



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

11201 Renner Boulevard
Lenexa, Kansas 66219

09 MAR 2015



CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Article No.: 7006 2760 0000 8649 7673

Mr. Brian Hoelscher
Metropolitan St. Louis Sewer District
2350 Market Street
St. Louis, Missouri 63103-2555

RE: Clarification of Combined Sewer Overflow control measures associated with the tunnels required by Consent Decree no.4:07-CV-1120

Dear Mr. Hoelscher:

The U.S. Environmental Protection Agency has received the Proposed Non-Material Modification of CSO control measures submitted by the Metropolitan St. Louis Sewer District (MSD) on February 4, 2015. The MSD requested clarification of the Design Criteria for the CSO control measures associated with the Upper River Des Peres Storage Tunnel, River Des Peres Tributary Storage Tunnel, and the Lower & Middle River Des Peres Storage Tunnel. In the approved Long Term Control Plan, the MSD describes various control technologies that will be implemented to achieve the required Performance Criteria (i.e. no more than four overflows per year). Appendix D of Consent Decree No.4:07-CV-1120 requires the construction of three storage tunnel systems to address CSOs along the River Des Peres in addition to other control measures. The MSD is concerned that the language of Appendix D could be interpreted to mean that every one of the CSO outfalls set forth in the Appendix must be physically connected to the storage tunnel. MSD proposes to modify the Consent Decree to "allow MSD to use other design methods, so long as they reflect good engineering practice, in order to satisfy the specified Performance Criteria and Critical Milestones."

The EPA believes that when reading the Description, Design Criteria and Performance Criteria of Appendix D together, it is clear that the Storage Tunnel CSO control measures required by the Consent Decree are tunnel *systems* that include the tunnel structure near-surface facilities, pump stations, sewer separation and consolidated sewers. The description of the control measures set forth in Appendix D associated with the tunnel systems includes "deep storage tunnel, near-surface facilities, pump stations, sewer separation and consolidated sewers." The design criteria does not require the physical connection of the listed CSO outfall to the tunnel. The design criteria requires the construction of a tunnel *system* that captures at least the described volume to reduce the number of overflows from the listed CSOs to no more than four per typical year. For the reasons state above, the EPA does not believe that the Decree needs to be modified to clarify that the MSD may utilize one of the control measures that have already been identified in Appendix D. If the MSD is proposing to utilize control measures that are not



identified in the description of the control measure set forth in Appendix D, then the EPA views that request as a major modification to the Consent Decree.

Paragraph 51 of the Decree states that the MSD shall construct and implement the CSO Control Measures in accordance with the description, design and performance criteria, and critical milestones set forth in Appendix D. Paragraph 61 of the Decree only addresses proposed modifications to the design criteria (e.g., storage capacity, diameter of tunnel) of the CSO Control Measures, and not to the actual CSO Control Measures employed. The goal of Paragraph 61 was to provide a definition – in this case less than 20% revision of design criteria – for such modifications to the design criteria to be considered non-material. A request to change a technique or CSO Control Measure from what is described in Appendix D will be treated as a major modification under Paragraph 136, and will be subject to the analysis and criteria that went into the development and preparation of the LTCP.

If you have any questions or would like to discuss this further, please contact Jodi Bruno of my staff at 913-551-7810 or email at bruno.jodi@epa.gov.

Sincerely,



Karen A. Flournoy

Director

Water, Wetlands and Pesticides Division

cc:

U.S. Department of Justice, Chief, Environmental Enforcement Section

State of Missouri Office of Attorney General, Chief Counsel, Agriculture and Environment Division

Missouri Dept. of Natural Resources, Chief, Water Pollution Compliance and Enforcement Section

Missouri Department of Natural Resources, Director, St. Louis Regional Office

Heather Navarro, Director, Missouri Coalition for the Environment

Maxine Lipeles, Elizabeth Hubertz, Interdisciplinary Env'tl Clinic, Washington Univ. School of Law

Metropolitan St. Louis Sewer District, General Counsel

Metropolitan St. Louis Sewer District, Director of Engineering