

**BEFORE THE RATE COMMISSION OF THE  
METROPOLITAN ST. LOUIS SEWER DISTRICT**

**JULY 15 2011 FIRST DISCOVERY REQUEST  
OF ROBERT A. MUELLER**

**Metropolitan St. Louis Sewer District Response**

**ISSUE: WASTEWATER RATE CHANGE PROPOSAL**  
**WITNESS: METROPOLITAN ST. LOUIS SEWER DISTRICT**  
**SPONSORING PARTY: ROBERT A. MUELLER**  
**DATE PREPARED: JULY 22, 2011**

**Metropolitan St. Louis Sewer District  
2350 Market Street  
St. Louis, Missouri 63103**

**BEFORE THE RATE COMMISSION  
OF THE METROPOLITAN ST. LOUIS SEWER DISTRICT**

For Consideration of a Wastewater )  
Rate Change Proposal by the Rate )  
Commission of the Metropolitan )  
St. Louis Sewer District )

**JULY 15, 2011 FIRST DISCOVERY REQUEST  
OF ROBERT A. MUELLER**

Pursuant to §§ 7.280 and 7.290 of the Charter Plan of the Metropolitan St. Louis Sewer District (the “Charter Plan”), Operational Rule 3(2) and Procedural Schedule §§ 1, 14, 15 and 17 of the Rate Commission of the Metropolitan St. Louis Sewer District (“Rate Commission”), Metropolitan St. Louis Sewer District (“District”) thereby responds to the Robert A. Mueller July 15, 2011 First Discovery Request for additional information and answers regarding the Rate Change Proposal dated May 10, 2011 (the “Rate Change Proposal”).

The District is requested to amend or supplement the responses to this Discovery Request, if the District obtains information upon the basis of which (a) the District knows that a response was incorrect when made, or (b) the District knows that the response, though correct when made, is no longer correct.

**JULY 15, 2011 FIRST DISCOVERY REQUEST  
OF ROBERT A. MUELLER**

**Metropolitan St. Louis Sewer District Response**

1. On June 29, 2011, The Metropolitan St. Louis Sewer District Board of Trustees voted to adopt a \$4.7 billion, 23 year Long-Term Control Plan, outlined in a "Consent Decree" that MSD worked out with the U.S. Environmental Protection Agency (EPA) in response to a suit filed by the Agency in U.S. District Court in 2007, to force compliance with the Clean Water Act of 1972.

**RESPONDER:** Susan Myers, MSD General Counsel

**RESPONSE:** See responses to Questions # 1A and # 1B.

1A. Does the Consent Decree contain any provision which stipulates that the EPA will be bound by a "no further action" clause that prevents the EPA from initiating further litigation in this matter in the event that the Plan agreed to by all parties to the Consent Decree fails to comply with the provisions contained in the Non-Pollution Discharge Elimination System (NPDES) Permit and the Clean Water Act of 1972? Or alternatively,

**RESPONDER:** Susan Myers, MSD General Counsel

**RESPONSE:** In answering your question I would like to provide some background information. The Consent Decree (CD) resulted from negotiations with the EPA, State of Missouri, and the Missouri Coalition for the Environment (MCE), concluding a federal lawsuit that was filed in 2007. In 2007, the Missouri Coalition for the Environment filed a 60 day Notice under the citizen suit provision of the Clean Water Act stating it intended to file suit against MSD if the federal/state government did not. EPA and the State then filed suit prior to the 60 day notice period ending. The MCE then intervened. A detailed summary of the requirements of the CD is provided in Exhibit 11A32. (The detail sheet was approved by the Plaintiffs prior to the final signing of the CD to address the technical requirements of the CD.) The elements of the CD have been negotiated and reflect MSD's specific current program and future programs to comply with current law and regulation.

