

**STATE DIRECT LOAN
DUE DILIGENCE REQUEST FORM
(Governmental Participant)**

The following information is requested from each participant (“Participant”) that is applying for financial assistance from the Missouri Department of Natural Resources - Water Protection Program – Financial Assistance Center. The information is also needed as part of the due diligence review required by federal and state securities laws. It is necessary to obtain the following information for the Missouri Department of Natural Resources to assess loan participant’s financial background information. By executing this questionnaire, the Participant certifies that responses provided are true, correct, complete and do not contain material misstatements or omissions.

If one of the following questions is not applicable, please indicate so. Attach additional sheets of paper, as needed, or extend the form electronically, as needed, to answer the following questions. Return the completed form to:

Joe Boland
Missouri Dept. of Natural Resources, WPP – FAC
P.O. Box 176
Jefferson City, MO 65102-0176
Phone: (573) 751-1192
Fax: (573) 751-9396

Please confirm that the following description of project to be financed with the State Direct Loan is accurate:

[insert project description from DNR’s FNSI] The District’s rate setting process as approved by the Rate Commission assumes the use of a combination of SRF and stand alone debt totaling \$75 million for fiscal year 2010. This loan request represents needs that the District has already contracted for in the first half of the fiscal year for projects that are on the current fiscal year Intended Use Plan.. There are four projects from our capital improvement program that are on the fundable list : Lemay Wastewater Treatment Plant Wet Weather Expansion \$11 million, L-52 Pump Station modifications \$4 million, inflow and infiltration project pilot study \$8 million of the \$16 million approved million and the Missouri River Wastewater Treatment Plant Digester Project \$11 million that is on the ARRA intended use plan fundable list for both loan and grant funding.

I. General Information

1. Legal Name of Participant: The Metropolitan St. Louis Sewer District
2. Nature of governmental entity of the Participant (county, city, village, public water district, public sewer district, or combination):
Sewer District
3. Authorized Representative/Daily Contact Person: Karl Tyminski
Address; 2350 Market Street St. Louis MO 63103
Phone #: 314-768-6222
Fax #: 314-768-2701

E-mail: kjtymi@stlmsd.com

2. Does any member of the Participant's governing body or any of its key administrative personnel have a potential conflict of interest regarding the project to be financed with the Direct Loan by reason of such membership or position?

Yes

No

If yes, state whom and the nature of such conflict. _____

3. Date of Participant's fiscal year end: June 30

4. Participant's Taxpayer Identification Number:

43-6011991

5. Has the Participant ever defaulted on a bond issue?

Yes

No

If yes, please describe: _____

6. Does the Participant's last annual audit include a finding that the Participant is in non-compliance with any bond covenants contained in any bond ordinances or resolutions?

Yes

No

If yes, please describe: _____

7. Has the Participant ever failed to comply with any of the informational reporting responsibilities contained in any financing document or instrument intended to comply with the requirements of Rule 15c2-12 of the Securities and Exchange Commission (regarding municipal securities disclosure)?

Yes

No

If yes, please describe: _____

8. Participant's local bond counsel:

Name: Gilmore & Bell PC

Address: One Metropolitan Square
211 N. Broadway, Suite 2350
St. Louis MO 63102

Phone #: 314-436-1000

Fax #: 314-436-1166

E-mail: rballsrud@gilmorebell.com

Name: White Coleman & Associates, LLC

Address: 500 North Broadway, suite 1300
St. Louis MO 63102-2110

Phone #: 314-621-7676

Fax #: 314-621-0959

E-mail: whitecoleman@whitecoleman.net

E-mail: smcfarind@whitecoleman.net

9. Participant's financial advisor, if any:

Name: Public Financial Management ("PFM")

Address : 2600 Grand Avenue, Suite 214, Terrace Place
Des Moines, Iowa 50312

Phone #: 515-243-2600

Fax #: 515-243-6994

E-mail: vandaj@pfm.com

E-mail: poolert@pfm.com

Name: Valdés & Moreno, Inc.
Address: 1600 Genesee Street, Suite 630
Kansas City, MO 6402-1082
Phone #: 816-221-6700 Fax #: 816-221-1310
E-mail: marco@valdesmoreno.com
E-mail: bcookson32@gmail.com

II. Debt and Authorizing Information

1. What is the source of repayment of the Participant's bonds securing the direct loan:
- Combined Waterworks and Sewerage System Revenues
 - Waterworks System Revenues
 - Sewerage System Revenues
 - Unlimited Property Tax Revenues (General Obligation)
 - Capital Improvement Sales Tax Revenues (Bonds)
 - Capital Improvement Sales Tax Revenues (annual appropriation) [note – must also check another box]
 - Other (describe):
-

2. Is there a limitation on the final maturity date for the Participant's bonds imposed by election or ordinance?

- Yes
- No

If yes, please describe. Only that imposed by state law or by the SRF program.

