



**Environmental
Protection**

March 19, 2020

Vincent Sapienza
Commissioner

Mary vonWergers, Esq.
Office of General Counsel
NYC Department of Environmental Conservation
Office of Legal Affairs
625 Broadway
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Marcella Eckels
Deputy General Counsel

Re: CSO Order on Consent (DEC Case No. C02-20140314-01, modification of
DEC Case No. CO2-20000107-8)
All Open Appendix A Milestones
Notice of Force Majeure and Request for Modification to Open
Waters/Citywide LTCP

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Dear Ms. vonWergers:

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In accordance with Section VI of the above-referenced Order on Consent (“CSO Order”) the New York City Department of Environmental Protection (“DEP”) hereby submits to the New York State Department of Environmental Conservation (“DEC”) a written 20-day notification of a Force Majeure event that has the potential to impact DEP’s ability to meet all open construction milestones and Long-term Control Plan (“LTCP”) projects listed in Appendix A of the Order. As described below, the Force Majeure event can be categorized as an “Act of God” and is related to delays associated with the recent outbreak of the novel coronavirus (COVID-19). COVID-19 has had and continues to have a devastating impact on human health and life around the globe, with significant repercussions for businesses worldwide.

As you are aware, on March 7, 2020, New York State Governor Andrew Cuomo declared a state of Emergency in New York through Executive Order No. 202. On March 13, 2020 the federal government declared a nationwide emergency pursuant to Sec. 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207, Release number HG-20-017. As has been reported in numerous news reports, the epidemic and government measures taken in response have had a significant impact, both direct and indirect, on businesses and commercial relations, as worker shortages have occurred; supply chains have been disrupted; facilities and production have been suspended; and demand for certain goods and services have fallen.

At this time DEP has identified a direct impact from the Force Majeure

event on DEP's ability to submit the Open Waters/Citywide LTCP ("Citywide LTCP") by March 31, 2020 and on the construction at multiple construction sites as described below. DEP continues to monitor progress on all CSO Order projects and will keep DEC informed of any additional impacts from the Force Majeure.

Milestone Delay

All open milestones and projects listed in Appendix A of the Order may be impacted by this Force Majeure event and the full extent of delays is not currently known at this time. However, at this stage, DEP is able to inform DEC of the following known delays to Milestone XIII.A. Open Waters/Citywide Long Term Control Plan submittal and Milestone XII.C.9 – Construction Completion for 26th Ward Preliminary Treatment Reliability Improvements to PSTs #1 to 4 and Construction of PST #5¹ ("Contract 26W-20"), and Milestone IX.A.4 - Modifications to CSO-29 and CSO-29A, Construction Completion. To date, the prime contractors on these two projects have notified DEP that they are experiencing impacts to labor or fabrication and delivery of materials, equipment or other work items.

DEP will take all reasonable steps to mitigate delays to the project schedules and milestone dates and will continue to update DEC on the status of any impacts to the milestones. The full impact of this Force Majeure event and whether DEP will be able to mitigate any delays or other impacts to compliance with the CSO Order is unknown at this time.

Long Term Control Plan

As of the date of this letter, DEP has identified a delay in completing the Citywide LTCP, by the March 31, 2020 deadline to submit the LTCP to DEC. The unprecedented nature of the Force Majeure event continues to develop and impact daily life in New York City creating significant uncertainty and concern about maintaining sufficient staffing and access to resources to finalize the LTCP. DEP has currently initiated a telecommuting protocol and a majority of DEP key staff assigned to LTCP development have had to prioritize functions affected by the COVID-19 pandemic. Therefore, DEP requests that DEC extend the March 31, 2020 deadline by 60 days to May 30, 2020.

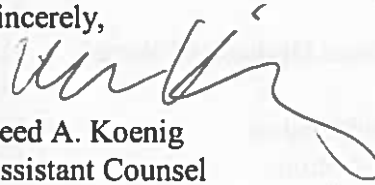
DEP will keep DEC informed as to the extent of any delays to these projects and any other projects directly related to this Force Majeure event, efforts to mitigate such delays, and once identified, the projected compliance with any impacted CSO Order milestone dates. DEP will provide additional information regarding the delay, mitigation measures, and the impact of the project construction schedule for the milestones referenced herein and any additional impacted milestones, if any, as soon as practicable after they are identified. At this time, DEP respectfully requests that DEC modify the date for submittal of the Citywide LTCP to May 30, 2020.

If you have any questions or would like to discuss further, please contact me at

¹ Please note that PST# 5 was completed and accepted for service as of June 17, 2019.

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Sincerely,



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