Prior to the filing of the suit, MSD was initially involved with the State of Missouri thru its NPDES permits working on the development of a Long Term Control Plan (LTCP) strategy for the combined sewer system constructed overflows from the initial development of the EPA/State program in, as well as MSD was working on eliminating the constructed sanitary sewer system overflows. EPA became part of those discussions as EPA decided nationally to target municipal CSO and SSO compliance plans thru injunctive relief in CDs.

To understand the current background it is important to have some recent history. In 2001, several changes were made to the Clean Water Act including a requirement for EPA to report to Congress on the progress being made by EPA, States, and Municipalities in implementing and enforcing the CSO Policy of 1994. EPA submitted the report in 2004. The report stated that there were 772 CSO communities with a total of 9,471 CSOs which was a significant decrease from the previously estimated numbers. Even though some progress was being made, CSOs (compliance) and SSOs (elimination) became an EPA priority for enforcement to get a compliance schedule for CSO communities and later SSO communities (which was then expanded to include the

impacts from wet weather). In a Memorandum titled “Guidelines for Federal Enforcement in CSO/SSO cases dated April 10, 2005” the EPA Assistant Administrator outlined how the States and EPA needed to work together to address the issues because “Enforcement actions involving CSO and SSO violations are often highly complex and resource-intensive.” In that same memo, it outlines which situations require Federal involvement. Included as a determining factor are “larger systems” both in the expansiveness (i.e., cost exceed \$250 million ) of the system itself and the population ( i.e., population served is greater than 300,000) plus other factors. MSD clearly fits into the category for federal enforcement in conjunction with the State. These communities have been targeted for Federal CDs for more than a decade. Cities and Sewer Districts throughout the country have entered into CDs (i.e., Los Angeles, Cleveland, Milwaukee, Honolulu, Kansas City, Independence, Cincinnati, WDC, Atlanta, New York, Baltimore, Des Moines, Omaha, and many others including much smaller cities.).

The CD which is in the process of being approved by the Parties settles all claims presented by the Plaintiffs. It includes much of the standard language used in the EPA template for this type of compliance CD as well as addresses issues specific to MSD. The obvious assumption can be made that if MSD stays in compliance with the CD and its terms, the signatories of the CD will not have justification to bring another enforcement action.

As required by law and pursuant to the Missouri Operating Permits for the Bissell and Lemay plants, the negotiated CSO Long Term Control Plan was submitted to the State (Missouri Department of Natural Resources Agency). MSD received a letter dated June 1, 2011 approving required specific parts of the LTCP and has provided that letter as Exhibit MSD 25C. The LTCP is a separate document from the CD. However, the CD does contain certain scheduled requirements outlined in the appendices as developed thru the LTCP. Similarly, there will be an SSO Master Plan to be submitted in 2012 and certain of those milestones will be put into the CD upon approval pursuant to the CD.

Due to the voluminous nature of the LTCP it is provided via the following link on the MSD website:

<http://www.stlmsd.com/educationoutreach/bestpractices/combinedseweroverflow>

1B. Are the District and it's Customers fully exposed to further litigation and possible additional rate increases as a result of future actions that may be taken by the EPA and/or the Missouri Department of Natural Resources related to this same matter?

**RESPONDER:** Susan Myers, MSD General Counsel

**RESPONSE:** As indicated in the detail sheet (Exhibit MSD 11A32), the injunctive relief covers more than two (2) decades. As long as MSD complies with the CD there should be no further litigation on the issues alleged in the complaints. MSD cannot predict future actions that may be taken by regulatory agencies. In the best interest of our rate payers, MSD is committed to complying with the requirements in the CD which address improvements to the system which impact the environment and maintaining compliance with the legal requirements into the future.

2. In the last 4 1/2 years, how often has MSD violated its NPDES Permit or the Clean Water Act of 1972, with discharges of untreated combined storm water and sanitary sewage?