4. Please attach a list of the Participant's outstanding bonds that are secured by the same source of revenues that will secure repayment of the direct loan indicated in II-1 above, showing outstanding balance, source of payment, and principal and interest payable by fiscal year

The MSD Sewer Service charge Revenue has been pledged to all the bond issues on the attached schedule of MSD debt dated June 30, 2009. The 2004A, 2006C and 2008A issues are senior lien debt. The 2005A, 2006 A & B and 2008B issues are subordinate lien debt securities.

5. Describe the amount and type of any authorized but unissued bond debt for the type of bonds secured by the same source of revenues that will secure repayment of the direct loan, including the bonds to be issued in connection with this financing.

In August 2008 MSD successfully passed a bond authorization election for \$275 million. To date \$40 million has been issued against that authorization. With this request an additional \$214 million of authorization remains after this loan including the stimulus component. (\$275mm; less \$30mm 2008A issue, \$23mm; 2009A loan. Less \$8mm stimulus loan)

5. If sales tax is an anticipated source of repayment for the direct loan, list and describe all sales taxes imposed by the Participant (including the sales tax described above as a source of repayment for this financing): **Not Applicable**

Please provide a copy of the ballot authorizing such sales tax(es) and ordinance(s) establishing the sales tax(es). **Not Applicable**

6. Does the Participant anticipate issuing any bonds simultaneously with or within one year after the bonds to be issued by the Participant in connection with this direct loan?

Yes

No

If yes, please describe and provide an official statement, if available: The District is contemplating a \$52 million Build America Bond issue in the November 2009 to February 2010 timeframe.

III. Project and Finance Structure Information

1.A. Amount of financial assistance required:
Lemay Wastewater Treatment Plant Wet Weather Expansion

Description	Direct Loan Amount	Other Sources (SRF Oct 2008 Issue)	Other Sources (Possible Build America Bond Issue after srf loans are exhausted)	Other Sources (Cash Pay Go)	Total Project Cost
Planning and design	\$ -			\$4,147,600	\$4,147,600
Reimbursement of prior construction	\$10,644,547				10,644,547
Refinance outstanding bonds/notes					
Project construction (including construction engineering)	\$260,369	\$39,351,102	\$19,650,000	\$27,644,002	\$86,905,473
Capitalized interest (through _____)					
Local bond counsel *	\$19,872	\$50,000	\$50,000		\$119,872
Local financial advisor*	\$4,783	\$25,000	\$50,000		\$79,783
Other (including cost of DNR construction permit)*	\$70,429	\$573,898	\$250,000		\$894,327
Total	\$11,000,000	\$40,000,000	\$20,000,000	\$30,792,104	\$101,697,024

* Pro rated

Note: The Participant's of Direct Loan Program costs of issuance will be added to the total above. (DNR's program counsel and Escrow Agent).

1B. Amount of financial assistance required: L52 Pump Station

Description	Direct Loan Amount	Other Sources (SRF 2006 B)	Other Sources (Cash Pay Go)	Total Project Cost
Planning and design	\$		\$575,000	\$575,000
Reimbursement of prior construction	\$1,618,517			\$1,618,517
Refinance outstanding bonds/notes				
Project construction (including construction engineering)	\$1,253,126	\$14,193,132	\$2,320,000	\$17,766,258
Capitalized interest (through _____)				
Local bond counsel	\$1,470	\$26,500		\$27,470
Local financial advisor	\$1,739	\$15,000		\$16,739
Other (including cost of DNR construction permit)	31,400	\$216,426		\$247,826
Total	\$4,000,000	\$14,205,000	\$2,895,000	\$21,100,000

1C. Amount of financial assistance required: Pilot **Inflow & Infiltration Study**

Description	Direct Loan Amount	Other Sources (Cash Pay Go)	Total Project Cost
Planning and design			
Reimbursement of prior construction	\$679,577		\$679,577
Refinance outstanding bonds/notes			
Project construction (including construction engineering)	\$7,246,388	\$500,000	\$7,746,388
Capitalized interest (through _____)			
Local bond counsel	\$14,452		\$14,452
Local financial advisor	\$8,696		\$8,696
Other (including cost of DNR construction permit)	\$51,287		\$51,287
Total	\$8,000,000		\$8,500,000

1D. Amount of financial assistance required: **Missouri River Digester Project (Fundable Stimulus Project)**

Description	Direct Loan Amount	Other Sources (Grant Funded)	Total Project Cost
Planning and design	\$359,764	\$135,237	\$495,000
Reimbursement of prior construction			
Refinance outstanding bonds/notes			
Project construction (including construction engineering)	\$7,620,976	\$2,864,763	\$10,485,739
Capitalized interest (through _____)			
Local bond counsel			
Local financial advisor			
Other (including cost of DNR construction permit)			
Total	\$7,980,739	\$3,000,000	\$10,980,739

2. Structure for Participant bonds

Amortization Method: Standard - Level debt.
 Non-standard: Provide proposed amortization and rationale.

Are revenues available to pay interest on the Participant's bonds from date of issuance?

Yes

No

If no, please describe special circumstances: _____

Will this financing utilize all remaining voter authorization?

Yes

No

3. Anticipated Project Schedule:

Please provide a separate project schedule for each project that will be completed pursuant to a separate construction contract.

