U.S. Department of Justice

Environment and Natural Resources Division

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January 25, 2008

Mr. Henry Diamond
Beveridge & Diamond
1350 I Street, N.W.
Washington, D.C. 20005

Re: Preparation for Upcoming Quarterly Meeting and Response to Certain Force Majeure Requests

Dear Henry:

We were pleased with the progress that the Board reported during our last quarterly meeting in Washington and in your letter of July 11, 2007, particularly with respect to the repairs and upgrades being made to the sewage collection system and the wastewater treatment plant that incurred damages from Katrina. We were also happy to hear that a number of funding issues are in the process of being resolved, though, of course, we are mindful of the continued challenges of providing quality sewage and water services to the City of New Orleans.

Although not unexpected, we were disappointed that the Board was, and apparently still is, unable to provide us with a realistic schedule for completion of the long-term repairs to the collection system basins. The Board's inability to establish such a schedule has made it difficult to modify the deadlines in the Consent Decree, some of which have already been exceeded, and to continue to extend force majeure protection that in some instances has been extended repeatedly and indefinitely. At the last meeting, we explained that we were concerned about the open-endedness of some of the Board's force majeure requests, including some of those made in your letter of July 11. We explained that, given the length of time since Katrina, we could not continue to justify the longer, more open-ended force majeure requests without some quid pro quo. Specifically, we said that we would consider additional force majeure extensions of reasonable lengths of time if we were satisfied that the Board is committed to undertaking, or to continue to undertake, certain interim measures that are integral to the process for completing the long-term basin renovations and to promoting overall compliance with the Consent Decree.

On that score, as you know, Ted Palit of EPA Region 6 conducted an extensive, week-long site assessment throughout the City of New Orleans during the week of October 22, 2007. During that period, Mr. Palit observed the status of the Katrina recovery efforts and the on-going progress related to compliance with the Consent Decree. Through consultation with Mr. Palit, the EPA Region 6 Office of General Counsel and Headquarters EPA, we have developed a list of significant interim measures that we believe the Board can and should undertake (or continue to undertake) during this "transition" period prior to being able to fully meet the more long-term Consent Decree requirements. In exchange for conducting such interim measures during this "transition" period, the United States will agree to continue to extend force majeure protection during the corresponding period for certain already missed and impending deadlines under the

Consent Decree, particularly as they relate to the schedule for basin renovation.[1]

Specifically, we request that the Board undertake – or agree to continue to undertake – the following interim measures beginning immediately following our upcoming meeting in New Orleans on February 14, and complete such measures in the time period noted, as follows:

1. Renovate and/or repair each pump/motor and electrical equipment in each of the 23 lift stations that were operating with Entergy power (not portable pumps) as of the week of October 22, 2007. Each pump/motor in each of these lift stations should be in operating condition, including a functional SCADA system, no later than August 15, 2008. Adequate hazard mitigation measures shall be considered in these lift stations to maintain operating conditions during a catastrophic situation.

2. Complete construction of five partially hazard mitigated lift stations (i.e., Folgers, Franch and Florida, American Marine, and Venetian Isles), as already planned by the Board, including the associated SCADA system, no later than November 17, 2008.

3. Complete construction of five completely hazard mitigated lift stations (i.e., Michoud. Village D'Lest, Lamb, MECO, and Southern Scrap), as already planned by the Board, including the associated SCADA system, no later than August 15, 2009.

4. Restore pumps, motors, electrical operation, and the associated SCADA system of the remaining 32 or 33 lift stations that are currently operating on portable pumps, no later than August 15, 2008. Adequate hazard mitigation measures shall be considered in these lift stations to maintain operating conditions during a catastrophic situation.

5. Restore the telephone line from Station D Annex Building to Station A to enable 24 hour monitoring of the SCADA system, no later than August 15, 2008.

6. Construct additional force main(s) to establish dependable redundancy to pump influent wastewater from Station A and Station D to the East Bank Wastewater Treatment Plant, no later than November 17, 2008. This redundancy will be needed to repair the force mains due to Katrina damages and during future emergency situations.

7. Procure and construct auxiliary diesel/electric power facilities at the East Bank Wastewater Treatment Plant to provide dependable electrical services during a catastrophic situation, no later than November 17, 2008.

8. Provide a schedule to construct facilities to protect the East Bank Wastewater Treatment Plant facilities from one hundred year flood, no later than May 15, 2008.

9. Provide a revised, realistic schedule to address the remaining Consent Decree requirements including renovation of the remaining basins, no later than May 15, 2008.

10. Complete repairs to fluidized bed incinerator no later than August 15, 2008.

We are happy to discuss each of these interim measures with you during our upcoming meeting next month, as well as how best to memorialize an interim agreement along these lines. To facilitate that discussion, it would be very helpful if we could have the benefit of your initial thoughts on this matter within the next week to ten days, prior to our meeting. Please feel free to

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[1] As discussed in previous correspondence and meetings, force majeure requests for unauthorized and non-compliant discharges are handled on a case-by-case basis.

contact me at your earliest convenience.

In addition, during our last quarterly meeting, we discussed the Board's force majeure requests raised in your letter of July 11, 2007, and the United States said that it would agree to a number of those more limited requests in light of Katrina. To memorialize that discussion, we have agreed to the Board's limited force majeure requests on pages 4-7 of your July 11 letter, with respect to the Sewer Overflow Action Plan response time of 24 hours, and the Preventive Maintenance requirements, as follows: sanitary sewer collection system line inspection 9% annual requirement for 2005 and 2006; sanitary sewer collection system line inspection 100% cumulative cycle, extended through 6/21/09 and beginning again 6/22/09 through 6/21/17; sanitary sewer collection system manhole inspection 25% annual requirement for 2005 and 2006; sanitary sewer collection system manhole inspection 100% requirement in 3.3 years, extended through 8/17/09; sewage pump station preventive maintenance for 2005 and 2006; air release valve inspection and maintenance requirement for 2005 and 2006; force main isolation valve exercise and inspection requirement for 2005 and 2006; and force main alignment inspection requirement for 2005 and 2006.

We look forward to a productive discussion and to making continued progress during our meeting next month, and, hopefully, over the next few weeks as well.

Sincerely,

Arnold

Arnold S. Rosenthal
Senior Counsel

cc: Ellen Chang
Elyse DiBiagio-Wood
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Ted Palit