**RESPONDER:** Jonathon Sprague, MSD Director of Operations

**RESPONSE:** The following response is applicable to Questions # 2 through # 2D.

In the combined sewer system, overflows are a wet weather issue. Wet weather overflows from MSD's 199 combined system overflows (CSO) are not violations of NPDES permits as each overflow point is permitted. The goal of the Long Term Control plan (LTCP) is not to eliminate, but mitigate these overflow points. MSD does not monitor each CSO for activations and volume, however, the Long Term Control Plan does show typical year overflow volumes and frequencies in Table ES-1. Due to the voluminous nature of the LTCP it is provided via the following link on the MSD website:

<http://www.stlmsd.com/educationoutreach/bestpractices/combinedseweroverflow>

In the Separate Sanitary Sewer System (SSO), overflows are violations of the Clean Water Act of 1972. These overflow issues are part of the Consent Decree (CD) but are separate from the Long Term Control Plan. The SSOs will be addressed in the Master Plan due to regulators by December 31, 2013. Currently MSD has approximately 200 constructed SSO points in its system that will be removed as part of the CD. These constructed SSO points were put in to control the location of wet weather overflows and deal with capacity issues. MSD has monitored activations on the majority of these constructed SSO's since May of 2008 in terms of the number of activations. In the past 3 years and 2 months, since monitoring began, the constructed SSO points have activated 5,084 times. MSD does not collect volume data associated with SSO activity.

While the majority of overflows are wet weather related, dry weather overflows are tracked as well. MSD treats these overflows the same whether in the CSO or SSO system. Dry weather overflows are typically caused by system failures and maintenance issues. Their frequency and volume is typically much less than wet weather overflows. In comparison to SSO activity, the number of dry weather overflows in the same 3 years and 2 month period is 911. This number increases to 1,396 when considered over a 4 1/2 year timeframe since monitoring began.

The cost impact of this specific overflow activity is not available, however, the cost of elimination and mitigation is included in the District's proposed CIRP. The total cost of addressing the required SSO and CSO elimination and mitigation, respectively, is \$746 million. This represents 74% of the total \$1 billion CIRP reflected over the 4 year Rate Change Proposal time period. This information may be found in Table 3-8, page 3-14 of the Rate Change Proposal (Exhibit MSD 1).

2A. Is there a record of the dates and times and an estimate of the volume of water involved when such discharges have taken place?

**RESPONDER:** Jonathon Sprague, MSD Director of Operations

**RESPONSE:** See response to Question # 2 above.

2B. For the most part, do the violations of the NPDES Permit and /or the Clean Water Act take place during heavy storm water conditions or do they, as a matter of fact, occur on a regular or irregular basis when there is no storm water event?

**RESPONDER:** Jonathon Sprague, MSD Director of Operations

**RESPONSE:** See response to Question # 2 above.

2C. If these violations occur primarily during storm water events, is there a record of such occurrences and what percentage of MSD's overall operation does this constitute?

**RESPONDER:** Jonathon Sprague, MSD Director of Operations

**RESPONSE:** See response to Question # 2 above.

2D. What I am trying to discover with this line of questions is this. Are we dealing with cleaning up a 2% or 3% problem with the Consent Decree and the expenditure of \$4.7 to \$6.0 billion? MSD's response to these discovery questions may cause the Rate Commission to give serious consideration as to the cost/benefit to MSD's customers.

**RESPONDER:** Jonathon Sprague, MSD Director of Operations

**RESPONSE:** See response to Question # 2 above.

3. In order to comply with the full impact of the Consent Decree, which continues to remain confidential during these deliberations, is it probable that MSD will have to request additional rate increases in the near future and is it possible that individual single family home owners within the District's jurisdiction could see their monthly sewer service charge ultimately be increased to \$100.00 or \$200.00 per month if these increases are approved?

**RESPONDER:** Jeff Theerman, MSD Executive Director

**RESPONSE:** The District believes the rate increases currently proposed are sufficient to fund the Consent Decree (CD) requirements for the fiscal 2013 through 2016 period. There is no doubt the District will seek similar rate increases in the fiscal years 2017 through 2020 and beyond. We have stated publically that rates of approximately \$85 per month, in current dollars, are likely to be required within ten years.