Lemay Wastewater Treatment Plant Wet Weather Expansion

Event	Projected Date (month/year) Contract 1	Projected Date (month/year) Contract 2
Advertising for Bids	5/1/07	
Bid Opening	6/29/07	
Construction Contract Award	9/10/07	
Initiation of Operations*	12/30/09	
Construction Completion	4/29/10	
Project Completion	4/29/11	

L-52 Pump Station

Event	Projected Date (month/year) Contract 1	Projected Date (month/year) Contract 2
Advertising for Bids	2 nd week Nov. 2006	
Bid Opening	3 rd week Dec. 2006	
Construction Contract Award	3/8/07	
Initiation of Operations*	February 2010	
Construction Completion	April 2010	
Project Completion	Oct. 2010	

Pilot I & I Study

Event	Projected Date (month/year) Contract 1	Projected Date (month/year) Contract 2
Advertising for Bids	No, professional Service	
Bid Opening	No, professional Service	
Construction Contract Award	No, professional Service	
Initiation of Operations*	7/1/2009	
Construction Completion	No, professional Service	
Project Completion	10/31/2010	

Missouri River Treatment Plant Digester Project ARRA Project

Event	Projected Date (month/year) Contract 1	Projected Date (month/year) Contract 2
Advertising for Bids	8/4/09	
Bid Opening	9/15/2009	
Construction Contract Award	11/15/09	
Initiation of Operations*	2/26/12 (staged with final for 2/26/12)	
Construction Completion	4/26/12	
Project Completion	10/26/12	

* "Initiation of operations" is not project completion. It is the date upon which operations commence or beneficial occupancy is achieved under a construction contract awarded in connection with this financing.

Please add an additional page if the above table does not contain sufficient columns for the separate projects financed by this direct loan.

6. Estimated Construction Draw Schedule. Note: Construction draws should equal the financial assistance requested as shown in the chart above (other than costs of issuance). Please provide a separate draw schedule for each of the contracts identified above.

See attached Schedule.

5. Are sales tax revenues an anticipated source of repayment?

Yes

No

If yes, please furnish the following information:

Is there a tax increment financing district within the district/city that would capture a portion of the sales tax revenues that are anticipated to be a source of repayment for the participant's bonds?

Collection data for the past five (5) years (and collections for current year-to-date) for those sales tax revenues available to pay debt service on the Participant's bonds:

20__	\$	<u>N/A</u>	(year-to-date)
20__	\$	<u>N/A</u>	
20__	\$	<u>N/A</u>	
20__	\$	<u>N/A</u>	
20__	\$	<u>N/A</u>	
20__	\$	<u>N/A</u>	

Rate of sales tax available: _____

Permissible uses for the sales tax: _____

Restrictions on the use of sales tax: _____

Sunset date for sales tax, if any: _____

6. **Note: Question 6 is applicable only if the Participant is refinancing outstanding notes/bonds with the direct loan.**

Does the project include a refinancing of outstanding notes or bonds?

Yes

No

If yes, please describe the bonds or notes to be refinanced, the amount of the proceeds that have been spent, the amount of bonds or notes outstanding and the call date: _____

Are there any unexpended proceeds from the bonds or notes being refinanced?

Yes

No

If yes, please provide an expected disbursement schedule. (Include the last date on which any remaining proceeds from the bonds or notes to be refinanced may be disbursed.)

Has DNR reviewed expenditures of the proceeds of the bonds or notes to be refinanced to determine if such expenditures qualify as "eligible costs?"

Yes

No

Were these projects covered under a FNSI or a categorical exclusion?

Yes

No

If financing is being requested for the purpose of refunding outstanding notes or bonds, please provide a copy of the resolution or ordinance authorizing the issuance of the bonds or notes to be refunded.

7. Are there any proposed leases or management contracts with or occupancy by nongovernmental entities (other than contracts for janitorial, office equipment repair, billing or other services that are solely incidental to the primary governmental function(s)) of the project financed with the proceeds of the direct loan?

Yes

No

If yes, briefly describe: _____

8. Will a nongovernmental entity use more than 5% of the project financed with the proceeds of the direct loan?

Yes

No

If so, will such user receive treatment different than that afforded to a member of the general public, or is the project designed in any way to accommodate the needs of such user? For this purpose, the term "use" may include, among other things, ownership or the actual or beneficial use of property pursuant

to any number of other arrangements, such as a lease, a management, service or incentive payment contract, a research agreement or certain other arrangements, such as a take or pay or other output-type contract.

