB CEHRT system within 6 months of Pilot Testing Report Approval Construction award for plant improvements and PEB CEHRT system within 30 months of Pilot Testing Report Approval Construction Completion of plant improvements and PEB CEHRT system within 60 months of Pilot Testing Report Approval	Within 6 months from date of approval of pilot report Within 30 months from date of approval of pilot report Within 60 months from date of approval of pilot report	This Control Measure is subject to Modification Request 2 submitted June 21, 2018. Construction of CEHRT is complete; continued shakedown.

Table 2a: Description of this Reporting Period's Current Work

Reference	Description	Milestone(s) in CD	Calendar Milestone(s)	Current Period Work Summary
Appendix 1 Control Measure 6	Euclid Creek Tunnel/Dugway Storage System	Bid Year 2010 Achievement of Full Operation 2020	December 31, 2010 December 31, 2020	Easterly Tunnel Dewatering Pump Station (ETDPS): Continued construction and start up. Dugway Storage Tunnel (DST): Continued construction. East 140th Street Consolidation and Relief Sewer: Continued construction. Dugway South Relief and Consolidation Sewer: Continued construction. London Road Relief Sewer: Completed design and bidding process. Dugway Regulators and Relief Sewer: Completed design and advertised for bids.
Appendix 1 Control Measure 7	Shoreline Tunnel System	Bid Year 2021 Achievement of Full Operation 2027	December 31, 2021 December 31, 2027	Shoreline Storage Tunnel (SST): Issued design Request for Proposals.

Table 2a: Description of this Reporting Period's Current Work

Reference	Description	Milestone(s) in CD	Calendar Milestone(s)	Current Period Work Summary
Appendix 1 Control Measure 8	Doan Valley Tunnel System	Bid Year 2017 Achievement of Full Operation 2021	December 31, 2017 December 31, 2021	Doan Valley Tunnel: Continued construction. Following a wet weather event on April 14 and 15, 2018 in the vicinity of the Doan Valley Tunnel System mining site (Ambler Park), flooding inundated the Woodhill Conveyance Tunnel (WCT) mining shaft and damaged the tunnel boring machine for WCT and the MLK Conveyance Tunnel. The contractor is currently determining the impact to the overall project schedule. Doan Valley Relief and Consolidation Sewer: Completed Design and Bidding process. Doan Valley Regulators/Relief Sewers: Continued Design.
Appendix 1 Control Measure Consolidated 9-10-11	Superior Avenue Pump Station (SAPS) Upgrade/ Stones Levee Pump Station (SLPS) Upgrade/ SAPS-SLPS-Canal Road Area Regulator Modification	Bid Year 2017 Achievement of Full Operation 2018	December 31, 2017 December 31, 2018	Modification Request 1 to consolidate CMs 9, 10 and 11 was approved and entered by the court on May 23, 2018. Superior-Stones-Canal CSO Improvements: Continued construction on remaining portions.

Table 2a: Description of this Reporting Period's Current Work

Reference	Description	Milestone(s) in CD	Calendar Milestone(s)	Current Period Work Summary
Appendix 1 Control Measure 14	Westerly Tunnel System	Bid Year 2020 Achievement of Full Operation 2024	December 31, 2020 December 31, 2024	Westerly Tunnel Dewatering Pump Station: Completed design. Project on hold until completion of Shaft WST-1 under Westerly Storage Tunnel in 2019. Construction Notice to Proceed anticipated in 2019. Westerly Storage Tunnel: Issued construction Notice to Proceed May 7, 2018. Westerly Low Level Relief Sewer: Continued construction. W. 3rd Quigley/Westerly Miscellaneous CSO Control: Continued Design.
Appendix 1 Control Measure 15	Columbus Road Storage Tank	Bid Year 2018 Achievement of Full Operation 2019	December 31, 2018 December 31, 2019	Control Measure 15 is being addressed under the Westerly Low Level Relief Sewer project, which is in construction. This project includes a regulator modification to capture Typical Year flows in the Westerly Low Level Interceptor/Relief Sewer to control CSO-078 to 0 overflows in a Typical Year.
Appendix 1 Control Measure 16	Center Street Storage Tank	Bid Year 2023 Achievement of Full Operation 2024	December 31, 2023 December 31, 2024	Control Measure 16 is being addressed under the Westerly Low Level Relief Sewer project, which is in construction. This project includes a regulator modification to capture Typical Year flows in the Westerly Low Level Interceptor/Relief Sewer to control CSO-076 to 0 overflows in a Typical Year.

Table 2a: Description of this Reporting Period's Current Work

Reference	Description	Milestone(s) in CD	Calendar Milestone(s)	Current Period Work Summary
Appendix 1 Control Measure 17	West Third Street Storage Tank	Bid Year 2024 Achievement of Full Operation 2025	December 31, 2024 December 31, 2025	Control Measure 17 will be addressed under the Morgana & Burke System Improvements project (formerly Morgana Run Relief Sewer), which is in design.
Appendix 1 Control Measure 18	Mary Street Pump Station Upgrade	Bid Year 2015 Achievement of Full Operation 2017	December 31, 2015 December 31, 2017	Commenced post-construction monitoring activities.
Appendix 1 Control Measure 19	Jefferson Avenue Separation	Bid Year 2027 Achievement of Full Operation 2028	December 31, 2027 December 31, 2028	Construction of Control Measure 19 partially completed under the Mary Street Pump Station Upgrade project (Control Measure 18). Remaining sewer separation not addressed by Mary Street Pump Station Upgrade project will be addressed under the Morgana & Burke System Improvements project, which is in design.
Appendix 1 Control Measure 20	West 3rd/Quigley Parallel Storage System	Bid Year 2021 Achievement of Full Operation 2021	December 31, 2021 December 31, 2021	West 3rd Quigley / Westerly Miscellaneous CSO Control: Continued design.
Appendix 1 Control Measure 21	Southerly Tunnel System	Bid year 2024 Achievement of Full Operation 2030	December 31, 2024 December 31, 2030	Morgana & Burke System Improvements (formerly Morgana Run Relief Sewer): Continued design. Burke Open Channel Improvements: Continued design.

Table 2a: Description of this Reporting Period's Current Work

Reference	Description	Milestone(s) in CD	Calendar Milestone(s)	Current Period Work Summary
Appendix 1 Control Measure 23	CSO 045 Storage Tank	Bid Year 2021 Achievement of Full Operation 2023	December 31, 2021 December 31, 2023	Pearl & Jennings Road Storage Tanks and Pump Station Upgrades: Initiated design consultant procurement.

Table 2b: Description of Next Reporting Period's Projected Work

Reference	Description	Milestone(s) in CD	Calendar Milestone(s)	Next Period Projected Work
Appendix 3	Implementation of GI Plan	Implementation of GI Plan within eight (8) years of Entry of Decree	July 7, 2019	Complete construction of the E. 140th GI Project and initiate post construction monitoring. Complete construction of the Union/Buckeye GI project and initiate post construction monitoring. Continue construction of the Woodland Central GI project.
Appendix 1 Control Measure 1	Increase Secondary Treatment Capacity	Bid Year 2014 Achievement of Full Operation 2016	December 31, 2014 December 31, 2016	Continue post construction compliance activities.

Table 2b: Description of Next Reporting Period's Projected Work

Reference	Description	Milestone(s) in CD	Calendar Milestone(s)	Next Period Projected Work
Appendix 1 Control Measure 2	Treatment and Disinfection of CSO 001 Using CEHRT	Work Plan Submittal Pilot Testing Report within 42 months of Work Plan Approval Design Commencement within 6 months of Pilot Testing Report Approval Construction Award within 24 months of Pilot Testing Report Approval Construction Completion Within 54 months of Pilot Testing Report Approval	January 1, 2011 March 20, 2015 Pending Pilot Testing Report Approval	Engage with EPA on Modification Request 2.

Table 2b: Description of Next Reporting Period's Projected Work

Reference	Description	Milestone(s) in CD	Calendar Milestone(s)	Next Period Projected Work
Appendix 1 Control Measure 3	Treatment and Disinfection of CSO 002 using CEHRT in all 6 Quadrants (quads)	Work Plan Submittal Demonstration Testing Report within 54 months of Work Plan Approval Design Commencement of 2 additional quads within 6 months of Demonstration Testing Report Approval Construction Award within 24 months of Demonstration Testing Report Approval Construction Completion within 54 months of Demonstration Testing Report Approval	January 1, 2011 March 20, 2016 Pending Demonstration Testing Report Approval	Continue engagement with EPA regarding Pilot Testing Report. Receive EPA response on revised Pilot Testing Report submitted August 30, 2017. Engage with EPA and Ohio EPA on resolving design and implementation issues.
Appendix 1 Control Measure 4	Treatment of Primary Effluent Bypass Demonstration/Pilot Project	Work Plan Submittal Pilot Testing Report within 42 months of Work Plan Approval	January 1, 2011 March 20, 2015	Continue engagement with EPA regarding Pilot Testing Report. Receive EPA response on revised Pilot Testing Report submitted February 17, 2016.

Table 2b: Description of Next Reporting Period's Projected Work

Reference	Description	Milestone(s) in CD	Calendar Milestone(s)	Next Period Projected Work
Appendix 1 Control Measure 5	Increase Secondary Treatment Capacity and Treat Primary Effluent Bypass with CEHRT	Commencement of design of plant improvements and PEB CEHRT system within 6 months of Pilot Testing Report Approval	Within 6 months from date of approval of pilot report	Engage with EPA on Modification Request 2
		Construction award for plant improvements and PEB CEHRT system within 30 months of Pilot Testing Report Approval	Within 30 months from date of approval of pilot report	
		Construction Completion of plant improvements and PEB CEHRT system within 60 months of Pilot Testing Report Approval	Within 60 months from date of approval of pilot report	

Table 2b: Description of Next Reporting Period's Projected Work

Reference	Description	Milestone(s) in CD	Calendar Milestone(s)	Next Period Projected Work
Appendix 1 Control Measure 6	Euclid Creek Tunnel/Dugway Storage System	Bid Year 2010 Achievement of Full Operation 2020	December 31, 2010 December 31, 2020	Euclid Creek Tunnel (ECT): Commence operation upon completion and operation of Easterly Tunnel Dewatering Pump Station (TDPS). Easterly TDPS: Complete startup, shakedown, and training. Dugway Storage Tunnel (DST): Continue construction. East 140th Consolidation and Relief Sewer: Continue construction. Dugway South Relief and Consolidation Sewer: Complete construction. London Road Relief Sewer: Issue Construction Notice to Proceed. Dugway Regulators and Relief Sewers: Issue Construction Notice to Proceed.
Appendix 1 Control Measure 7	Shoreline Tunnel System	Bid Year 2021 Achievement of Full Operation 2027	December 31, 2021 December 31, 2027	Shoreline Storage Tunnel (SST): Issue design Notice to Proceed.

Table 2b: Description of Next Reporting Period's Projected Work

Reference	Description	Milestone(s) in CD	Calendar Milestone(s)	Next Period Projected Work
Appendix 1 Control Measure 8	Doan Valley Tunnel System	Bid Year 2017 Achievement of Full Operation 2021	December 31, 2017 December 31, 2021	Doan Valley Tunnel: Continue construction. Doan Valley Relief and Consolidation Sewer: Issue Construction Notice to Proceed. Doan Valley Regulators/Relief Sewers: Continue design.
Appendix 1 Control Measure Consolidated 9-10-11	Superior Avenue Pump Station (SAPS) Upgrade/ Stones Levee Pump Station (SLPS) Upgrade/ SAPS-SLPS-Canal Road Area Regulator Modification	Bid Year 2017 Achievement of Full Operation 2018	December 31, 2017 December 31, 2018	Superior-Stones-Canal CSO Improvements: Achievement of Full Operation. Commence post construction compliance activities.
Appendix 1 Control Measure 14	Westerly Tunnel System	Bid Year 2020 Achievement of Full Operation 2024	December 31, 2020 December 31, 2024	Westerly Tunnel Dewatering Pump Station: Design complete and project on hold until completion of Shaft WST-1 in 2019. Westerly Storage Tunnel: Continue construction. Westerly Low Level Relief Sewer: Complete Construction. West 3rd Quigley / Westerly Miscellaneous CSO Control: Continue design.
Appendix 1 Control Measure 15	Columbus Road Storage Tank	Bid Year 2018 Achievement of Full Operation 2019	December 31, 2018 December 31, 2019	Westerly Low Level Relief Sewer: Complete construction.

Table 2b: Description of Next Reporting Period's Projected Work

Reference	Description	Milestone(s) in CD	Calendar Milestone(s)	Next Period Projected Work
Appendix 1 Control Measure 16	Center Street Storage Tank	Bid Year 2023 Achievement of Full Operation 2024	December 31, 2023 December 31, 2024	Westerly Low Level Relief Sewer: Complete construction.
Appendix 1 Control Measure 17	West Third Street Storage Tank	Bid Year 2024 Achievement of Full Operation 2025	December 31, 2024 December 31, 2025	Morgana & Burke System Improvements: Continue design.
Appendix 1 Control Measure 18	Mary Street Pump Station Upgrade	Bid Year 2015 Achievement of Full Operation 2017	December 31, 2015 December 31, 2017	Continue with post construction compliance activities.
Appendix 1 Control Measure 19	Jefferson Avenue Separation	Bid Year 2027 Achievement of Full Operation 2028	December 31, 2027 December 31, 2028	Continue design of Morgana & Burke System Improvements Project.
Appendix 1 Control Measure 20	West 3rd St./Quigley Parallel Storage System	Bid Year 2021 Achievement of Full Operation 2021	December 31, 2021 December 31, 2021	West 3rd Quigley / Westerly Miscellaneous CSO Control: Continue design.
Appendix 1 Control Measure 21	Southerly Tunnel System	Bid Year 2024 Achievement of Full Operation 2030	December 31, 2024 December 31, 2030	Morgana Burke System Improvements (formerly Morgana Run Relief Sewers): Continue design. Burke Open Channel Improvements: Continue design.