The exact rates are a matter of what solutions are developed to deal with CD requirements. There is a substantial amount of planning and design work remaining before actual cost estimates based upon final designs will be available. As a great many parts of the CD are resolved through the construction of improvements, inflation plays a significant part in the financial requirements. Likewise, there are no limits on the impact of additional regulatory requirements which may be imposed upon the District and its customers during the 23 year period of the CD. With inflation but without significant additional regulatory requirements, \$100 per month sewer rates are certainly likely. Given the unknowns related to inflation, new regulations, day to day operating costs, etc. it is impossible to accurately predict the extent of required rate increases beyond five to ten years.

4. Does the 1972 Clean Water Act and the EPA's interpretation of said Act consider the Missouri and the Mississippi Rivers within the MSD boundaries to be clean clear water streams suitable for recreational use such as boating, swimming and other water sports?

**RESPONDER:** Brian Hoelscher, MSD Director of Engineering

**RESPONSE:** The entire length of the Missouri River along MSD's boundaries is classified as Whole Body Contact Recreation, or swimming. This is the same for the Mississippi River except for an approximately 28 mile reach from North Riverfront Park to the confluence of the Meramec River which is classified as Secondary Contact Recreation, or boating.

4A. Are the regulation and water quality limits contained in MSD's NPDES Permits, as issued by the Missouri Department of Natural Resources (DNR) for the treatment plants that are located along these rivers, based upon of such interpretation?

**RESPONDER:** Brian Hoelscher, MSD Director of Engineering

**RESPONSE:** The referenced regulation and water quality limits are contained in MSD's NPDES Permits. Due to the voluminous nature of these permits they are provided via the following link on the Missouri Department of Natural Resources (MDNR) website:

[www.dnr.mo.gov/env/wpp/permits](http://www.dnr.mo.gov/env/wpp/permits)

5. Has the Economic Analysis undertaken by MSD's consultants taken into consideration the fact that a significant percentage of single family homes within the District have been foreclosed on and that an equally large number are in various stages of going into the foreclosure process; that home ownership in at least one close-in suburb to the City of St. Louis has dropped to 55%; and that the market values for some homes with 3 bedrooms and 1 bath in that same community have been lowered from \$80,000.00 to \$20,000.00 in the past year, an extreme case, but nevertheless a sign of the times?

**RESPONDER:** Jan Zimmerman, MSD Director of Finance

**RESPONSE:** The District interprets this request as addressing the issue of rate affordability. The MSD rate consultant Economic Analysis referenced in this request consists of a discussion of rate affordability on pages 5-11 and 5-12 of the Rate Change Proposal (Exhibit MSD 1). This discussion and its conclusion is based on affordability measure guidelines provided in Chapter 16 of the American Water Works Association's (AWWA) publication titled "Principles of Water Rates, Fees and Charges" (AWWA M1 manual – Fifth Edition). This copyrighted material, requiring purchase, and may be obtained at [www.awwa.org](http://www.awwa.org).

5A. Realistically, when people can barely afford to make their home payment, unemployment seems to be holding steady at about 10%, the United States Government stand on the brink of default of its financial obligations, how can MSD, the EPA, the U.S District Court and any other parties to the Consent Decree expect ordinary people to endure such substantial increases in their monthly sewer service charges along with all of the other increases in basic necessities such as food, shelter, clothing, transportation and health care without very serious hardship to their lives?