- Yes
 No

If yes, briefly describe the arrangements concerning such user. Include any special fee(s) to be charged to such user that are outside the approved user charge ordinance: _____

IV. System Information and Revenues

- Other than the project being financed with this direct loan, describe generally any plans to expand, improve or equip the system within the next two years: **The District is in the second phase of a multi-decade and multi phase capital improvement plan. The existing phase that covers fiscal years 2008 through 2012 and totals \$661 million.**
- Provide actual operating expenses of the system for the previous two (2) years and projected operating expenses of the system for the current year and the next (4) fiscal years. Please do not include current or anticipated debt service payments. Denote the year in which new project is to come on line. **(Paul L)**

<u>Year</u>	<u>Operating Expenses</u>
FY06 (previous)	118,816,017
FY07 (previous)	129,348,891
FY08 (current)	141,917,888
FY09 (next)	151,260,220
FY10 (next)	163,038,000
FY11 (next)	169,544,000
FY12 (next)	173,131,000

- If system revenues are an anticipated source of repayment of the bonds securing the direct loan, please provide the following information in connection with the Participant's system (or the portion of the system from which the Participant anticipates drawing revenues to repay the direct loan): (

Last five (5) years	2008	2007	2006	2005	2004
System Revenue	\$203,674,746	\$193,556,431	\$199,470,786	\$180,732,026	\$149,672,393
Investment Income	\$13,277,548	\$13,501,751	\$6,135,347	\$4,356,643	\$1,630,215
Other Income	\$5,306,631	\$7,391,655	\$5,988,302	\$1,359,916	7,182,897
Total Revenue	\$222,258,925	\$214,449,837	\$211,594,435	\$186,448,585	\$158,485,505
Operating Expenses (excluding depreciation)	\$164,789,198	\$138,089,529	\$131,909,717	\$117,930,992	\$108,000,500
Net Revenues available for DS	\$57,469,727	\$76,360,308	\$79,684,718	\$68,517,593	\$50,485,005
Annual Debt Service (existing)	\$26,334,791	\$24,329,929	\$19,242,832	\$15,926,902	\$924,164
Debt Service Coverage	31,134,936	52,030,379	60,441,886	52,590,691	49,560,841

Existing covenant coverage required, if any: 1.25

4. Ten (10) largest users and % of system use.

<u>User</u>	<u>% of System Use</u>	<u>% of System Revenues</u>
Anheuser Busch	3.70%	2.91%
Mallinckrodt Inc	0.87%	0.41%
Chrysler Corporation	0.46%	0.21%
City of St. Louis	0.45%	0.20%
Zoological Gardens	0.41%	0.20%
Sigma-Aldrich	0.40%	0.18%
Sensient Colors Inc	0.34%	0.19%
Washington University	0.33%	0.15%
GKN Aerospace N America Inc	0.30%	0.13%
St. Joseph's Convent of Mercy	0.29%	0.13%

Has there been a 5% or greater change in the number of system users during the past two-year period?

Yes

No

If so, please explain. _____

5. Identify system use (gallons per day) for billing purposes, actual billings, and collections for each of last five (5) years. If the system is a combined waterworks and sewerage system, please provide the following information separately for the waterworks and sewerage components of the combined system. (Mike & Michelle)

<u>Year</u>	<u>System Use (gal.)</u>	<u>Billings (\$)</u>	<u>Collections (\$)</u>
FY 08			
FY 07	_____	198,992,581	199,474,088
FY 06	_____	203,880,320	198,449,849
FY 05	_____	183,512,398	177,872,543
FY 04	_____	150,518,591	143,667,321
FY 03	_____	123,694,300	123,269,772

6. Current and Proposed Rate Structure.

Please provide the Participant's current rate structure and its effective date and any proposed new rate structure and date of adoption for the same. If the Participant has a combined waterworks and sewer system, the rate structure for both water and sewer users should be included.

	<u>Current Rate Schedule</u>	<u>Effective Date</u>	<u>Proposed Rate Structure</u>	<u>Date of Adoption</u>
Residential users	See accompanying presentation			

Commercial users
Industrial users

Please provide a copy of the ordinance imposing the most recent rate increase in connection with the current SRF financing.

7. Please provide information on previous rate increases and effective dates within the last five (5) years. .

[See accompanying presentation](#)

8. Does the Participant's investment policy relative to funds of the system or otherwise securing the direct loan comply with the State Treasurer's model investment policy and any other state law requirements (see www.treasurer.mo.gov/invest/policy2.doc model policy)?

9. Please provide a certificate or other evidence of insurance coverage against the risks of property and casualty loss, public liability, and any other insurance maintained by the Participant, including type of coverage, amount of coverage, annual premiums, name of insurer, and term

[See accompanying information](#)

V. Litigation and Other Proceedings

1. Provide a description of all contracts and commitments of the Participant under which any default has occurred or is claimed to have occurred. In December 2003, the District entered into a construction contract with the Baumgartner Tunnel Joint Venture (BTJV) group for the construction of a 4 – mile long 200 foot deep tunnel with placement of pipe the length of the tunnel and the creation of 3 access shafts and 5 drop shafts. The project was located in South St. Louis County and had an initial completion date of December 2005 which was revised to March of 2006. The BTJV made a claim for additional fees based on a soft tunnel invert causing problems during pipe placement. MSD denied the claim based upon the BTJV's failure to notify the District of a changed condition causing the delay. The District is also charging BTJV liquidated damages based upon late completion. Through negotiation this matter was settled prior to litigation.
2. Describe (1) any pending or possible litigation and contractual disputes and (2) any consent decrees, prospective judgments, writs, injunctions, court orders, settlement agreements or judgments, or correspondence regarding the same, to which the Participant either is or has been a party within the past three (3) years or that are threatened against the Participant. Supply copies of all letters concerning any litigation against the Participant that have been provided by all legal counsel to the Participant's independent public accountants in connection with audit opinions for the last three (3) fiscal years.