Table 2b: Description of Next Reporting Period's Projected Work

Reference	Description	Milestone(s) in CD	Calendar Milestone(s)	Next Period Projected Work
Appendix 1 Control Measure 23	CSO-045 Storage Tank	Bid Year 2021 Achievement of Full Operation 2023	December 31, 2021 December 31, 2023	Pearl & Jennings Road Storage Tanks and Pump Station Upgrades: Issue design Notice to Proceed.

3. Current Reporting Period Consent Decree Submissions (IX. Paragraph 46.c.)

"A summary of the submissions under this Decree that were sent to U.S. EPA and/or Ohio EPA, including the dates submitted".

Table 3: Current Reporting Period Consent Decree Submissions

Reference	Deliverable Description	Milestone in CD	Calendar Milestone	Actual Submittal Date
Consent Decree IX Reporting Requirements Paragraph 46	Semi-Annual Report No. 12	On a semi-annual basis on January 31 and July 31, each 6-month period commencing with the first full 6-month period after entry of the Consent Decree	January 31, 2018	January 30, 2018

4. Certification Statement (IX. Paragraph 48)

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 the 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 a fine and imprisonment for knowing violations.

Kyle Drey-Well 7/27/18

Kyle Dreyfuss-Wells, Chief Executive Officer **Date**

Northeast Ohio Regional Sewer District

January 27, 2017

Chief, Environmental Enforcement Section
Environmental and Natural Resources Division
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Chief, Water Enforcement and Compliance
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Chief, Division of Surface Water
Ohio Environmental Protection Agency
50 West Town Street, Suite 700
Columbus, OH 43215

Re: NEORSD Consent Decree App. 3 Corrective Action Volume Credit Acknowledgment

Dear U.S. EPA and Ohio EPA:

The Northeast Ohio Regional Sewer District (the "District") requests formal acknowledgment from the U.S. Environmental Protection Agency and the Ohio Environmental Protection Agency (collectively the "Regulators") that additional overflow volume control achieved from the District's voluntary enhancements and expansions of Appendix 1 control measures will be credited as Corrective Action volume for purposes of compliance with Appendix 3 of the Consent Decree, even though such voluntary enhancements and expansions will be completed prior to submission of the post-construction monitoring report required by Appendix 3.

Appendix 3 of the Consent Decree requires the District to reduce typical year annual overflow volume by 44 million gallons ("MG") by implementation of Green Infrastructure projects. This 44 MG volume of capture is in addition to the capture per typical year that would be achieved by all of the Appendix 1 Gray Infrastructure control measures required under the Consent Decree. To measure the volume captured through Green Infrastructure, the District will use the methodology set forth in Appendix 3. First, the District will run the Long Term Control Plan ("LTCP") model to encompass all CSO control measures, including the Green Infrastructure actually constructed. Then, the District will run a second LTCP model which is identical to the first, but without the Green Infrastructure control measures. The District will use the difference in overflow volume performance between the two model simulations to gauge the volume reduction achieved by the Green Infrastructure control measures and to determine the volume of Corrective

Action required. Note that both models will be run following post-construction monitoring of the Appendix 3 projects but without the voluntary enhancements and expansions.

As discussed at the September 26, 2016 meeting in Chicago and in subsequent teleconferences, the District is aware that Appendix 3 Corrective Action will be required. The District is requesting Corrective Action credit for the voluntary enhancements and expansions undertaken by the District since entering into the Consent Decree. These voluntary enhancements and expansions include exceeding the performance and design criteria, optimizing system operations, upsizing tunnels, and building projects beyond what is set forth in Appendix 1. All of these enhancements and expansions provide a reduction in overflow volume to the environment.

For example, the District anticipates that the additional volume from the voluntary enhancements and expansions made to the Doan Valley Tunnel, Westerly Storage Tunnel and Heights Hilltop Connection (E.140th) will contribute to the Appendix 3 Corrective Action volume credit. This project list is not exclusive as the District may identify other enhancement and expansion opportunities:

- Doan Valley Tunnel: Upsize the storage tunnel.
- Westerly Storage Tunnel: Upsize the storage tunnel and optimize operations.
- Heights Hilltop Connection (E. 140th): Optimize operation to capture more flow and free up capacity at the Euclid/Dugway Storage Tunnel system.

Once the required volume of Corrective Action is established using the method set forth in Appendix 3, the District will use the following methodology to calculate the additional overflow volume control achieved from the District's voluntary enhancements and expansions:

1. Simulation Result 1: This simulation result shall be the CSO volume remaining after running NEORSD's most current version of its model(s) that includes and represents all Appendix 1 CSO Control Measures.

2. Simulation Result 2: This simulation result shall be the CSO volume remaining after running the same version of its model(s) used to produce simulation result 1 that includes and represents all Appendix 1 CSO Control Measures and all Appendix 3 GI projects.

3. Simulation Result 3: This simulation result shall be the CSO volume remaining after running the same version of its model(s) used to produce simulation results 1 and 2 that includes and represents all Appendix 1 CSO Control Measures, all Appendix 3 GI projects, and all voluntary enhancements and expansions of Appendix 1 control measures and any other voluntary projects that NEORSD wishes the Agencies to consider for credit toward the Green Infrastructure Corrective Action Proposal ("GICAP").

The difference between Simulation Results 2 and 3 is the CSO volume reduction credited in its GICAP to compensate for the CSO volume reduction shortfall.

The District, therefore, requests formal acknowledgement from the Regulators of the following:

1) The additional overflow volume control attributable to the voluntary enhancements and expansions to Appendix 1 control measures will be credited as Appendix 3 Corrective Action volume credit, even though such voluntary enhancements and expansions will be undertaken prior to submission of the post-construction monitoring report required by Appendix 3; and

2) The above methodology will be used to calculate the Appendix 3 Corrective Action volume credit.

The District welcomes further discussion and engagement on this topic. Please feel free to contact myself or consent decree counsel, Lou McMahon.

Sincerely,

Julius Ciaccia
Chief Executive Officer

CC: Kyle Dreyfuss-Wells, Northeast Ohio Regional Sewer District
Eric Luckage, Esq., Northeast Ohio Regional Sewer District
Devona Marshall/Project Clean Lake File, Northeast Ohio Regional Sewer District
Lou McMahon, Esq., McMahon DeGulis LLP (via email)
Summer Plantz, Esq., Ohio Attorney General (via email)

McNally/Kiewit DVT JV

March 31, 2020

Northeast Ohio Regional Sewer District (NEORSD)
Mr. Robert Auber
Construction Program Manager
3900 Euclid Avenue
Cleveland, OH 44145

RE: 1293 - Doan Valley Storage Tunnel (DVT)
2.077 Notice of Potential Claim – Ambler Park Flood Event

Mr. Auber,

Pursuant to Article 13, this letter serves as official notice of claim for project delays related to the flood event that occurred on March 29, 2020.

Due to the area-wide flooding from a significant rain event that occurred on Sunday March 29, 2020, the Ambler Park Site was flooded along with extensive erosion and water damage to site facilities.

McNally Kiewit DVT JV (MK) is still investigating and evaluating impacts and damages at this time.

If you have any questions, please don't hesitate to contact this office.

Thank You,

Christopher J. Lynagh, P.E.
Project Manager/Engineer

Christopher J. Lynagh
Digitally signed by Christopher J. Lynagh
Date: 2020.03.31 12:06:52 -04'00'

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800 Westpoint Parkway, Suite 1130
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Cell 440-759-1947
Email clynagh@mcnallycorp.com
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U.S. Department of Justice
Environment and Natural Resources
Division

90-5-2-1-1-08177/1

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anna.cross@usdoj.gov

May 7, 2020

VIA ELECTRONIC MAIL

Kyle Dreyfuss-Wells
Chief Executive Officer
Northeast Ohio Regional Sewer District
3900 Euclid Avenue
Cleveland, OH 44115

Samuel Brown
Hunton Andrews Kurth LLP
50 California Street
Suite 1700
San Francisco, CA 94111

Re: *United States and State of Ohio v. Northeast Ohio Regional Sewer District*, Initial Force Majeure Notification for Control Measure 8

Dear Kyle and Sam:

We have received your letter dated April 22, 2020, submitting an initial force majeure notice for Control Measure 8 relating to COVID-19. We will respond after we have reviewed any 30-day notices you submit for this Control Measure and consulted the State Co-Plaintiffs, as appropriate.

Sincerely,

Anna E. Cross

cc: Chrisna Baptista, EPA
Gary Prichard, EPA
Lawrence Helkowski, Ohio Attorney General's Office
William Fischbein, Ohio EPA

U.S. Department of Justice
Environment and Natural Resources
Division

90-5-2-1-1-08177/1

Environmental Enforcement Section
4 Constitution Square
150 M Street, N. E.
Suite 2.900
Washington, D. C. 20002

Telephone (202) 514-1671
Facsimile (202) 616-6584
anna.cross@usdoj.gov

April 28, 2020

VIA ELECTRONIC MAIL

Kyle Dreyfuss-Wells
Chief Executive Officer
Northeast Ohio Regional Sewer District
3900 Euclid Avenue
Cleveland, OH 44115

Samuel Brown
Hunton Andrews Kurth LLP
50 California Street
Suite 1700
San Francisco, CA 94111

Re: *United States and State of Ohio v. Northeast Ohio Regional Sewer District*, Initial Force Majeure Notifications for Control Measures 6 and 8

Dear Kyle and Sam:

We have received your letters dated April 10 and April 16, 2020, submitting initial force majeure notices for Control Measures 6 and 8. We will respond after we have reviewed any 30-day notices you submit for these Control Measures and consulted the State Co-Plaintiffs, as appropriate.

Sincerely,

Anna E. Cross

cc: Gary Prichard, EPA
Lawrence Helkowski, Ohio Attorney General's Office
William Fischbein, Ohio EPA

NU-WEST
INDUSTRIES, INC.

5296 Harvest Lake Drive, 4th Floor
Loveland, Colorado 80538

April 15, 2020

VIA EMAIL AND OVERNIGHT MAIL

Mr. Peter Magolske
U.S. Environmental Protection Agency
Office of Compliance and Enforcement
M/S OCE-101
1200 Sixth Avenue, Suite 155
Seattle, WA 98101-3140

Re: Force Majeure Notification due to COVID-19
Administrative Order on Consent, Docket No. RCRA-10-2009-0186
Nu-West Industries, Inc. Conda Phosphate Operations

Dear Peter:

In accordance with Paragraph 116 of the above-referenced Administrative Order on Consent ("Consent Order"), this letter serves as Nu-West Industries, Inc.'s ("Nu-West") notification of a *force majeure* event. This event will delay or prevent performance of routine groundwater monitoring activities required by the Consent Order. As discussed below, because of the health risks presented by the COVID-19 pandemic, the state and federal governments' response thereto, and anticipated travel and access issues, a modification is necessary to the schedule for groundwater monitoring activities required under the Consent Order.

Groundwater Monitoring

Pursuant to the Consent Order, Nu-West conducts groundwater monitoring at the Conda Phosphate Operations (CPO) facility located near Soda Springs, Idaho in accordance with the EPA-approved Groundwater Monitoring Plan, Revision 3 (GWMP, dated November 12, 2014), the Quality Assurance Project Plan, Revision 4 (QAPP, dated May 19, 2016), and subsequent modifications approved by EPA. The groundwater monitoring program includes monthly and quarterly groundwater sampling at monitoring wells located throughout the CPO facility, which is currently owned and operated by Itafos Conda LLC ("Itafos"). The groundwater monitoring program also includes sampling at an off-site domestic well, owned by a private landowner.

Force Majeure

In response to the COVID-19 pandemic, state and local governments have imposed work and travel restrictions to mitigate the spread of the disease and protect human health. In Idaho, the Idaho Department of Health and Welfare issued an Order to Self-Isolate (Self-Isolation Order), requiring all individuals living in the State of Idaho to self-isolate at their place of residence; individuals traveling to Idaho must self-quarantine for fourteen days. The Self-Isolation Order, as amended on April 15, 2020, will continue to be in effect until 11:59 p.m. on April 30, 2020 or until extended, rescinded, superseded, or amended in writing by the director of the Idaho Department of Health and Welfare.

Also in response to the pandemic, Itafos has restricted access to the CPO facility for contractors, vendors, suppliers, and customers, limiting site access only to those providing critical support for ongoing operation and maintenance of the facility; "turnaround" activities, when numerous contractor groups travel to and work at the facility to complete infrastructure and improvement projects, normally scheduled for May and June, has been postponed until September.

Nu-West has evaluated health and safety measures that might be implemented to minimize the risk of COVID-19 transmission by field sampling personnel conducting the groundwater monitoring activities, including additional personal protective equipment (PPE), sampling equipment disinfection procedures, social distancing where applicable, and remote coordination with CPO facility personnel.