**RESPONDER:** Jeff Theerman, MSD Executive Director

**RESPONSE:** This is the question that all wastewater agencies are grappling with across the country. Virtually all wastewater utilities are playing catch up in the funding of necessary infrastructure renewal. This is the same story that exists in other infrastructure like roads, bridges, etc. MSD operates the fourth largest sewer infrastructure in the nation with a sanitary and combined sewer mileage of approximately 6,500 miles. A lack of investment in the past, primarily reflects MSD's inability to increase rate due to legal challenges. This consequently lead to many of the issues raised in the plaintiff's lawsuit. In essence, like other utilities across the nation, we are playing catch-up. It is important to keep in mind that sewer bills of \$28 per month are not excessive. Many communities across the nation pay considerably more each month for sewer service. Exhibit MSD 25B is pages D-57 and D-58 from the MSD Draft Feasibility Study (provided as Exhibit MSD 18Y) and provides a comparison of an average MSD residential customer's monthly bill to a historical and projected national average as compiled by the National Association of Clean Water Agencies (NACWA). The blue bar on the graph (page D-57) represents MSD's monthly bill, the red line reflects NACWA's projected monthly bills. The black triangles represent the median monthly bill of the 50 largest cities periodically surveyed by Black & Veatch.

Likewise, compared to other utilities, sewer services tend to be one of the lowest bills faced by typical residential customers. Page D-58 of Exhibit MSD 25B provides a list of average residential customer monthly bills for the surveyed 50 largest U.S. cities on an individual basis. MSD's average monthly residential bill is comparable to the Median Residential Bill included in this list. MSD's monthly bill appears at the bottom of the page and is 12% below the 50 cities average monthly bill of \$33.80. MSD's monthly bill is also lower than 24 or 48% of all the cities listed.

A copy of the complete survey can be obtained at the following website:

[http://www.bv.com/Downloads/Resources/Brochures/rsrc\\_EMS\\_Top50RateSurvey.pdf](http://www.bv.com/Downloads/Resources/Brochures/rsrc_EMS_Top50RateSurvey.pdf)

That said, MSD is intently focused on keeping its operating costs controlled so that required system improvements can be made with the lowest customer impact.

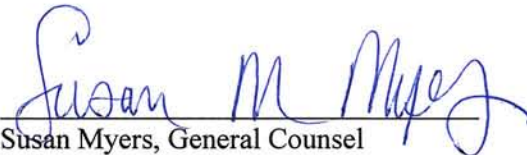
MSD acted in the best interest of its rate payers and mediated a resolution to the lawsuit so that the District could move forward with implementing the required system improvements while being mindful of the financial impact on its customers. While MSD has done extensive work in Washington DC and Jefferson City working with regulators to achieve reasonable requirements,

the District is faced with Clean Water Act mandates which must be addressed. MSD is settling the lawsuit because it believes the Consent Decree provides the St. Louis Community with the most reasonable CIRP schedule and requirements and avoids additional attorneys' fees than would have accumulated by litigating the matter to finality. Although MSD is settling the lawsuit it has not stopped advocating for reasoned approaches to mandated requirements and schedules for their implementation.

**Mueller Ending Comments:**

I am not a lawyer representing some other entity. I have been involved in clean water efforts for over 45 years as a past Member and Chairman of the Missouri Water Pollution Board and the Clean Water Commission and Member of the City of St. Louis Port Commission. I continue to support efforts to keep our waterways clean in a reasonable and responsible manner. I believe that your response to the above Discovery Requests will assist in arriving at a fair and equitable decision in the matter of the Rate Increase now before the MSD Rate Commission. Thank you.

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 22nd day of July, 2011:

An electronic copy of the foregoing instrument was emailed to the Secretary of the Rate Commission c/o [jfenton@stlmsd.com](mailto:jfenton@stlmsd.com)

**SECRETARY OF RATE COMMISSION:** Ms. Nancy Bowser  
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At the request of Rate Commission Counsel, one paper original and associated Exhibits are held at the Rate Commission office for Commissioner review.

An electronic copy of the foregoing instrument was emailed and one paper copy and associated Exhibits were couriered to:

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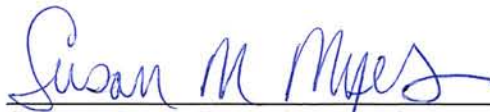
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