(a) On or about July 29, 2002, the District entered into a Settlement Agreement with Missouri Department of Natural Resources, (MDNR) the Missouri Clean Water Commission, (Commission) and the Missouri Attorney General regarding the Baumgartner Sewage Treatment Facility (Baumgartner).

Previously, the State filed the case of State of Missouri ex rel. William L. Webster, et al. v. The Metropolitan St. Louis Sewer District, No. 864-00250, against MSD with respect to certain alleged past and continuing violations of the Federal Water Pollution Control Act, 33 U.S.C. §§1251 et seq., the Missouri Clean Water Law §§ 644.006, et seq., RSMo, and Missouri State Operating Permits issued to various sewage treatment facilities and other facilities owned and operated by MSD. An Amended Consent Judgment was entered by the circuit court on January 20, 1989.

Paragraph XXIV of the Amended Consent Judgment further provided, in pertinent part, that the Amended Consent Judgment shall terminate when MSD has achieved substantial compliance with the final effluent limitations for the Bissell Point and Baumgartner Sewage Treatment Facilities for a period of one year. One of the purposes of the Amended Consent Judgment was for MSD to achieve and then continue to achieve compliance with its Missouri State Operating Permit effluent limitations at Baumgartner.

Under said settlement agreement the District agreed to take certain measures to achieve temporary compliance with fecal coliform permit limits at Baumgartner. Ultimately, the District is to take the Baumgartner lagoon offline on or before December 31, 2006. This will be done by connecting the sewage flow going to Baumgartner to a new Meramec Wastewater treatment facility. Furthermore, the parties agreed that MSD will complete closure of the Baumgartner lagoon pursuant to 10 CSR 20-6.010(12) within 24 months of taking the Baumgartner lagoon offline. As of May 31, 2003, a moratorium on further sewer connects to Baumgartner will be enacted should the District be unable to meet identified effluent limits.

In addition, should the District fail to meet any of the deadlines set out in the Settlement Agreement or violate any of the terms contained therein, the penalties for each missed deadline could reach a maximum of \$10,000 per day, per violation.

The July 29, 2002 Settlement Agreement was modified on January 3, 2007. In compliance with the Modification to the July 29, 2002 Settlement Agreement the Baumgartner Lagoon was taken offline on March 1, 2007. The District will complete closure of the Baumgartner lagoon pursuant to 10 CSR 20-6.010(12) within 24 months of taking the Baumgartner lagoon offline. The lagoon was properly closed and inspected by MDNR representatives on November 13, 2008. A Satisfaction of Judgment regarding the Amended Consent Judgment was filed by the Attorney General's office on March 5, 2009.

(b) US and State of Missouri v. Metropolitan St. Louis Sewer District; In the US District Court for the Eastern District of Missouri; Case No. 07-1120. A lawsuit was filed by the Department of Justice on behalf of the United States Environmental Protection Agency ("EPA") for various alleged violations of the Clean Water Act. The district has been the subject of several investigatory actions by EPA over the past several years. Negotiations have been ongoing with EPA and the Missouri Department of Natural Resources ("MDNR") regarding the sewer collection system, both the combined system and the sanitary system, for several years. The Missouri Coalition for the Environment ("MCE") gave Notice of Intent to Sue the District under the citizen suit provisions of the Clean Water Act. EPA and MDNR then brought the suit on June 11, 2007, and MCE moved to intervene on August 13, 2007. Intervention was granted on August 29, 2007. The District filed its answer to the complaint filed by US and Missouri on September 21, 2007, including in its response filing counterclaims against the State of Missouri. Concurrently with the answer and counterclaims, the District filed a motion to dismiss all claims and penalties that occurred before July 11, 2002, as barred by the applicable statute of limitations. Following a responsive pleading filed by the U.S. Department of Justice and a reply by the District, on October 4, 2007, the Court granted the District's motion to dismiss, thus barring all of plaintiffs' claims for civil penalties attributable to any and all of the District's alleged violations of the Clean Water Act that occurred before June 11, 2002 from this litigation.

A group of companies called the MIEC filed a Motion to Intervene. This motion was denied on September 12, 2008. Further, the original judge in this matter, and the subsequently assigned judge, have either been recused or rejected by a party from presiding over this case. The current judge is Carol E. Jackson, Chief United States District Judge. The suit is based on violations of the Clean Water Act as a result of overflows in the combined and sanitary sewer systems causing pollutants to reach waters of the United States. There are other counts involving violations of permit conditions. Also, the suit alleges that the District does not have an approved Long-Term Control Program ("LTCP") for the combined system. The District has been working on these issues for several decades. The District has asked voters to approve bonds and rate increases to rehabilitate and maintain the collection system. The District finished this year's process required by its Charter to increase rates which will continue to fund the improvements sought by EPA and MDNR. The Judge made a major ruling on September 12, 2008, putting in place a Stay while the parties mediate the issues.