While beneficial, these procedures will not completely eliminate the risk of COVID-19 transmission to sampling personnel, to others they may encounter during sampling activities, or during their travel. Moreover, the presence on-site of contractors performing routine groundwater sampling may interfere with the essential activities of facility personnel. In light of these factors, and the current access and travel restrictions, Nu-West anticipates it likely will be unable to timely perform the routine groundwater sampling required by the Consent Order.

Recognizing the health risks presented by the novel coronavirus, the impact of state and local government work and travel restrictions, and facility-specific Covid-19 policies and procedures, EPA and the Idaho Department of Environmental Quality (IDEQ) have released guidance acknowledging that flexibility may be warranted in complying with certain environmental responsibilities. *See e.g.,* EPA's March 26, 2020 guidance "COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program," IDEQ's April 8, 2020 guidance "COVID-19 Regulatory Flexibility and Compliance Assistance," and EPA's April 10, 2020 guidance "Interim Guidance on Site Field Work Decisions Due to Impacts of Covid-19" (specifically advising that routine sampling activities not providing a near-term reduction in human health risk may be more strongly considered for delay, suspension, or rescheduling).

Nu-West Response

Because of the above, Nu-West has instructed WSP USA Inc., its contractor carrying out the terms of the Consent Order, to temporarily suspend field activities. Nu-West intends to resume field activities related to the groundwater monitoring program after the Self-Isolation Order is rescinded, after site access restrictions are lifted and reasonable access can be confirmed, and after adequate personnel health and safety measures can

be put in place. (While impossible to know for certain, we anticipate the suspension may include the entire second quarter – i.e., April through June).

Thank you for your attention to this notice. Please don't hesitate to contact me if you have any questions or require additional information.

Sincerely yours,

Jeff Grussing
Director Environmental Operations, Nutrien
Project Coordinator, Nu-West Industries, Inc.

cc: Natalie Creed, IDEQ
Lynne Davies, EPA
Carlyle Miller, Itafos Conda LLC
Timothy Vedder, Itafos Conda LLC
P. Scott Burton, Hunton Andrews Kurth

From:	Magolske, Peter
To:	Marshalonis, Dino
Cc:	Sullivan, Jennifer; Schanilec, Kevin; Davies, Lynne
Subject:	COVID DEVIATION REQUEST: Nu-West Industries
Date:	Wednesday, April 15, 2020 9:22:01 PM
Attachments:	2020 0415 Nu West Force Majeure Notification COVID-19 Signed.pdf image001.jpg

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Dino,

Per your April 6 email, you requested that any requests for changes or modifications to enforcement actions due to coronavirus are to be forwarded to you. You indicated that we need not respond or take any action regarding any request other than to forward the content for tracking. The attached request is a bit different.

Nu-West Industries has carried out a site investigation pursuant to an EPA Administrative Order on Consent issued under section 3013 of RCRA. The company is carrying out quarterly groundwater monitoring. Under terms of the Consent Order (paragraphs 115-117), the Respondent has the option to declare a Force Majeure event. The attached letter provides such notification to EPA.

Respondent has been conducting quarterly groundwater monitoring at the facility since at least 2014 and is requesting to forego groundwater monitoring for the second quarter of 2020. The majority of the groundwater monitoring wells were installed over the 2011 – 2014 time period. EPA therefore has a data-set that spans at least a six-year period for the majority of monitoring wells onsite.

This groundwater monitoring per the Consent Order should not be confused with National Discharge Elimination System monitoring that many regulated entities conduct in order to monitor effluent into water bodies. Nu-West Industries has no such NPDES discharge activity at this facility.

I have been the Project Manager of this RCRA 3013 Investigation since late 2009. So I am quite familiar with the site characterization data and groundwater monitoring activity that has been conducted since 2010 and am

also familiar with the historical site data going back some decades. I have been onsite on 10 or so different occasions to inspect and oversee work.

Section XI of the RCRA Consent Order establishes a "Project Coordinator", and I was officially assigned that role in late 2009. Paragraph 86 of the Consent Order requires that all communications to the Respondent be directed through or include the Project Coordinator. Paragraph 129 of the RCRA Consent Order requires that modifications in the studies, techniques, procedures, designs, work plans, or schedules utilized in carrying out this Consent Order may be made by written agreement of the Project Coordinators (EPA and the Respondent each have one).

Given my knowledge of the site, my familiarity of the monitoring data that has been collected to date, and understanding of the current pandemic health crisis, I agree with the Force Majeure request. Foregoing one quarter of monitoring data will not adversely impact EPA's understanding and knowledge of the site characterization. Our existing data-set is quite well established.

Under terms of the RCRA Consent Order, I am authorized to make modifications to work schedule changes. The Force Majeure request would fall under that rubric. I would like to respond a timely response to Nu-West Industries within the next day or two. I am happy to discuss with you, Jen, Morgan or anyone else in ECAD this request. I just don't want it to languish without a response back to the Respondent for very long.

Thanks,
-Peter

From: O'Flaherty, Rita <rkim@hunton.com>
Sent: Wednesday, April 15, 2020 3:31 PM
To: Magolske, Peter <Magolske.Peter@epa.gov>
Cc: 'Natalie.Creed@deq.idaho.gov' <Natalie.Creed@deq.idaho.gov>; 'Jeff Grussing' <Jeff.Grussing@nutrien.com>; 'timothy.vedder@itafos.com' <timothy.vedder@itafos.com>; 'Carlyle Miller' <Carlyle.Miller@itafos.com>; Burton, Scott <SBurton@hunton.com>; Carlstedt, Timothy J.

<TCarlstedt@hunton.com>; Davies, Lynne <Davies.Lynne@epa.gov>
Subject: Nu-West Industries, Inc. - Force Majeure Notification due to COVID-19

Mr. Magolske,

In accordance with the Administrative Order on Consent, this letter serves as Nu-West Industries, Inc.'s notification of a force majeure event.

Please feel free to contact our office should you have any questions.
Thank you.

Rita O'Flaherty
Sr Professional Assistant
roflaherty@HuntonAK.com
p 213.532.2159

Hunton Andrews Kurth LLP
550 South Hope Street
Suite 2000
Los Angeles, CA 90071

HuntonAK.com

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 155
Seattle, WA 98101-3188

ENFORCEMENT &
COMPLIANCE ASSURANCE
DIVISION

April 16, 2020

Reply to: 20-C04

Sent via Email

Jeff Grussing
Director, Environment and Special Projects
Nutrien Ltd.
5296 Harvest Lake Drive, 4th Floor
Loveland, Colorado 80538

Re: Force Majeure Notification due to COVID-19, dated April 15, 2020
Administrative Order on Consent for Nu-West Industries, Inc.
Idaho Facility, Docket No. RCRA-10-2009-0186

Dear Mr. Grussing:

This letter responds to your notice of a *force majeure* as described in the April 15, 2020 letter. EPA agrees with the reasons provided in your notice and the proposed course of action, which will impact the ability to conduct groundwater sampling in the 2nd quarter 2020 at the Itafos Conda Phosphate Operations site in Soda Springs, Idaho.

I normally send a response letter by U.S. Postal Service in order to document official Agency response, as is required by the Administrative Order on Consent. However due to the pandemic, our office building is presently closed and I do not have access to certain resources. This letter is being sent alternatively via email only due to the unique circumstances.

Thank you for your attention to this important matter.

Sincerely,

PETER MAGOLSKE Digitally signed by PETER MAGOLSKE
Date: 2020.04.16 14:27:37 -07'00'

Land Enforcement Section

cc: Carl Miller, Itafos Conda LLC
Natalie Creed, Idaho Department of Environmental Quality
P. Scott Burton, Esq., Hunton Andrews Kurth LLP

From: Schulze, Chad
To: Marshalonis, Dino
Subject: RE: COVID DEVIATION REQUEST: Oregon Department of Agriculture"
Date: Thursday, May 14, 2020 2:04:16 PM

Hi Dino!

Sorry for the delay. Looks like we gave our "approval" of their remote inspection approach via conference call. I do not have any email approval. Is there something else I can provide?

Thanks.

Sincerely,
Chad

Chad Schulze
Pesticide Enforcement Coordinator
Deputy Unit Diving Officer
Air & Toxics Enforcement Section
Enforcement & Compliance Assurance Division (ECAD)
EPA Region 10 (20-C04)
1200 6th Ave, Suite 155
Seattle, WA 98101
206-553-0505 (ph)
206-771-3058 (cell)
schulze.chad@epa.gov
https://www.epa.gov/pesticide-contacts/region-10-pesticide-program-and-contacts

EPA DIVE UNIT:
https://www.epa.gov/scientific-diving or https://www.epa.gov/diving

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From: Marshalonis, Dino <Marshalonis.Dino@epa.gov>
Sent: Wednesday, May 13, 2020 4:42 PM
To: Schulze, Chad <Schulze.Chad@epa.gov>
Subject: RE: COVID DEVIATION REQUEST: Oregon Department of Agriculture"

Chad,

Can you forward the email you sent to ODA saying we approve their approach? I need it for FOIA purposes.

Thank you.

Dino Marshalonis, Ph.D. | Enforcement Coordinator
Enforcement & Compliance Assurance Division
U.S. Environmental Protection Agency | Region 10
206.553.1519

From: Schulze, Chad <Schulze.Chad@epa.gov>
Sent: Monday, April 06, 2020 5:49 PM
To: Marshalonis, Dino <Marshalonis.Dino@epa.gov>
Cc: McClintock, Katie <McClintock.Katie@epa.gov>
Subject: COVID DEVIATION REQUEST: Oregon Department of Agriculture"

Here is ODA's requests that I mentioned.

The FIFRA enforcement team discussed this and agreed to work with ODA to ensure all aspects of an inspection are meet. To date though, ODA has not conducted a remote PEI ... they are waiting to see if the stay at homes orders will be lifted in time to conduct in person inspections in May and June.

Let me know if you have questions.

Sincerely,
Chad

Chad Schulze
Pesticide Enforcement Coordinator
Deputy Unit Diving Officer
Air & Toxics Enforcement Section
Enforcement & Compliance Assurance Division (ECAD)
EPA Region 10 (20-C04)
1200 6th Ave, Suite 155
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206-771-3058 (cell)
schulze.chad@epa.gov
https://www.epa.gov/pesticide-contacts/region-10-pesticide-program-and-contacts

EPA DIVE UNIT:
https://www.epa.gov/scientific-diving or https://www.epa.gov/diving

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From: Schulze, Chad
Sent: Friday, March 20, 2020 8:50 AM
To: Terada, Derrick <Terada.Derrick@epa.gov>; Hurwit, Nicholas <hurwit.nicholas@epa.gov>;

Landry, Andrew <landry.andrew@epa.gov>; McClintock, Katie <McClintock.Katie@epa.gov>
Subject: FW: PEIs in Corona land

Good morning,

I wanted to discuss Mike Odenthal's idea below of possibly conducting as much of a PEI as one could remotely. I think this is a great way to maintain our inspection numbers and our presence "in the field" while avoiding face to face contact. We would only use this approach during the corona virus epidemic. For background Katie, the states collectively conduct around 15 PEI's per FY under federal credentials as part of their obligations under their Cooperative Agreements. Typically, most states conduct their EPA PEIs between March and the end of June when their FY ends.

We may be able to use this approach for our own inspections since much of what we do involves following the paper trail. Let me know your initial thoughts via email (like do you think it's even possible) and if we need, I can set up a Skype call next week.

Thanks all .. Have a great weekend ... I'll be signing off today at 10:30am.

Sincerely,
Chad

Chad Schulze
Pesticide Enforcement Coordinator
Deputy Unit Diving Officer
Air & Toxics Enforcement Section
Enforcement & Compliance Assurance Division (ECAD)
EPA Region 10 (20-C04)
1200 6th Ave, Suite 155
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schulze.chad@epa.gov
https://www.epa.gov/pesticide-contacts/region-10-pesticide-program-and-contacts

EPA DIVE UNIT:
https://www.epa.gov/scientific-diving or https://www.epa.gov/diving

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From: MIchael L. Odenthal <modenthal@oda.state.or.us>
Sent: Thursday, March 19, 2020 11:27 AM
To: Schulze, Chad <Schulze.Chad@epa.gov>
Subject: PEIs

Chad,

With the current situation and limiting face to face inspections, have you given any thought to alternative means of conducting a normal PEI?
I'm wondering if we could establish a method to do a records inspection via internet communication. It would require some approvals to say mail (either ground or electronic) the Notice of Inspection to the target prior to the meeting and then conducting the opening interview via Skype type program then have the records sent to us.
We would send the Receipt for Samples once we get the records. Biggest problem would be no photos or tour of the facility.
Any thoughts? I'm just trying to think outside the box so some of these inspections could be conducted while we aren't supposed to go anywhere.
Mike

Michael L Odenthal
Lead Pesticide Investigator
Oregon Dept. of Agriculture Pesticides Program
635 Capitol St NE
Salem, OR 97301
503-986-4655
modenthal@oda.state.or.us

PACIFIC
PROPELLER
INTERNATIONAL LLC

April 16, 2020

Andrew Futerman, Attorney Advisor
US Environmental Protection Agency – Region 10
Office of Regional Counsel; Air, Toxics, & Information Law Branch
1200 Sixth Avenue, Suite 155, M/S 11-C07
Seattle, WA 98101

Dear Andrew,

PPI is requesting a quarterly payment plan to pay the $66,300 fine agreed to by PPI.
PPI is forecasting and experiencing, a significant impact to our financial position and related cash flow due to the current events happening around the world, particularly relating to COVID-19 response measures. Providing us with a payment plan would assist us to bring this matter to an amiable resolution.
We appreciate you consideration.

