

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of the General Counsel

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March 27, 2020

SENT VIA EMAIL

Mr. Matthew Ruderman, Esq.
Assistant Counsel
Bureau of Legal Affairs
New York City Department of Environmental Protection
59-17 Junction Boulevard
Flushing, NY 11373

Re: Order on Consent (CSO Order), DEC Case #CO2-20110512-25, modification to DEC Case #CO2-20000107-8
XIII. City-Wide LTCP, A. Submit Approvable City-Wide LTCP
Modification Request for Milestone Extension

Dear Mr. Ruderman:

On March 19, 2020, the New York City Department of Environmental Protection (City) submitted to the New York State Department of Environmental Conservation (Department) a Notice of Force Majeure and Modification Request for the City-Wide CSO Long-Term Control Plan (LTCP). According to the Notice of Force Majeure, the outbreak of COVID-19 and associated declarations of state and national emergencies are impacting the staffing levels and resources available to complete the City-Wide LTCP. As such, the City requested a 60-day extension to Appendix A, Milestone XIII.A for submittal of the City-Wide LTCP, from March 31, 2020 to May 30, 2020.

The Department responded in a separate letter on March 26, 2020 to the Notice of Force Majeure related to the COVID-19 outbreak. In that response letter, the Department stated that it would make a determination regarding the Force Majeure claim for specific CSO Order milestones on a case-by-case basis, based on information provided after a 60-day review period. However, in the Notice of Force Majeure, the City stated that it had already identified a direct impact of the COVID-19 pandemic on completion of the City-Wide LTCP. In particular, staff that are normally assigned to work on the City-Wide LTCP have had to prioritize functions affected by the COVID-19 pandemic, in addition to telecommuting. For example, the day before submitting the Force Majeure, in a technical meeting with the Department, the City stated that it had received over 1,000 comments on the LTCP but the availability of staff to prepare responses was being impacted due to reprioritization of workload associated with the COVID-19 pandemic. Moreover, the City stated it would not be possible to obtain executive approval to submit the LTCP because its executive team was responding to the COVID pandemic. Lastly, the Department requested specific content to be included in the City-Wide LTCP during the March 18 meeting, which included revisions to the submittal that the City had not anticipated to complete at this time.

In light of limited availability of City staff during the COVID-19 pandemic to complete the preparation of the City-Wide LTCP, the Department hereby determines that the COVID-19 is a valid Force Majeure with respect to Appendix A Milestone XIII.A and approves the modification request for extension of Milestone XIII.A; the new milestone date is May 30, 2020. It is the Departments' understanding this extension request is based on the City's current assessment of the potential delays to submittal of the City-Wide LTCP. The City shall keep the Department informed of any updates to this assessment and take all reasonable steps to mitigate the delays to this milestone.



If you have any questions, please feel free to call me at (518) 596-9156.

Sincerely,


Mary vonWergers

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