On October 14, 2008, the MIEC appealed the denial of the Motion to Intervene. That motion was denied by the Eighth Circuit Court of Appeals on June 22, 2009. In addition, the State of Missouri filed an appeal of the September 12, 2008 ruling which disallowed the State's claim of sovereign immunity as to the counterclaims made by the district. On August 3, 2009, this decision was upheld by the Eighth Circuit Court of Appeals. The parties have been in mediation over the past year. A status report on the Stay is due on November 2, 2009. The District submitted its LTCP, which is currently under review.

(c) In the matter of Metropolitan St. Louis District, Respondent. Proceedings under Section 309(a)(3) of the Clean Water Act, 33 U.S.C. § 1319(a)(3); filed on April 30, 2007, and amended on May 22, 2007, Docket No. CWA-07-2007-0042, has been amended for a second time on July 18, 2008. This is a Unilateral Administrative Order (“UAO”) issued by the United States Environmental Protection Agency Region VII requiring that the District: (1) provide notice to EPA of the District’s intent to comply with the Amended Order; (2) post signs according to the instructions and schedule contained in the UAO; (3) forward notices to customers and post a notice on the District’s website as described in the UAO; and (4) provide notice to EPA and MDNR of all known discharges from constructed Sanitary Sewer System Overflows (“SSOs”) on a quarterly basis, beginning in August 2007. The District is complying with the UAO. EPA has been notified of the District’s intent to comply with the Amended Order, subject to the District’s legal authority and capabilities. The notices have been forwarded to customers and a copy posted on the District’s website. Signs have been posted as instructed. The district has notified EPA and MDNR of all known discharges from construction SSOs for the quarter May 2007 through July 2007, and continues such notifications on a quarterly basis. The Second Amended Order required additional information, signs, and adjusted the non-constructed SSO sign inspection schedule as well as requested electronic raw data. The District has sent such information to EPA and complied with all requests subject to the District’s legal authority and capabilities and continues to do so.

(d) *William Zweig et al. v. MSD*. This case was filed on July 18, 2008 in the Circuit Court for St. Louis County. The lawsuit, as amended, contends that MSD Ordinances No. 12560 and No. 12789, which enacted increases in MSD’s stormwater user charge based on the amount of impervious area on the customer’s property, are unconstitutional. The lawsuit claims the ordinances violate the so-called Hancock Amendment, Mo. Const. art. X, § 22(a), because the stormwater user charge is in reality a tax that requires voter approval. MSD’s Board of Trustees passed the ordinances in December 2007 and December 2008, respectively, without submitting them to the voters. MSD contends the stormwater user charge is not a tax and, thus, not subject to voter approval. The original plaintiff, William Zweig, is an MSD stormwater customer residing in Chesterfield, Missouri, who seeks to represent a class of all MSD stormwater customers. In July 2009, two more plaintiff class representatives, David Milberg and Mark Kurz, were added to the lawsuit. The lawsuit seeks (1) a declaration that the stormwater user charge is unconstitutional, (2) a refund of all stormwater user charges collected, and (3) payment of the plaintiffs’ costs, including attorneys’ fees.

On August 27, 2008, we filed on MSD’s behalf an answer and affirmative defenses to the original petition, and on August 6, 2009, we filed MSD’s answer and affirmative defenses to the Second Amended Petition. Since the case was filed, the parties have engaged in extensive discovery, including depositions of the original plaintiff and several MSD witnesses. Discovery is continuing, including depositions of the new plaintiffs and expert witness discovery. Plaintiffs’ motion for class certification was filed in May 2009, but has not been fully briefed and has not been argued to the court. A motion to intervene was filed in February 2009 on behalf of a number of putative class members who allege they are not adequately represented by the plaintiffs. The plaintiffs and MSD both oppose the motion to intervene. The class certification and intervention motions are set for hearing in early October 2009.

The pace of the case has been significantly slowed due to the retirement of the judge originally assigned to the case, the assignment and subsequent recusal of a replacement judge, and then the recusal of all the judges in the St. Louis County Circuit Court, presumably because they are all putative class members as MSD customers. In August 2009, the Missouri Supreme Court assigned a judge from Lincoln County to hear the case. At this point, there is no trial date set, but we anticipate the case will go to trial in Spring 2010. MSD is vigorously defending the lawsuit. While we believe MSD’s position that its stormwater user charge is a fee, not a tax, is meritorious, we cannot predict with certainty that Missouri’s courts will agree.