Regards,

James Brittain – Financial Controller
Pacific Propeller International, LLC

P.O. BOX 1187 ● KENT, WA 98035-1187 ● 5802 S. 228TH ST. ● KENT, WA 98032-1810
(253) 872-7767 ● WATS 1-800-722-7767 ● FAX (253) 872-7221
FAA CERTIFIED REPAIR STATION #NQ3R719L
www.pacificpropeller.com ● email: sales@pacprop.com

From: Futerman, Andrew
To: Marshalonis, Dino
Subject: FW: Request for payment plan
Date: Wednesday, May 13, 2020 2:44:29 PM

Thank you,

Andrew Futerman

Attorney Advisor
U.S. Environmental Protection Agency - Region 10
Office of Regional Counsel; Air, Toxics, & Information Law Branch
1200 Sixth Avenue, Suite 155, M/S 11-C07, Seattle, WA 98101
206.553.6709
Futerman.Andrew@epa.gov
(he/him)

From: Tim Gellerson <tgellerson@pacprop.com>
Sent: Thursday, April 16, 2020 1:43 PM
To: Futerman, Andrew <Futerman.Andrew@epa.gov>; James Brittain <jbrittain@pacprop.com>
Subject: RE: Request for payment plan

Andrew,
I would be signing on behalf of PPI.

Best Regards,
Tim Gellerson

From: Futerman, Andrew <Futerman.Andrew@epa.gov>
Sent: Thursday, April 16, 2020 1:11 PM
To: James Brittain <jbrittain@pacprop.com>; Tim Gellerson <tgellerson@pacprop.com>
Subject: RE: Request for payment plan

Thank you James.

To be clear, the first payment is due 30 days after the Consent Agreement and Final Order is signed by the Regional Judicial Officer. So I am working on getting the Consent Agreement and Final Order approved by my management. Once approved, I will send it off the Tim for Pacific Propeller's signature. Once signed by Pacific Propeller, EPA will sign it and file it with the Regional Judicial Officer for his review and signature. It is upon the RJO's signature that the order becomes final and the payment due within 30 days.

To that end, Tim, do you know who will be signing the agreement on behalf of Pacific Propeller?

Thank you,

Andrew Futerman

Attorney Advisor
U.S. Environmental Protection Agency - Region 10
Office of Regional Counsel; Air, Toxics, & Information Law Branch
1200 Sixth Avenue, Suite 155, M/S 11-C07, Seattle, WA 98101
206.553.6709
Futerman.Andrew@epa.gov
(he/him)

From: James Brittain <jbrittain@pacprop.com>
Sent: Thursday, April 16, 2020 12:54 PM
To: Futerman, Andrew <Futerman.Andrew@epa.gov>; Tim Gellerson <tgellerson@pacprop.com>
Subject: Request for payment plan

Hi Andrew,
Please find PPI's request for a payment plan on the agreed settlement. We understand the first payment is due within 30 days of mutual acceptance.

James Brittain - Financial Controller

☎ 253.943.2154 Direct Line | ☎ 253.872.7767 ext 264 Main Line | ☎ (b) (6) [redacted] |
🖷 253.872.7221 Fax
✉ jbrittain@pacprop.com | 📰 P.O. Box 1187, 5802 S. 228th St., Kent, WA 98032-1810

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 ELM STREET, SUITE 500
DALLAS, TX 75270

July 22, 2020

Linda G. Hester
Senior Counsel
Phillips 66 Company
2331 CityWest Boulevard
Houston, Texas 77042

Sent via email: Linda.G.Hester@p66.com

Re: Phillips 66 Company WRB Border Refinery COVID-19 Related Force Majeure Notification Pursuant to Civil Action 2:08-cv-00077-J United States of America v. ConocoPhillips Company, DOJ No. 90-5-1-1-08325

Dear Ms. Hester:

The United States is in receipt of Phillips 66 Company's ("Phillips 66") March 13, 2020, notification under Paragraph 53 of the Consent Decree in Civil Action No. 2:08-cv-00077-J (the "CD") of a potential *force majeure* event that may cause a delay or impediment to performance in complying with certain provisions of the CD. We apologize for the delay in issuance of our response acknowledging receipt of your notification, and my staff and I commit to more timely responses in the future. As you may be aware, on March 26, 2020, the U.S. Environmental Protection Agency ("EPA") issued a temporary Policy: "COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program" ("Policy") that addresses EPA enforcement of environmental legal obligations during this time. As provided in Section I.C of the Policy, claims of an inability to comply with the terms of a judicial consent decree are properly handled pursuant to the consent decree's *force majeure* provisions. We are enclosing a copy of that Policy.

Phillips 66's notice describes a potential *force majeure* based on the current COVID19 public health emergency. EPA has consulted the U.S. Department of Justice ("DOJ"), and this response is made on behalf of the United States. This response is intended to cover the facilities that are the subject of the above-referenced CD and directs Phillips 66 to Paragraphs 52 through 55 of the CD. Among other things, Phillips 66 should note that Paragraph 53 of the CD states:

> Defendant shall provide notice to EPA orally or by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time the Defendant first knew of, or by the exercise of due diligence, should have known of, a claimed force majeure event. Defendant shall also provide written notice to the United States as provided in Section XIV of this Consent Decree ("Notices"), within seven days of the time the City first knew of, or by the exercise of due diligence, should have known of, the event. The notice shall state the anticipated

duration of any delay, its cause(s), Defendant's past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and Defendant's rationale for attributing any delay to a force majeure event. Failure to provide oral and written notice as required by this Paragraph shall preclude Defendant from asserting any claim of force majeure.

Phillips 66's March 13, 2020, letter identified the potential COVID-19-related delays as potential force majeure factors that caused a delay or impediment to performance in complying with the CD. However, meaningful compliance with the *force majeure* provisions set forth in Section IX of the CD requires more than the pre-notification of factors set forth in Phillips 66's March 13, 2020, letter. If a *force majeure* occurs, the *force majeure* Section of the CD requires that the notice should at a minimum: identify the specific CD provisions with which Phillips 66 will not be able to comply due to this event; describe the anticipated length of time the delayed compliance may persist; the cause or causes of the delayed compliance; the measures taken or to be taken by Phillips 66 to prevent or minimize the nature and duration of such effects on those CD obligations; and, provide details of the proposed schedule for when and how it will comply with each CD obligation at the earliest practicable date. Because of the uncertainty surrounding the COVID-19 public health emergency, we understand that Phillips 66 may not have complete information at this time, but it should provide additional information in accordance with that Section as more information becomes available.

In addition to compliance with the express provisions of the CD, Phillips 66 is encouraged to maintain an open and continuing dialogue with EPA and DOJ. This will serve to protect human health and the environment, minimize potential misunderstandings, and facilitate timely and appropriate decision-making as this situation unfolds. Should you have any questions regarding the above or any aspect of this matter, please do not hesitate to contact Alan Vaughn at Vaughn.Alan@epa.gov for compliance matters or Tucker Henson at Henson.Tucker@epa.gov for legal matters.

Sincerely,

Cheryl T. Seager

Digitally signed by CHERYL SEAGER
DN: c=US, o=U.S. Government, ou=Environmental Protection Agency, cn=CHERYL SEAGER, 0.9.2342.19200300.100.1.1=68001003651793
Date: 2020.07.22 16:36:39 -05'00'

Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

ec: thomas.carroll@usdoj.gov
deborah.gitin@usdoj.gov
peters.carol@epa.gov
vaughn.alan@epa.gov
mcdonald.scott@epa.gov
henson.tucker@epa.gov

May 20, 2020

Supplement to Force Majeure COVID-19 Compliance Situation Report of April 15, 2020
Request for Due Date Extension – Biannual Progress Report No. 9

United States of America v. Puerto Rico Aqueduct and Sewer Authority
Consent Decree - Case 3:15-cv-02283

As part of our April 23, 2020 Conference Call, the letters of the Puerto Rico Aqueduct and Sewer Authority (PRASA) sent on March 16, 2020 and April 14, 2020 concerning the COVID-19 pandemic were discussed. The first invoking force majeure protection under Section XXVII (Force Majeure), Paragraph 107, of the Consent Decree and the latter, a Force Majeure COVID-19 Compliance Situation Report requesting a due date extension of Bi-annual Progress Report No. 9 up to November 1, 2020 to submit jointly with upcoming Biannual Progress Report No. 10 due on that same date.

At the outset of the discussions, COVID-19 pandemic was recognized as a force majeure event and the conversation turned towards the length of time of the extension sought. As agreed, the following provides more specificity and additional information as to why the extension requested is reasonable given the successional impacts of COVID-19.

General Effects of COVID-19 FM Event

As explained in our April 14, 2020 letter, as March 12, 2020 the Governor of Puerto Rico, on declared a state of emergency throughout the island as a result of the COVID-19 global pandemic. An Executive Order and amendments thereto were issued with the objective to minimize the chances of direct and indirect transmission of the virus from one person to another and avoid a rapid spread of the virus in Puerto Rico. Mindful of the need to protect the safety and health of the public, curfew, social isolation and distancing, stay-home order, vehicle movement limitations, and quarantine, among other measures were mandated under penalty of law. In addition, the Governor ordered closure of governmental operations, except those related to essential services, and businesses and commercial enterprises, with certain exceptions. All such measures to stay in effect up to May 3, 2020.

Supplemental reasons why extension requested is attributable to COVID-19 implications and the deferral up to November 1, 2020 is reasonable

PRASA's first response to address the COVID-19 situation and declaration of emergency was to activate its Emergency Response Plan (ERP) to protect the public, personnel and property. The primary objectives were to assure the continuance of water and sewer services. Also, contemplated, among other things, were personnel assignments based on classifications of Essential and Non-Essential Employees and the categories thereof for operational tasks, including establishment of shifts. Employees who should continue to work were determined and appropriate Personal Protective Equipment (PPE) were evaluated based on position and assignment. Work shifts were also established to minimize agglomeration and maintain physical distancing. Employees were and continue to be visited on a floor-by-floor basis, brigade by brigade, plant by plant to give guidance on COVID-19 and re-train on the proper use and maintenance of PPE.

The Governor's orders directly affected the availability and assistance of PRASA personnel. Thus from the outset, meetings were held with the concerning unions regarding continued operations of installations, assignment and re-assignment of union personnel to assure availability of licensed operators for the supply of continuous safe, clean and reliable water and sewer services with the goal to keep water flowing. Assurances were given as to the supplies available and measures taken to safeguard the security and health of the operators and other operational personnel to avoid propagation of the virus amongst the workers. Personnel holding supervisory positions were tasked to support operation efforts at various installations since operators now hold longer shifts without onsite support. Operator and supervisory duties have been skewed towards maintaining operations of facilities and essential compliance reporting thereof. Non-operational administrative duties, such as gathering, compiling, analyzing and submitting data and information for the Bi-annual Progress Report No. 9 were limited and impaired; thus, have fallen behind. Much of the information required are in paper format filed at the facilities and require copying and scanning to transmit electronically. In addition, the relay of data and information gathered to administrative personnel responsible for compiling and organizing information for the progress reports, most of which are under stay-home orders, too hinders efforts to timely produce Bi-annual Progress Report No. 9.

To put in perspective our request, the magnitude of the information to be gathered and produced periodically, despite the formats created for electronic delivery to reduce paper and simplify information, is abundant and involves 51 wastewater treatment plants and associated sewer systems, 113 water treatment plants and their sludge treatment systems, and 718 pump stations, including appurtenances thereof. Also, as part of the process, quality control and assurance review are performed of the gathered data and information that require at times site visits by the person delivering the information for inclusion in progress reports under certification that the data or information provided to the best of their knowledge is true and correct.

For the reasons afore mentioned and since data and information gathering, analyzing, and compiling for Bi-annual Progress Report No. 10 for the period of March 1 to August 31, 2020 will run at the same time the extension requested for Progress Report No. 9, albeit even for part of the time if not granted the full extension requested, when considering the workforce issues confronted, the magnitude of information to be gathered, organized, analyzed, and compiled, plus the uncertainties that surround the COVID-19 implications, a joint delivery of Bi-annual Progress Reports 9 and 10 by November 1, 2020 is reasonable and logical. Moreover, under the existing circumstances and uncertainties associated with the COVID-19 pandemic, the extension request maximizes resources and is a more efficient and logistical way of handling the data and information for both reports. Therefore, PRASA reaffirms its request to submit jointly Bi-annual Progress Reports 9 and 10 by November 1, 2020[1].

Thank you for your consideration of this matter.

