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December 15, 2011

Mr. Sean Ireland
Water Programs Enforcement Branch
Water Management Program
US EPA Region 4
Atlanta Federal Center
61 Forsyth Street SW
Atlanta, GA 30303

Mr. Gary Levy
Division of Enforcement
Department of Environmental Protection
300 Fair Oaks Lane
Frankfort, KY 40601

Subject: Wet Weather Impacts on Construction Progress
Civil Action No. 3:08-cv-00608-CRS

Gentlemen:

During the calendar year 2011 the Louisville area has experienced record levels of precipitation. April 2011 was the wettest April on record, with over 19 inches of rain recorded in some areas of the county. As of December 12, 2011, over 65 inches of rain have fallen in Louisville, making 2011 the wettest year ever recorded. These record rains came during periods of intense construction activity at a number of our Integrated Overflow Abatement Plan (IOAP) projects, causing unforeseen delays in some of these projects.

During your site inspection trip in May, 2011, we toured the Derek R. Guthrie Water Quality Treatment Center (WQTC) expansion projects, and discussed the impact that weather had already had on the projects. We discussed the extraordinary measures being taken by our Contractors to stay on schedule, including three-shift work schedules for iron-workers on the pumping project. You advised us that the milestone dates listed in the Amended Consent Decree could not be changed without going through a formal consent decree amendment process, but that you had administrative discretion to consider mitigating circumstances on individual construction project schedules if the compliance dates of the Amended Consent Decree are still met.

The Amended Consent Decree requires the constructed overflow at the Southeast Diversion (SED) structure to be closed not later than December 31, 2011. For this to occur, the Interim Sanitary Sewer Discharge Plan (ISSDP) defined a number of projects to increase the capacity of downstream systems, including wet weather treatment pumping, storage, and treatment expansions to the Derek R. Guthrie WQTC. The WQTC expansion described in the ISSDP was broken into four discrete construction contracts that have progressed to the point that **we will be able to close the SED constructed overflow on schedule**, even though the suite of WQTC projects may not all have achieved full substantial completion as defined in the construction contract documents.



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While the WQTC projects were initiated to provide downstream capacity to allow elimination of the SED constructed overflow, the final sizing of the pumping, storage, and treatment facilities was based on capturing additional flows from the Hike's Point and Upper Middle Fork Trunk watersheds that do not currently flow to the SED. Since these flows are not currently connected, MSD does not need the full capacity of the planned WQTC pumping, storage, and treatment facilities to meet the Amended Consent Decree requirement to close the SED constructed overflow.

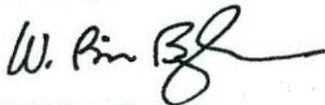
As we discussed in May, it is MSD's intent to provide two separate certifications relative to the closure of the SED constructed overflow. In January, 2012, we will certify closure of the SED constructed overflow, in accordance with the requirements of the Amended Consent Decree. In June, 2012, we will certify the substantial completion of the entire suite of WQTC expansion projects as defined in the construction contract documents.

If you have any questions about this matter, or would like to discuss the form or format of these two certifications we are available at your convenience.

I certify under penalty of law that this document and all attachments were prepared under our 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.

If you have questions or need additional information, please contact me at (502) 649-3850.

Sincerely,



W. Brian Bingham
Regulatory Services Director

cc: H. J. Schardein, Jr.

Paula Purifoy

Laurence J. Zielke