If it is our understanding that MSD has collected approximately \$46,000,000 to date from the stormwater user charge, and is continuing to collect approximately \$3,000,000 each month, which would be subject to plaintiffs’ request for a refund should the ordinances be declared unconstitutional. MSD has significant legal and factual arguments in opposition to any refund, but we cannot predict with any certainty at this time whether, or in what amount, MSD may be required to make a refund should the

ordinances be declared unconstitutional. In addition, if plaintiffs' were to prevail and the ordinances were found unconstitutional, plaintiffs would be entitled to their attorneys' fees and costs under the Hancock Amendment (Mo. Const. art. X, § 23). While we cannot estimate these fees and costs with certainty, the amount sought could be in excess of \$1,000,000.

(e) There are four cases associated with the September 14, 2008 flooding. They are as follows:

Angela Holland v. The Metropolitan St. Louis Sewer District. St. Louis County Circuit Court, Cause No. 08SL-CC04922. On November 25, 2008, Plaintiff Angela Holland filed this action against the District in the Circuit Court of St. Louis County for wrongful death and property damage arising out of the flash flooding of the River Des Peres in the aftermath of heavy rains from Hurricane Ike on September 14, 2008. The initial Petition alleged that the District was liable for the wrongful death of Louise Bryant who was swept away by the flood waters and drowned while trying to save her car. The petition alleged that the District was liable because (1) it failed to construct adequate stormwater facilities along the River Des Peres, such as levees, retaining walls, and water detention basins; and (2) it failed to forecast and warn plaintiff and her decedent about the potential dangers of flash flooding on September 14, 2008. The petition further alleged that the District's sovereign immunity was waived under the circumstances of the case under the "dangerous condition" waiver of sovereign immunity contained in RSMo. § 537.600.

On February 23, 2009, the District moved to strike certain allegations of petition and to make the petition more definite and certain. As grounds for the motion to strike, the District argued that the allegations failed to state a claim against the District arising out of the alleged dangerous condition of public property and that the District had no private duty to plaintiff or plaintiff's decedent to construct stormwater facilities along the River Des Peres or to warn plaintiff or plaintiff's decedent of potential flash flooding of the River Des Peres on September 14, 2008.

In response to the District's Motion, plaintiff Holland filed her first amended petition on April 13, 2009. The First Amended Petition sounded in two Counts. Count I purports to state a claim for negligence and a dangerous condition of public property, alleging basically the same grounds for liability as in the initial petition but omitting claims of liability arising out of the District's alleged failure to forecast and warn of the flooding on the River Des Peres. Count II purports to state a claim for inverse condemnation and damage to Louise Bryant's residence on Wilson Avenue in University City, Missouri. The first amended petition seeks damages for Ms. Bryant's wrongful death and residential property damage as a result of the River Des Peres flooding.

The District answered the first amended petition on May 4, 2009, denying liability and raising affirmative defenses.

The parties have exchanged written discovery requests and responses and have produced documents. At present, there is no discovery deadline for this matter but a case management conference is scheduled for December 21, 2009.

Frederick Eppenberger, et al. vs. The Metropolitan St. Louis Sewer District. St. Louis County Circuit Court, Cause No. 08SL-CC05270. On December 17, 2008, plaintiffs Frederick Eppenberger, Maxine Smith and William Bain, as individuals and as putative class representatives filed this action against the District in the Circuit Court of St. Louis County for property damages arising out of the flash flooding of the River Des Peres in the aftermath of heavy rains from Hurricane Ike on September 14, 2008.

Like the Holland petition, the initial Eppenberger Petition alleged that the District was liable for the property damage to their homes and personal property caused by the flash flooding of the River Des Peres. Like the Holland Petition, the Eppenberger petition alleged that the District was liable because (1) it failed to construct adequate stormwater facilities along the River Des Peres, such as levees, retaining walls, and water detention basins; and (2) it failed to forecast and warn plaintiffs and the plaintiff class about the potential dangers of flash flooding on September 14, 2008. The petition further alleged that the River Des Peres was owned by and under the exclusive control of the District; that it was in a dangerous condition for which the District was responsible; and that plaintiffs' damages resulted from the dangerous condition of the River Des Peres.

On February 23, 2009, the District moved to dismiss the petition for failure to state a claim and, alternatively, to strike certain allegations. The District moved to dismiss on grounds that plaintiffs failed to plead essential facts establishing a waiver of the District's sovereign immunity. As grounds for the motion to strike, the District argued that the allegations failed to state a claim against the District arising out of the alleged dangerous condition of the public property and that the District had no private duty to plaintiffs or the plaintiff class to construct stormwater facilities along River Des Peres or to warn plaintiffs or the plaintiff class of potential flash flooding of the River Des Peres on September 14, 2008.

In response to the District's motion, plaintiffs filed their first amended petition on April 13, 2009. The first amended petition sounded in two Counts. Count I purports to state a claim for negligence and a dangerous condition of public property, alleging basically the same grounds for liability as in the initial Petition but omitting claims of liability arising out of the District's alleged failure to forecast and warn of the flooding on the River Des Peres. Count II purports to state a claim for inverse condemnation and damage to the homes and personal property of plaintiffs and the plaintiff class. The first amended petition seeks monetary relief for plaintiffs and the plaintiff class to compensate them for flood damage to their property.

The District answered the first amended petition on May 4, 2009, denying liability and raising affirmative defenses.