[1] For the Hurricane María force majeure event invoked, a similar extension of time under alike workforce circumstances and reasoning was allowed for the joint delivery of Bi-Annual Progress Reports 4 and 5.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
CARIBBEAN ENVIRONMENTAL PROTECTION DIVISION
CITY VIEW PLAZA II BUILDING, 7TH FLOOR
ROUTE 165 GUAYNABO, PUERTO RICO 00968

June 20, 2020

BY ELECTRONIC MAIL TO
DORIEL.PAGAN@ACUEDUCTOSPR.COM

Eng. Doriel Pagán
Executive President
Puerto Rico Aqueduct and Sewer Authority (PRASA)
P.O. Box 7066
San Juan, PR 00916-7066

Re: U.S. EPA vs PRASA
Civil Consent Decree, Civil Action Number 3:15-CV-02283
COVID-19 Force Majeure Request Determination

Dear Eng. Pagán:

The United States Environmental Protection Agency ("EPA") is in receipt of the Puerto Rico Aqueduct and Sewer Authority's ("PRASA") *force majeure* notice, dated March 16, 2020, made pursuant to Section XXVII (*Force Majeure*) of the above-referenced Consent Decree ("CD"). PRASA indicated that the curfew ordered by the Governor of Puerto Rico on March 15, 2020 amid the threat of the COVID-19 global pandemic to the public health of the citizens of Puerto Rico could potentially cause a delay or impediment to compliance with certain provisions of the CD. Shortly thereafter, in a letter dated April 15, 2020, and supplemented on May 20, 2020 by additional information, PRASA specifically requested a due date extension for the submittal of the Bi-annual Progress Report No. 9 from May 1, 2020 until November 1, 2020. PRASA also requested via an email dated June 5, 2020, a due date extension for the submittal of the annual consolidated progress report for the S2OMP, NMC, and CMMR from May 31, 2020 until November 1, 2020.

Pursuant to Section XXVII, paragraph 107 of the CD, the COVID-19 pandemic is an event that qualifies as a *force majeure* event. In addition, PRASA has adequately explained why the COVID-19 pandemic justifies the delays requested in the submission of the aforementioned reports. Accordingly, EPA is hereby approving PRASA's request to submit all aforementioned reports by November 1, 2020. Pursuant to paragraph 110 of the CD, this deferment is not intended, and is not to be construed, to alter or revise the schedule for the performance and/or completion of any other CD obligation.

Moreover, circumstances not considered as *force majeure*, as defined by Section XXVII, paragraph 107 of the CD, that have prevented, or will prevent, PRASA from performing its obligations under the CD (e.g. financial inability), must immediately be discussed with the U.S. Department of Justice and EPA.

If you have any questions concerning the above, please contact Mr. Jaime Geliga of my staff at (787) 977-5840, or via electronic mail at geliga.jaime@epa.gov.

Sincerely,

Carmen R. Guerrero Pérez
Director
Caribbean Environmental Protection Division

cc: Donald G. Frankel, Esq, DOJ (via email)

From:	Cobb, David
To:	Piantanida, David
Cc:	Patefield, Scott
Subject:	RE: COVID-19 National Tracking Spreadsheet: Please respond by June 2nd
Date:	Thursday, May 28, 2020 4:09:28 PM

Hi David,
The incoming email for ReBatyh is below. I'll work with ORC to get you the Harmon and Son's email.
-david

From: Dennis Stricker <dennis@nocobathremodel1.com>
Sent: Friday, April 24, 2020 1:51 PM
To: Labrie, Laurence <Labrie.Laurence@epa.gov>
Subject: Request Letter

MR. Labrie:

I need an extra 10 business days to complete the reports you requested. I am working from home due to COVID-19 virus and do NOT have immediate access to our customer files which contain the information you need. I believe I can complete the forms in that period of time.

Thank you,

--
Dennis D Stricker, CBM, PA, MA, RTRP
Office Manager
Rebath of Northern Colorado, LLC
1017 N 1st Street
Berthoud, CO 80513
970-535-9400

From: Piantanida, David <Piantanida.David@epa.gov>
Sent: Thursday, May 28, 2020 11:00 AM
To: Cantor, Tiffany <Cantor.Tiffany@epa.gov>; Cobb, David <cobb.david@epa.gov>; Patefield, Scott <Patefield.Scott@epa.gov>; Pearson, Janice <pearson.janice@epa.gov>; Boeglin, Michael <Boeglin.Michael@epa.gov>
Cc: Rathbone, Colleen <Rathbone.Colleen@epa.gov>; Russo, Rebecca <Russo.Rebecca@epa.gov>; Wilwerding, Joseph <Wilwerding.Joseph@epa.gov>; Dean, Abigail <Dean.Abigail@epa.gov>; Swanson, Amy <Swanson.Amy@epa.gov>; Castelli, Matthew <castelli.matthew@epa.gov>
Subject: COVID-19 National Tracking Spreadsheet: Please respond by June 2nd

Hello Tiffany, Janice, Mike, David and Scott – I am working w/ Amy Swanson and tracking facility/companies that have applied specifically to the Agency's Enforcement Discretion policy and we have 19 such requests in our Region 8 database thus far. As you're aware, these facilities have notified EPA of potential civil violations associated with an inability to comply with environmental regulations or have notified EPA of COVID-19 impacts as affecting or potentially affecting the performance of environmental requirements associated with already existing settlement

agreements in place at individual facilities. The companies cited potential difficulties related to the availability and safety of staff in completing inspection, monitoring and corrective actions associated with terms that are unique to these agreements.

We also have a few circumstances where a facility has submitted notices (for federal consent decrees, called "Force Majeure" notices) to EPA related to provisions specified in the existing agreements intended to provide flexibility in instances where unforeseen circumstances can impede or delay the completion of agreed-to actions. These provisions exist independent of the March 26 policy and are the typical mechanism for informing the agency when circumstances beyond their control impede a company's ability to comply within specified timeframes.

I need your assistance with locating the incoming emails for 17 of these requests and I have outlined the requests below with the POC. Let me know if you have the email, is it CBI, and please forward the email to me. I will include the email as a link in the spreadsheet. We have links for an incoming Phillips 66 letter from April 29th and an email from JoaQuin Manufacturing from May 7th.

If you don't have the email and/or the conversation occurred over the phone, please let me know that.

Thanks!!

Tiffany Cantor: (SDWA-PWS) Denny Menholt Honda, Red Lane Domestic Water, Inc.

Janice Pearson: (RCRA) Solvay

Scott Patefield: (CAA) Harvest Midstream, Phillips 66 from March 9th, PDC Energy, Tesoro, ExxonMobil, and Sinclair (SWRC)

David Cobb: (FIFRA) Re Bath, Harmon and Sons

Mike Boeglin: (CWA), Dept of Veteran Affairs, City of Boulder, Boxedler Sanitation District, City of Northglenn, and two with Cheyenne Crow Creek WWTP

David Piantanida, (303) 312-6200, cell: (720) 661-7482
State Oversight Liaison, Enforcement Coordinator, and ELMS Champion Trainer
ECAD, Region 8, US EPA
Denver, CO

MANKO | GOLD | KATCHER | FOX LLP

AN ENVIRONMENTAL AND ENERGY LAW PRACTICE

Jonathan H. Spergel
484-430-2309
jspergel@mankogold.com

Admitted in PA and NJ

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TEL: 484-430-5700
FAX: 484-430-5711
WWW.MANKOGOLD.COM

A LIMITED LIABILITY PARTNERSHIP
FORMED IN PENNSYLVANIA

Partner responsible:
John F. Gullace (NJ)
Brenda H. Gotanda (HI)

May 20, 2020

Via Electronic Mail
Lauren Fischer
Assistant Regional Counsel
U.S. Environmental Protection Agency Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

Re: Riverton Project, Sayreville, New Jersey – CA/FO Request for Payment Schedule

Dear Lauren:

By way of this letter, Sayreville Seaport Associates Urban Renewal, L. P. ("SSA") requests that the U.S. Environmental Protection Agency ("EPA") agree to a five-month payment plan to pay the $200,000 civil penalty pursuant to the final Consent Agreement and Final Order ("CA/FO") to be executed between EPA and SSA. Specifically, SSA proposes that the $200,000 civil penalty be satisfied through a payment of $40,000 per month for a five (5) month period, commencing thirty (30) days after the Effective Date of the CA/FO.

The reason for this request for a payment plan is to allow SSA to more effectively manage cash flow associated with ongoing site remedial activities at the Riverton Project site. In light of the worldwide COVID-19 pandemic that has had significant economic impact throughout the U.S. economy, SSA believe that it is critical to conservatively manage cash flow to ensure that SSA can continue to satisfy all of its remedial and permitting obligations at the site in a timely fashion, and the requested payment plan will meaningfully assist SSA in these efforts. Once SSA and EPA reach agreement concerning the terms of the requested payment plan, SSA will be in a position to immediately execute the CA/FO.

Thank you for all of your assistance in this regard, and please feel free to contact me should you have any questions.

Sincerely,

Jonathan H. Spergel
For MANKO, GOLD, KATCHER & FOX, LLP

JHS/pa

From:	Perenchio, Lisa
To:	Divya.Ramaswamy@shell.com; Jann, Stephen
Cc:	Augustina.D-B@shell.com; Murphy, Elizabeth
Subject:	RE: Shell Oil Company- Financial Assurance Documents - Indiana- CRI - Chicago
Date:	Wednesday, April 29, 2020 4:56:05 PM

Hello Divya.

Susan Bodine, EPA's Assistant Administrator for Enforcement and Compliance Assurance, release the attached memorandum which explains EPA enforcement discretion in situations resulting from the Covid-19 pandemic. This temporary policy is retroactive to March 13, 2020.
https://www.epa.gov/newsreleases/epa-announces-enforcement-discretion-policy-covid-19-pandemic

Section B of the memo concerns routine compliance monitoring and reporting by regulated entities.

The consequences of the pandemic may constrain the ability of regulated entities to perform routine compliance monitoring, integrity testing, sampling, laboratory analysis, training, and reporting or certification.

Entities should use existing procedures to report noncompliance with such routine activities, such as pursuant to an applicable permit, regulation or statute. If no such procedure is applicable, or if reporting is not reasonably practicable due to COVID-19, regulated entities should maintain this information internally and make it available to the EPA or an authorized state or tribe upon request. In general, the EPA does not expect to seek penalties for violations of routine compliance monitoring, integrity testing, sampling, laboratory analysis, training, and reporting or certification obligations in situations where the EPA agrees that COVID-19 was the cause of the noncompliance and the entity provides supporting documentation to the EPA upon request.

After this policy is no longer in effect, the EPA expects full compliance going forward. In general, absent exigent circumstances, the EPA does not plan to ask facilities to "catch-up" with missed monitoring or reporting if the underlying requirement applies to intervals of less than three months. For other monitoring or reports, such as those required on a bi-annual or annual basis, when this policy is no longer in effect, the EPA expects facilities to take reasonable measures to resume compliance activities as soon as possible, including conducting late monitoring or submitting late reports. In some programs, there are sections or codes in the reporting form in which a facility may indicate why it has not conducted the required sampling and monitoring, and the EPA encourages facilities to include such information when submitting any late reports.

If a submission to the EPA requires a "wet" signature of a responsible official, the EPA will accept a digital or other electronic signature. The mere inability to obtain a "wet" signature will not be considered a justification for failure to make a paper submission or certification. We strongly encourage the regulated community use the EPA's approved electronic reporting mechanisms. For enforcement purposes, the EPA also will accept emailed submissions even if a paper original is required.

If the COVID-19 pandemic will prohibit your facility from meeting the compliance requirements of your permit, please reference the "Notification Requirement" Section (likely

Part I.E.9) of your permit. You must send your correspondence to Elizabeth Murphy (murphy.elizabeth@epa.gov), Enforcement and Compliance Assurance Division, Water Enforcement Branch, Section 3 Chief, at which point enforcement discretion will be considered. Please be advised that when this temporary policy is no longer in effect and the pandemic restrictions have been lifted, the EPA expects facilities to take reasonable measures to resume compliance activities as soon as possible, including conducting late testing and/or submitting late reports.

From: Divya.Ramaswamy@shell.com <Divya.Ramaswamy@shell.com>
Sent: Tuesday, April 28, 2020 9:55 AM
To: Jann, Stephen <jann.stephen@epa.gov>; Perenchio, Lisa <perenchio.lisa@epa.gov>
Cc: Augustina.D-B@shell.com
Subject: Shell Oil Company- Financial Assurance Documents - Indiana- CRI - Chicago

Hi Stephen/Lisa

We have initially requested extension for submitting physical copies of 2020 financial assurance documents till 30th April. Now that the offices are not open, mailing the submissions is a challenge (email submission already made).

Is it possible to extend the due date for submitting physical copies till May 31st. If the extension is not possible, request you to let us know immediately, so that we shall mail only the physical copies of the documents/pages which has to be signed by CFO/controller of the company and requires notarization.

Regards,
Divya

From: Ramaswamy, Divya SSSCCH-FO/RRP
Sent: Tuesday, April 7, 2020 6:46 PM
To: Jann, Stephen <jann.stephen@epa.gov>; Perenchio, Lisa <perenchio.lisa@epa.gov>
Cc: B, Augustina D SSSCCH-FO/RRP <Augustina.D-B@shell.com>
Subject: RE: Financial Assurance Documents - Indiana- CRI - Chicago

Hi Stephen/Lisa,

Please find attached EPA documents with respect to injection wells.

Regards,
Divya
From: Jann, Stephen <jann.stephen@epa.gov>
Sent: Thursday, March 19, 2020 10:39 PM
To: Ramaswamy, Divya SSSCCH-FO/RRP <Divya.Ramaswamy@shell.com>; Perenchio, Lisa <perenchio.lisa@epa.gov>
Cc: B, Augustina D SSSCCH-FO/RRP <Augustina.D-B@shell.com>; Perenchio, Lisa <perenchio.lisa@epa.gov>

Subject: RE: Financial Assurance Documents - Indiana- CRI - Chicago

Think Secure. This email is from an external source.
Hi Ms. Ramaswamy. Thank you for your note. Folks here will look into your question and get back to you. Steve Jann

---

From: Divya.Ramaswamy@shell.com <Divya.Ramaswamy@shell.com>
Sent: Tuesday, March 17, 2020 2:32 PM
To: Perenchio, Lisa <perenchio.lisa@epa.gov>; Jann, Stephen <jann.stephen@epa.gov>
Cc: Augustina.D-B@shell.com
Subject: Financial Assurance Documents - Indiana- CRI - Chicago

Hi Lisa/Stephen,

In view of the declared national emergency due to COVID-19, I've a few questions:

1. We do have a 90-day deadline for EPA documents submission. While we are planning to work from home, there are certain challenges ahead of us with respect to signing and notarizing documents as it require us to be physically present. Though we plan to meet the 90-day deadline, is it possible to extend the submission till 30th April given the situation.

2. If an extension is possible, what is the process to apply for one?

3. Can we make an email submission within 90 days followed by a hard-copy submission in a month in case of non-extension?

And if you have any official communication on this situation, please do send it to us.

Thanks,
Divya

From: Perenchio, Lisa <perenchio.lisa@epa.gov>
Sent: Thursday, March 12, 2020 8:45 PM
To: Ramaswamy, Divya SSSCCH-FO/RRP <Divya.Ramaswamy@shell.com>
Cc: B, Augustina D SSSCCH-FO/RRP <Augustina.D-B@shell.com>; Jann, Stephen <jann.stephen@epa.gov>; Rzeznik, Dana <rzeznik.dana@epa.gov>; Stepp, Cathy <stepp.cathy@epa.gov>
Subject: RE: Confirming address for Financial Assurance Documents - Indiana- CRI - Chicago

THINK SECURE. This email has come from an **external source**. Do not click on links or open attachments unless you recognise the sender.
Hello Divya.

You can send them to me or to Stephen Jann at the below address with one correction. Our mail code is WP-16J. Also, my direct phone number is 312-886-6593.

For your information, Dana Rzeznik has moved to a different part of the Agency and Cathy Stepp has left the Agency, so you can remove them from your cc list.

From: Divya.Ramaswamy@shell.com <Divya.Ramaswamy@shell.com>
Sent: Thursday, March 12, 2020 3:21 AM
To: Perenchio, Lisa <perenchio.lisa@epa.gov>
Cc: Augustina.D-B@shell.com; Jann, Stephen <jann.stephen@epa.gov>; Rzeznik, Dana <rzeznik.dana@epa.gov>; Stepp, Cathy <stepp.cathy@epa.gov>
Subject: Confirming address for Financial Assurance Documents - Indiana- CRI - Chicago

Hi Lisa,

May I request you to confirm whether you are the contact with below address to send out filings relating to injection wells owned or operated by Shell Catalysts & Technologies L.P and Shell Chemical L.P.

Contact:
Lisa Perenchio
US EPA REGION 5
77 West Jackson Boulevard
Mail Code: R-19J
Chicago, IL 60604-3507
312-886-3000

Regards,
Divya

From: Perenchio, Lisa <perenchio.lisa@epa.gov>
Sent: Wednesday, February 20, 2019 9:31 PM
To: K, Kiren Kumar SSSCCH-FO/RR <Kiren-Kumar.K@shell.com>
Subject: RE: Confirming address for Financial Assurance Documents - Indiana- CRI - Chicago

Thank you.

From: Kiren-Kumar.K@shell.com <Kiren-Kumar.K@shell.com>
Sent: Wednesday, February 20, 2019 1:44 AM
To: Perenchio, Lisa <perenchio.lisa@epa.gov>
Subject: RE: Confirming address for Financial Assurance Documents - Indiana- CRI - Chicago

Hi Lisa,

I checked into the filings of last year and it is relating to Criterion Catalyst Technologies LP related to Shell Chemical LP in respect of injection wells, hence, as per your email shall be sending the documents addressing it to you, thank you.

Regards,

Kiren Kumar K
Senior Team Manager - Local Statutory Reporting
Shell Business Operations, Chennai
☎: +91 9886724550
Email: kiren-kumar.k@shell.com

Shell India Markets Limited, 4A , 4th floor, RMZ Corp, RMZ Millennia,
Kandanchavady, Perungudi, Chennai - 600 096, India.

From: Perenchio, Lisa <perenchio.lisa@epa.gov>
Sent: Tuesday, February 19, 2019 8:23 PM
To: K, Kiren Kumar SSSCCH-FO/RR <Kiren-Kumar.K@shell.com>
Subject: RE: Confirming address for Financial Assurance Documents - Indiana- CRI - Chicago

Hello.

We just spoke on the phone. I do not know what CRI is, so I may have given you the wrong answer. If CRI refers to injection wells, then yes, I am the right person. If it refers to some other kind of facility, I would not be the right person. If this is the case, I can try to find the right person for you.

From: Kiren-Kumar.K@shell.com <Kiren-Kumar.K@shell.com>
Sent: Monday, February 18, 2019 6:46 AM
To: Jann, Stephen <jann.stephen@epa.gov>; Perenchio, Lisa <perenchio.lisa@epa.gov>; Rzeznik, Dana <rzeznik.dana@epa.gov>
Cc: wanda.kimbrell@shell.com; S.KizhamanaliRamado2@shell.com; Augustina.D-B@shell.com; angie.moras@shell.com; Stepp, Cathy <stepp.cathy@epa.gov>
Subject: RE: Confirming address for Financial Assurance Documents - Indiana- CRI - Chicago

Hi,

As I haven't got a response for the below email if one of you can confirm me the right contact for the below mentioned purpose it will be of great help.

Regards,

Kiren Kumar K
Senior Team Manager - Local Statutory Reporting
Shell Business Operations, Chennai
☎: +91 9886724550
Email: kiren-kumar.k@shell.com

Shell India Markets Limited, 4A , 4th floor, RMZ Corp, RMZ Millennia,
Kandanchavady, Perungudi, Chennai - 600 096, India.

From: K, Kiren Kumar SSSCCH-FO/RR
Sent: Friday, November 16, 2018 12:35 PM
To: Stepp.cathy@Epa.gov
Cc: Kimbrell, Wanda S SEPCO-FUP/DA <wanda.kimbrell@shell.com>; Kizhamanali Ramadoss, Vanchi KR SSSCCH-FO/RR <S.KizhamanaliRamado2@shell.com>; B, Augustina D SSSCCH-FO/RR <Augustina.D-B@shell.com>; Moras, Angie A SEPCO-FUP/DA <angie.moras@shell.com>
Subject: Confirming address for Financial Assurance Documents - Indiana- CRI - Chicago

Hi Cathy,

I will be working with Wanda Kimbrell, just wanted to make sure that you are still the contact with the below address for Shell Oil's filing of Financial Assurance Documents with respect to Indiana-CRI site in Chicago. Thanks.

Contact:
Cathy Stepp
USEPA REGION 5
77 West Jackson Boulevard
Mail Code: R-19J
Chicago, IL 60604-3507
312-886-3000

Regards,

Kiren Kumar K
Senior Team Manager - Local Statutory Reporting
Shell Business Operations, Chennai
☎: +91 9886724550
Email: kiren-kumar.k@shell.com

Shell India Markets Limited, 4A , 4th floor, RMZ Corp, RMZ Millennia, Kandanchavady, Perungudi, Chennai - 600 096, India.

From: Waring, Linda
To: Remnek, Alexandre
Cc: Wong, Virginia
Subject: RE: COVID-19 and SIU sampling/inspections
Date: Monday, March 16, 2020 12:08:03 PM
Attachments: image001.png
image002.png
image003.png
image004.png
image005.png
image006.png

Thank you for this email. Our inspector has been in contact with the facility and is hoping to get in there today or tomorrow. This industry is aware they need to allow access to our inspector and we will follow up with an email or letter so this doesn't occur at this industry in the future.

I appreciate your quick response. Our sampling crew is collecting samples today and I've been in contact with the outside lab to make sure they can still analyze our samples. So far all good for today. I guess in this situation we are day to day.

Regards,
Linda

Linda Waring
Administrator I
Suffolk County Department of Public Works
Sanitation/Engineering
335 Yaphank Ave
Yaphank, NY 11980
Tel (631) 852-4176
FAX(631) 852-5674

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From: Remnek, Alexandre [mailto:Remnek.Alexandre@epa.gov]
Sent: Monday, March 16, 2020 11:50 AM
To: Waring, Linda
Cc: Wong, Virginia
Subject: FW: COVID-19 and SIU sampling/inspections

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Linda,

Below is some of the commentary on the State Pretreatment Coordinator workgroup…just an FYI. I talked to Virginia, and I believe if they are open for business and you are open for business, you are no different than any of their employees for having coronavirus (I would argue that you and your staff are more knowledgeable of the risks and precautions to take compared to most people). Therefore, they should have allowed entry and this could lead to enforcement action. Or at the very least, verbally saying that what happened last week is not acceptable. However, if push comes to shove it might be difficult to get an administrative order…

We will follow up on the second part of your question, i.e. relaxing reporting, sampling and inspection requirements. There needs to be a nation-wide policy on this, rather than an EPA Region 2 specific policy, so it might take a few days to iron this out.

Once again, we really appreciate you reaching out to us and bringing this to our attention. Very timely and very necessary. Thanks!!!

Alexi

Alexandre Remnek
Environmental Engineer
Pretreatment Expert
Unconventional Oil and Gas Regional Contact

NPDES Section
Clean Water Regulatory Branch, Water Division
Environmental Protection Agency, Region 2

290 Broadway
New York, NY 10007

Work: 212-637-3774
Fax: 212-637-3889
E-mail: remnek.alexandre@epa.gov

From: Utting, George <Utting.George@epa.gov>
Sent: Monday, March 16, 2020 10:43 AM
To: Discussion forum for State Pretreatment Coordinators <statepretcoord@lists.epa.gov>
Subject: RE:[statepretcoord] COVID-19 and SIU sampling/inspections

If the plant is operating (i.e., not shut down), I would expect that inspectors should be able to enter so long as they follow the same protocols as anyone else who is entering the plant. Are there reasons why that would not be reasonable to expect?

From: Pickrel, Jan <Pickrel.Jan@epa.gov>
Sent: Monday, March 16, 2020 10:36 AM

To: Discussion forum for State Pretreatment Coordinators <statepretcoord@lists.epa.gov>
Subject: RE:[statepretcoord] COVID-19 and SIU sampling/inspections

Natalie –
This certainly emphasizes the need to have accessible sampling ports outside the industry property boundaries and within the POTW boundaries

---

From: Vinch, James <Vinch.James@epa.gov>
Sent: Monday, March 16, 2020 10:04 AM
To: Discussion forum for State Pretreatment Coordinators <statepretcoord@lists.epa.gov>
Subject: RE:[statepretcoord] COVID-19 and SIU sampling/inspections

Yes in general if a regulated entity won't provide access to search or inspect private property then the regulator would need to obtain an administrative warrant. Administrative warrants are normally issued upon demonstration of reasonableness or that the search is being conducted pursuant to a reasonable regulatory scheme, but I do not know how a court would look at the reasonableness standard in light of the current pandemic. They would have to consult their legal counsel as to whether a warrant would be feasible under the circumstances.

Jim Vinch, Senior Attorney
U.S.EPA (2243A) │ Water Enforcement Division
1200 Pennsylvania Ave. N.W. │ Washington D.C. 20460
Phone: 202.564.1256

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From: MAUPIN, NATALIE <NMAUPIN@idem.IN.gov>
Sent: Monday, March 16, 2020 9:39 AM
To: Discussion forum for State Pretreatment Coordinators <statepretcoord@lists.epa.gov>
Subject: [statepretcoord] COVID-19 and SIU sampling/inspections

Hi everyone. I just received an email from an approved program that had a permitted SIU contact them about site visits. The email from the SIU to the POTW is below.

As with many others we have decided to suspend visitation at all of our plants indefinitely due to the current COVID-19 situation. We have already had Microbac in this month so we will have those results to pass along. Hopefully by the time we need to test for April we will have more clarity on the situation but, I wanted to give you a heads up. Please let me know if you need us to do anything or if you have any thoughts you need/want to share.

The POTW believes they may need to get an administrative warrant to complete sampling and a site inspection, if required. Thoughts?

Stay healthy!

Natalie Maupin
Pretreatment Compliance Coordinator
Office of Water Quality
(317) 232-8729 · nmaupin@idem.IN.gov

Indiana Department of Environmental Management

IDEM values your feedback.
Please take two minutes and complete this brief survey.

#HoosiersCountIN2020
2020 Census
It's easy: online, paper or phone

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---

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---

From:	Chase, Felicia
To:	Murphy, Elizabeth
Cc:	Perenchio, Lisa
Subject:	Fw: MPU 52-2 MIT
Date:	Friday, May 8, 2020 10:36:36 AM
Attachments:	Outlook-lb0h3emx.png

Yes, I responded the same day... See forwarded message below.

Best,
Felicia Chase
Underground Injection Control Section
Permits Branch
Water Division (WP-16J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

From: Chase, Felicia <chase.felicia@epa.gov>
Sent: Thursday, April 2, 2020 12:36 PM
To: Dan Nida <dnida@summitpetro.com>
Subject: Re: MPU 52-2 MIT

Thank you for your correspondence, I will add to the permit file. We appreciate your cooperation and look forward to hearing from you in the future regarding this compliance demonstrations once we are able to resume business as usual and the national constraints have been lifted.