The parties have exchanged written discovery requests and responses and have produced documents. At present, there is no discovery deadline for this matter. However, a case management conference was held on September 15, 2009 and plaintiffs' counsel indicated an intent to file their motion for class certification on or before January 25, 2010, the date of the next scheduled case management conference.

Peggy Sausville v. The Metropolitan St. Louis Sewer District. St. Louis City Circuit Court, Cause No. 0922-CC01248. On April 1, 2009, plaintiff Peggy Sausville filed this against the District in the Circuit Court of the City of St. Louis for property damages arising out of the flash flooding of the River Des Peres in the aftermath of heavy rains from Hurricane Ike on September 14, 2008. The case arises out of the same facts and circumstances as the Holland and Eppenberger lawsuits and the allegations of the petition mirror the initial Holland petition. Plaintiff Sausville alleges that she sustained damages to her home and personal property as a result of the flooding on September 14, 2008.

The petition sounds in two Counts. Count I purports to state a claim for negligence, nuisance and a dangerous condition of public property, alleging basically that the District was liable because (1) it failed to construct adequate stormwater facilities along the River Des Peres, such as levees, retaining walls, and water detention basins; and (2) it failed to forecast and warn plaintiff about the potential dangers of flash flooding on September 14, 2008. Count II purports to state a claim for inverse condemnation and damage to plaintiff's home and personal property caused by the flash flooding of the River Des Peres.

On April 21, 2009, the District moved to dismiss and transfer venue to the Circuit Court of St. Louis County. The motion was briefed, argued and remains under submission by the Court. On August 31, 2009, the District answered the petition, without waiver of its venue objection. The District's answer denied liability and raised affirmative defenses.

There has been limited discover at this time.

William & Louise Gaddy v. The Metropolitan St. Louis Sewer District. St. Louis County Circuit Court, Cause No. 09SL-CC03426. On August 7, 2009, plaintiffs William and Louise Gaddy, husband and wife, filed this action against the District in the Circuit Court of St. Louis County for property damages arising out of the flash flooding of Maline Creek in the aftermath of heavy rains from Hurricane Ike on September 14, 2008. This litigation is similar to the Holland, Eppenberger and Sausville cases and mirrors the pleadings in those cases. However, plaintiffs allege damages as a result of the flooding of Maline Creek on September 14, 2008 (upstream of the River Des Peres). Plaintiffs alleged they sustained damage to their homes and personal property on September 14, 2008 as a result

of the flooding of Maline Creek.

Plaintiffs allege that the District is liable for flood damage to their homes and personal property because (1) it failed to construct adequate stormwater facilities along the River Des Peres, such as levees, retaining walls, and water detention basins; and (2) it failed to forecast and warn plaintiffs and the plaintiff class about the potential dangers of flash flooding on September 14, 2008. The petition further alleged that the Maline Creek was owned by and under the exclusive control of the District; that it was in a dangerous condition for which the District was responsible; and that plaintiffs' damages resulted from the dangerous condition of the Maline Creek.

3. Has the Missouri Department of Natural Resources initiated or threatened any enforcement action against the Participant with regard to the system?
Has the MDNR initiated or threatened any enforcement action?

Yes, US & State of Missouri v MSD
Case # 4:07-cv-1120-JCH
Allege Clean Water Violations

4. Is the Participant under an administrative or judicial compliance order?

No.

5. Please provide any report or investigation made by any governmental agency or administrative regulatory body concerning the Participant within the last five (5) years.

EPA has conducted a number of inspections. On May 6 – 7, 2002 EPA Region VII conducted a nine minimum controls inspection of the Bissell system. A favorable, formal, report was received. On February 10 – 11, 2003 EPA Region VII conducted a nine minimum controls inspection of the Lemay system. A formal report was never received. On November 8 – 10, 2004 EPA Region VII conducted an inspection of MSD's system. No report was ever received.

VI. Requested Documents

Please provide a copy of the following:

1. All annual reports or audited financial statements and auditor's reports, including any management letters, for the Participant, and for the Participant's system, if available, for the last two (2) fiscal years (if available on a website, please indicate so and provide a web address).
<http://www.stlmsd.com/MSD/About>
2. Any bond ordinances or resolutions adopted in connection with outstanding system revenue bonds or any other document that contains restrictions on the use of system revenues.
3. All reports prepared by or for the Participant (including reports by inside or independent consultants) that describe or evaluate the Participant or its system. Include all reports that detail future operating costs of the system for the next five (5) years, such as any recent rate studies or operating budget or engineering reports.
4. Any agreements relating to any grants and/or loans to the Participant relating to its system, including any USDA Rural Development loans/grants and/or HUD Community Development Block Grants.
5. The most recent official statement, if any, regarding a bond issue or other financing.
6. One copy of this completed form, including supporting documentation, on a compact disk (CD) in Acrobat Adobe (pdf) format.

Executed this 22 day of September, 2009.

CITY OF St. Louis, MISSOURI

By: _____
Name: Karl J. Tyminski
Title: Secretary-Treasurer