Take care, be safe!

Best,
Felicia Chase
Underground Injection Control Section
Permits Branch
Water Division (WP-16J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

From: Dan Nida <dnida@summitpetro.com>
Sent: Thursday, April 2, 2020 12:19 PM
To: Chase, Felicia <chase.felicia@epa.gov>
Subject: MPU 52-2 MIT

Felicia,
We will be postponing the MPU 52-2 (MI-111-2R-A001) until at least June 2020. We would like this well to be witnessed by JoAnne if possible when the restrictions are lifted. I attached the most current MIT. We will run the MIT in June if we can get a gauge by then. Thanks.

Respectfully,

Daniel Nida – Regulatory & Environmental Geologist
Summit Petroleum Company
102 W. Front Street, Suite 200
Traverse City, MI 49684
(b) (6) [redacted]
www.Miller-Energy.com

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From:	Larson, Chris
To:	Noles, Jordan
Subject:	RE: RMP Audits due during COVID 19
Date:	Tuesday, April 14, 2020 4:07:35 PM

Mr Noles,

I appreciate your quick response and attached memo.

Thank you for the guidance.

Chris Larson

From: Noles, Jordan <Noles.Jordan@epa.gov>
Sent: Tuesday, April 14, 2020 1:47 PM
To: Larson, Chris <Chris.Larson@terracon.com>
Subject: RE: RMP Audits due during COVID 19

Mr. Larson,

I have attached a memo (COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program) from the EPA. It gives guidance for this situation. It basically says if compliance is not reasonably practicable, facilities should, among other things: identify the specific nature and dates of noncompliance, identify how COVID-19 was the cause of the noncompliance, and document the information, action or condition specified above.

I would say what you laid out in your email is the right approach, just make sure your client documents the reason of non-compliance, if they are not able to complete any of the required elements during the pandemic.

Let me know if you have any more questions.

Thank you,

Jordan Noles
404.562.9105

From: Larson, Chris <Chris.Larson@terracon.com>
Sent: Tuesday, April 14, 2020 9:16 AM
To: Noles, Jordan <Noles.Jordan@epa.gov>; Groendyke, Todd <Groendyke.Todd@epa.gov>
Subject: RMP Audits due during COVID 19

Good morning,

I tried calling the 404-562-9150 number and keep getting disconnected. I found your contact information on the https://www.epa.gov/rmp/epa-regional-rmp-contacts website.

I am working with a client of mine in Region 4 and their RMP program. They have a 3-yr audit that is due to be completed by early June. Due to the current COVID-19 situation, there are safety concerns regarding travel to and from the site in order to complete this audit. Is there any guidance from the EPA regarding the completion of these audits? Should we attempt to complete as much as possible remotely until travel is safe and finish it in person? Wait until the pandemic has subsided and or relaxed federal/state guidance has occurred? Obviously if everything subsides prior to the due date the audit will be completed on time.

Please let me know. I look forward to hearing back from you.

Chris Larson
Staff Engineer - Chemical
Terracon
13400 15th Avenue N, Suite A I Minneapolis, MN 55441
D (763)-489-3153 I F (913)-541-8907 I M (218)-289-5740
Chris.Larson@terracon.com I terracon.com

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Private and confidential as detailed here (www.terracon.com/disclaimer). If you cannot access the hyperlink, please e-mail sender.

IMPROVING COMMUNITIES TOGETHER

June 29, 2020

United States Environmental Protection Agency
Region 1 – New England
Office of Environmental Stewardship
5 Post Office Square – Suite 100
Boston, MA 02109-3912
Attention: David Turin (Mail Code: OES04-3)

Re: Capital Improvement Plan ("CIP")
EPA Clean Water Act Administrative Order – Docket No. CWA-AO-R01-FY19-14
Town of Bristol, RI
NPDES Permit No. RI0100005

Dear Mr. Turin:

On behalf of the Town of Bristol, RI, we respectfully request a time extension to the submission deadline for the **Capital Improvement Plan ("CIP")**, requested by the Agency in correspondence (Administrative Order, Docket No. CWA-AO-R01-FY19-14) received by the Town and dated March 7, 2019. The current deadline for submission of the Capital Improvement Plan (Paragraph IV.5 of the Administrative Order) is June 30, 2020. The Town would like to request extension of the document's submission deadline to **November 30, 2020**. Additional time will be required to complete this task as a direct result of the impacts surrounding the COVID-19 pandemic.

Should you have any questions pertaining to this correspondence, please call (401)-333-2382. Thank you for your consideration in advance.

Very truly yours,
BETA Group, Inc.

Brian K. Wrigley, P.E.
Project Manager

cc: Angelo Liberti, P.E. – Chief, Surface Water Protection, RIDEM

Steven Contente – Bristol Town Administrator

José J. Da Silva – Superintendent, Bristol Water Pollution Control Department

Mike Ursillo, Esq. – Bristol Town Solicitor, Ursillo, Teitz & Ritch, Ltd.

BETA GROUP, INC.
701 George Washington Highway, Lincoln, RI 02865
P: 401.333.2382 | F: 401.333.9225 | W: www.BETA-Inc.com

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

Sent via Electronic Mail (*Dated as shown on electronic signature*)

Steven Contente, Town Administrator
Town of Bristol
10 Court Street
Bristol, Rhode Island 02809
scontente@bristolri.gov

Re: Findings of Violation and Administrative Compliance Order
Docket No. CWA-AO-R01-FY19-14

Dear Mr. Contente:

I am writing in response to the letter to the U.S. Environmental Protection Agency dated June 29, 2020 from Brian Wrigley at BETA Group, Inc. on the Town of Bristol's behalf.

This letter requests an extension to the requirement in the above-referenced Administrative Order for the filing of a Capital Improvement Plan by June 30, 2020 because of delays associated with the Town's response to COVID-19. The Town is requesting an extension until November 30, 2020 for the submission of this plan. With this letter, EPA is granting the requested extension.

Please contact David Turin of my staff at 617-918-1598, or Tonia Bandrowicz, Senior Enforcement Counsel, at (617) 918-1734, if you have questions regarding this letter.

Sincerely,

NEIL HANDLER Digitally signed by NEIL HANDLER
Date: 2020.07.01 14:52:12 -04'00'

Denny Dart, Chief
Water Compliance Section
Enforcement and Compliance Assurance Division

CC: Brian Wrigley, BETA, BWrigley@BETA-Inc.com
Jose DaSilva, Bristol Supt. jdasilva@bristolri.gov
Angelo Liberti, RIDEM, angelo.liberti@dem.ri.gov
David Turin, turin.david@epa.gov
Toni Bandrowicz, bandrowicz.toni@epa.gov

From: Humphris, Allison
To: Bragan, Mary Jo; Smith, Brian; Campbell-Dunbar, Shawneille; Castillo, Jairo
Subject: FW: City of Union City request for schedule modification for UCMR 4 Monitoring
Date: Tuesday, April 7, 2020 5:12:42 PM
Attachments: oecamemooncovid19implications.pdf

-----Original Message-----
From: Humphris, Allison
Sent: Tuesday, April 7, 2020 5:10 PM
To: Tera Bloom <tbloom@unioncityga.onmicrosoft.com>
Cc: UCMR sampling coordinator <UCMR_sampling_coordinator@epa.gov>
Subject: RE: City of Union City request for schedule modification for UCMR 4 Monitoring

Tj,
In response to your request regarding a schedule modification for UCMR 4 monitoring and per the attached COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program policy signed on 3/26/2020 by Susan Bodine, Assistant Administrator for EPA's Office of Enforcement and Compliance Assurance, the EPA appreciates that Union City is making every effort to comply with its environmental compliance obligations for UCMR 4 monitoring. EPA is also in receipt of Union City's detailed explanation as to why the PWS is now out of compliance with the UCMR 4 requirement to complete all monitoring by 12/31/20. In general, the EPA does not expect to seek penalties for violations of routine compliance monitoring in situations where the EPA agrees that COVID-19 was the cause of the noncompliance and the entity provides supporting documentation to the EPA upon request. After this policy is no longer in effect, the EPA expects full compliance going forward.

Please email the UCMR sampling coordinator at UCMR_sampling_coordinator@epa.gov as soon as possible, and provide the following information in your email: PWS Name, PWSID, your reason for needing a schedule change and your new anticipated sample start dates.

AM1 & AM2 should begin as soon as possible to reduce the number of samples taken after the deadline (12/31/20). Your AM3 schedule can be revised, but must be completed in 2020 (8 sampling events, collected every 2 weeks for 4 consecutive months between March and November).

Please cc: me on your request so that the Region will have complete documentation of the status of Union City's non-compliance with UCMR 4 and the PWS's continued efforts to minimize that non-compliance going forward.

Thanks, Allison

Allison Humphris
Drinking Water Section
Water Division, USEPA Region 4
P:(404)562-9305 / F:(404)562-9439

-----Original Message-----
From: Tera Bloom <tbloom@unioncityga.onmicrosoft.com>
Sent: Tuesday, March 31, 2020 9:40 AM
To: Humphris, Allison <Humphris.Allison@epa.gov>
Subject: RE: City of Union City request for schedule modification for UCMR 4 Monitoring

Allison,

We (as everybody) are in a situation with the C-19 that put us even further behind with starting the UCMR4 report. We have been requesting quotes from labs/ vendors. We are required to get 3 quotes and are waiting on our last one so we have failed to take any samples. We are not going to make our deadline. After "in place sheltering" for a week due to the possibility of some employee's kids being exposed the C-19 we are now working furlough days.

We understand how imperative it is to complete these UCMR4 and we understand the importance of ensuring our citizens receive quality water. Can you give me any advice on how to proceed? I was told by a potential vendor to ask for another extension into January 2021 but I know the deadline is December 2020. Any advice is helpful.

Thanks,

Tj
470-389-2473 (c)

-----Original Message-----
From: Humphris, Allison <Humphris.Allison@epa.gov>
Sent: Sunday, March 15, 2020 5:28 PM
To: Tera Bloom <tbloom@unioncityga.onmicrosoft.com>
Cc: Rodney Landrum <rlandrum@unioncityga.org>
Subject: RE: City of Union City request for schedule modification for UCMR 4 Monitoring

CAUTION: This email originated from outside the City of Union City. Maintain caution when opening external links/attachments

Hi Tj,
The list of labs on the UCMR 4 website is the complete list of EPA-approved labs. Labs must request approval and complete a rigorous approval process for UCMR 4, so not all states have approved labs.
Unfortunately, there doesn't appear to be an approved lab in GA. There is one in KY (McCoy & McCoy Laboratories, Inc.), but that may not help much.
Thanks, Allison

-----Original Message-----
From: Tera Bloom <tbloom@unioncityga.onmicrosoft.com>
Sent: Wednesday, March 11, 2020 11:01 AM
To: Humphris, Allison <Humphris.Allison@epa.gov>
Cc: Rodney Landrum <rlandrum@unioncityga.org>
Subject: FW: City of Union City request for schedule modification for UCMR 4 Monitoring

Good Morning!

I was looking at the list of labs provided by the EPD and so far we are looking at utilizing one in Florida. Before we proceed would you happen to know if there is a lab that meets EPD's requirements that is in GA. I noticed the list doesn't have all the states listed.

Thank You,

Tj

From: Tera Bloom
Sent: Thursday, March 05, 2020 11:07 AM
To: Humphris, Allison <Humphris.Allison@epa.gov>
Cc: Rodney Landrum <rlandrum@unioncityga.org>
Subject: RE: City of Union City request for schedule modification for UCMR 4 Monitoring

Allison,

Thank you so much. I definitely will reach out.

Thanks Again,

TJ

From: Humphris, Allison <Humphris.Allison@epa.gov<mailto:Humphris.Allison@epa.gov>>
Sent: Thursday, March 05, 2020 11:00 AM
To: Tera Bloom <tbloom@unioncityga.onmicrosoft.com<mailto:tbloom@unioncityga.onmicrosoft.com>>
Cc: Rodney Landrum <rlandrum@unioncityga.org<mailto:rlandrum@unioncityga.org>>; Lonnie Ferguson <lferguson@unioncityga.org<mailto:lferguson@unioncityga.org>>
Subject: RE: City of Union City request for schedule modification for UCMR 4 Monitoring

CAUTION: This email originated from outside the City of Union City. Maintain caution when opening external links/attachments

Tera,
Thank-you very much. I can see that the requested schedule modification was approved. Please feel free to contact me if additional questions arise during the sampling process.
EPA appreciates Union City's participation in UCMR 4.

Allison Humphris
Drinking Water Section
Water Division, USEPA Region 4
P:(404)562-9305 / F:(404)562-9439

From: Tera Bloom <tbloom@unioncityga.onmicrosoft.com<mailto:tbloom@unioncityga.onmicrosoft.com>>
Sent: Thursday, March 5, 2020 9:45 AM
To: UCMR sampling coordinator <UCMR_sampling_coordinator@epa.gov<mailto:UCMR_sampling_coordinator@epa.gov>>
Cc: Humphris, Allison <Humphris.Allison@epa.gov<mailto:Humphris.Allison@epa.gov>>; Rodney Landrum <rlandrum@unioncityga.org<mailto:rlandrum@unioncityga.org>>; Lonnie Ferguson <lferguson@unioncityga.org<mailto:lferguson@unioncityga.org>>
Subject: City of Union City request for schedule modification for UCMR 4 Monitoring

1.) PWS City of Union City
2.) ID: 1210010
3.) The City of Union City is requesting a schedule modification for the 2020 reporting period. Due to the passing of our previous Water Supervisor and changes in administration this a Monitoring Report we were unaware of until now.
4.) We are currently in the process of looking at the requirements as well as an outside source to contract with to obtain samples and ship them to Pace Analytical Services in Florida to perform the testing. We are expecting a start date of April 6th.

We are also setting up our SDWARS account today and will proceed from there if you need any additional information please feel reach out to us.

Thank You,

[T]

Wenner, Rebecca

From: Wenner, Rebecca
Sent: Monday, May 18, 2020 7:22 AM
To: Lauren Taylor
Cc: Weekley, Erin; Buckner, Edwin
Subject: RE: Viega Request for Information

An extension until July 31, 2020, is granted.

The ownership question would be about the company structure. Who owns the company, is it public or private, and if it is a subsidiary, then who is the parent company.

Rebecca Wenner
USEPA/Region 7/ ECAD/CB/RCRA
11201 Renner Blvd.
Lenexa, Kansas 66219
Phone: 913-551-7644
E-mail: wenner.rebecca@epa.gov

From: Lauren Taylor <Lauren.Taylor@erisolutions.com>
Sent: Friday, May 15, 2020 4:20 PM
To: Wenner, Rebecca <wenner.rebecca@epa.gov>
Subject: Viega Request for Information

Good afternoon Rebecca, thank you again for your time this morning!

As discussed, Viega has been impacted by the COVID-19 pandemic, resulting in reduced operations and staffing. Currently the employees are working reduced work schedules and protocols have been established to minimize unnecessary interactions which are limiting available personnel to aid in the collection of data. Viega is also working on return to work plans for their multiple offices; however, these have not yet been finalized. Due to the unforeseen end to this pandemic and some limitations to assess necessary records, we kindly request an extension to July 31, 2020 to complete all the line items on the Request for Information received on May 6, 2020. Viega will continue to work diligently to provide information as it becomes available.

Lastly, we had some questions related to number 2 on the List of Requested Information. Would you please advise at what level of ownership you are requesting for (a) through (c)? Would this be the site in question, the parent company, or the legal portion of the parent company? Any clarification would definitely be appreciated!

Thank you again and please let me know if the extension is acceptable.

Have a great weekend!

Lauren Taylor
Senior EH&S Consultant
ERI Solutions LLC
Direct: (316) 927-4262
Cell: (720) 937-1119

3555 Stanford Rd. Suite 200 | Fort Collins, CO 80525 | ERIsolutions.com

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From: Dave Madden
To: Storm, Pamela
Cc: Groendyke, Todd; Morgan Ruppe
Subject: RE: Docket No. CAA-04-2020-003(b) - W.H. Bass, Inc.
Date: Monday, May 18, 2020 4:23:02 PM

Good morning Ms. Storm,

We will proceed with paying the fine as established. I signed the document and my CA, Morgan Ruppe, is mailing it back for processing. The directions said to not pay it until we get confirmation back that our signed copy was received. If that is incorrect please advise.

Thank you

Sincerely,
David Madden

W.H. Bass Inc.
11300 Johns Creek Parkway
Suite 100
Duluth, GA 30097
(b) (6) [redacted]
(678) 987-5752 fax

From: Storm, Pamela <Storm.Pamela@epa.gov>
Sent: Wednesday, May 13, 2020 4:08 PM
To: Dave Madden <dmadden@whbass.com>
Cc: Storm, Pamela <Storm.Pamela@epa.gov>; Groendyke, Todd <Groendyke.Todd@epa.gov>
Subject: RE: Docket No. CAA-04-2020-003(b) - W.H. Bass, Inc.
Importance: High

Mr. Madden,

I hope that this e-mail finds you doing well. EPA has considered the letter that you sent requesting reconsideration of this case.
While EPA is not willing at this time to drop this case, if you now believe that the $8,602 settlement that you previously agreed to is not a penalty that W.H. Bass can afford, you can claim an inability to pay the penalty. If this is something that you wish to do, please let me know. W.H. Bass will need to submit 5 years of corporate tax returns along with the inability to pay claim. Our financial experts will then determine what penalty W.H. Bass, Inc. can afford to pay without jeopardizing its business.

Please let me know if W.H. Bass, Inc. would like to submit an inability to pay claim for this penalty.

Please call me if you have any questions.

Thank you,

Pamela Storm (404) 562-9197

From: Dave Madden <dmadden@whbass.com>
Sent: Friday, April 03, 2020 1:05 PM
To: Storm, Pamela <Storm.Pamela@epa.gov>
Cc: Dave Lee <dlee@whbass.com>; Morgan Ruppe <mruppe@whbass.com>
Subject: Docket No. CAA-04-2020-003(b)

Good afternoon Ms. Storm,

I hope you and your family are well in this difficult time. I am attaching a letter respectfully requesting reconsideration of a case. Please see attached. I am mailing a copy to Mr. Russo as I do not have his e-mail.

Thank you for your consideration,

Sincerely,
David Madden

W.H. Bass Inc.
11300 Johns Creek Parkway
Suite 100
Duluth, GA 30097
(b) (6) [redacted]
(678) 987-5752 fax

From:	McFadden, Kelly
To:	McClintock, Katie; Jencius, Morgan; Marshalonis, Dino
Cc:	Familiare, Christopher S.; Hardesty, Doug
Subject:	RE: EPA Forms
Date:	Monday, April 13, 2020 1:45:08 PM
Attachments:	image001.jpg image002.gif

Update:

Chris was able to talk with Elizabeth, Yakama Tribal Env Mgr (as well as JD, YFP CFO) last week and said the enforcement division has been informed of the situation (but did not commit to you getting back with them).

They understand that:

- The TV Permit cannot be administratively extended and once it expires in September the facility would be operating without a permit if a new one can't be issued in time.
- They need to submit an application as soon as possible in order for us to start working on a new permit.

She said that the tribe is working very limited hours (a few hours a week) and that the previous mgr that worked on the permit is no longer with the company. (b) (5) Deliberative

Kelly McFadden, Branch Chief
U.S. EPA Region 10
Air Permits and Toxics Branch
1200 - 6th Avenue, Suite 155, 15-H13
Seattle, WA 98101
206-553-1679

From: McClintock, Katie <McClintock.Katie@epa.gov>
Sent: Monday, April 13, 2020 10:29 AM
To: McFadden, Kelly <McFadden.Kelly@epa.gov>; Jencius, Morgan <jencius.morgan@epa.gov>; Marshalonis, Dino <Marshalonis.Dino@epa.gov>
Cc: Familiare, Christopher S. <familiare.christopher@epa.gov>; Hardesty, Doug <Hardesty.Doug@epa.gov>
Subject: RE: EPA Forms

Kelly, I am not sure when we will be able to respond. I'm cc'ing Morgan for his thoughts on appropriate response and Dino to track the request.

Katie McClintock
Section Chief
Air Toxics and Enforcement Section
Enforcement and Compliance Assurance Division

U.S. EPA Region 10
1200 Sixth Ave, Suite 155
Mail Code 20-C04
Seattle, WA 98101
Phone: (206) 553-2143

From: McFadden, Kelly <McFadden.Kelly@epa.gov>
Sent: Friday, April 10, 2020 1:33 PM
To: McClintock, Katie <McClintock.Katie@epa.gov>
Cc: Familiare, Christopher S. <familiare.christopher@epa.gov>; Hardesty, Doug <Hardesty.Doug@epa.gov>
Subject: FW: EPA Forms
Importance: High

Katie,
I'd like for Chris to reply back to Elizabeth today that the Air Compliance Section will be in contact with her soon.

It's important that YFP knows that their TV permit expires on 9/29/20 and cannot be administratively extended because the statute requires a complete application 6 months prior to expiration. The agency cannot provide an extension. Since this is a tribally owned facility, the enforcement office can decide what to do if they continue operating without a permit. Please encourage them to get an application in ASAP.

Thank you

Kelly McFadden, Branch Chief
U.S. EPA Region 10
Air Permits and Toxics Branch
1200 - 6th Avenue, Suite 155, 15-H13
Seattle, WA 98101
206-553-1679

From: Hardesty, Doug <Hardesty.Doug@epa.gov>
Sent: Friday, April 10, 2020 11:37 AM
To: McClintock, Katie <McClintock.Katie@epa.gov>
Cc: McFadden, Kelly <McFadden.Kelly@epa.gov>; Familiare, Christopher S. <familiare.christopher@epa.gov>
Subject: FW: EPA Forms

Katie,

I just left you a voice message about this email (and a voice message Elizabeth left for Chris F). I'd like to point Elizabeth to the right person to discuss relief due to Covid for a late renewal application for Yakama Forest Products (due 3/29, but not yet rec'd). Can you tell me who that should be? The email string below provides a little background on the situation.

It would be best to get back to her today.

Doug Hardesty
208.378.5759
Air Permit Program Lead
Air Permits & Toxics Branch, Air & Radiation Division, Region 10, U.S. EPA
950 W Bannock St, Suite 900, Boise, Idaho 83702

From: Elizabeth Sanchey <Elizabeth_Sanchey@Yakama.com>
Sent: Friday, April 10, 2020 11:46 AM
To: Familiare, Christopher S. <familiare.christopher@epa.gov>; JD Mann <jd@yakama-forest.com>; 'Steve Rigdon' <steve@yakama-forest.com>
Cc: Account Rep <accountrep@yakama-forest.com>; Terry Connolly <terry@yakama-forest.com>; Noelle Saluskin <Noelle_Saluskin@Yakama.com>; Hardesty, Doug <Hardesty.Doug@epa.gov>; McFadden, Kelly <McFadden.Kelly@epa.gov>
Subject: Re: EPA Forms

Hello Christopher,

I just left you a voicemail. I wanted to talk with you about requesting an extension for the Title V permit. Due to COVID, both YFP and Yakama Nation are working with skeleton crews, much like EPA, a lot of us are working from home which as you know adds addition difficulty trying to get things processed.

Please give me a call on my cell phone at (b) (6) [redacted]

Thank you.

Elizabeth Sanchey

Yakama Nation

604 W. 4th Ave. Suite D

P.O. Box 151

Toppenish, WA 98948

509-865-5121 ext 6038

(b) (6) [redacted] cell

From: Familiare, Christopher S. <familiare.christopher@epa.gov>
Sent: Thursday, April 9, 2020 2:30:50 PM
To: JD Mann; 'Steve Rigdon'
Cc: Account Rep; Terry Connolly; Elizabeth Sanchey; Noelle Saluskin; Hardesty, Doug; McFadden, Kelly
Subject: RE: EPA Forms

JD,

As I mentioned in our phone call earlier this morning, I have attached a copy of YFP's initial title V application package that was submitted to Region 10.

Please don't hesitate to reach out to me if you have any questions or concerns.

Christopher Familiare
Environmental Engineer | Air Permits and Toxics Branch
U.S. EPA Region 10
1200 6th Ave, Suite 155, 15-H13
Seattle, WA 98101
(206)-553-1250 | familiare.christopher@epa.gov

From: Familiare, Christopher S.
Sent: Thursday, April 9, 2020 10:54 AM
To: JD Mann <jd@yakama-forest.com>; 'Steve Rigdon' <steve@yakama-forest.com>
Cc: Account Rep <accountrep@yakama-forest.com>; Terry Connolly <terry@yakama-forest.com>; Elizabeth_Sanchey@Yakama.com; Noelle_Saluskin@Yakama.com; Hardesty, Doug <Hardesty.Doug@epa.gov>; McFadden, Kelly <McFadden.Kelly@epa.gov>
Subject: RE: EPA Forms

Hi JD,

Thank you for the response, however this is not the correct information that I was inquiring about. As stated in 40 CFR 71.5(a)(1)(iii), I am requesting a digital copy of Yakama Forest Products title V air operating permit renewal #2 application that was due by March 19, 2020, 6 months before the

expiration of the current permit which expires on September 29, 2020. Please see the attachment reminder letter, dated March 4, 2020, to YFP's General Manager, Steve Rigdon, from EPA R10's Air Permits & Toxics Branch Chief, Kelly McFadden.

Forms for a title V renewal application can be found at: https://www.epa.gov/title-v-operating-permits/epa-issued-operating-permits .

YFP's current title V permit (No. R10T5120000) can be found at: https://www.epa.gov/caa-permitting/yakama-forest-products-title-v-air-permit

Please let me know if you have any questions, comments or concerns. Thank you.

Christopher Familiare
Environmental Engineer | Air Permits and Toxics Branch
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From: JD Mann <jd@yakama-forest.com>
Sent: Wednesday, April 8, 2020 12:12 PM
To: Familiare, Christopher S. <familiare.christopher@epa.gov>; 'Steve Rigdon' <steve@yakama-forest.com>
Cc: Account Rep <accountrep@yakama-forest.com>; Terry Connolly <terry@yakama-forest.com>
Subject: EPA Forms

Hello Christopher,

Here are the copies of the forms plus a copy of the check we sent in.
Let me if know if you need anything else.

Thank you,

JD Mann
CFO
Yakama Forest Products
3191 Wesley Rd. - P.O. Box 489
White Swan, WA 98952
Phone: 509-874-2901 Fax: 509-874-8884